



**4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Dockets No. FMCSA-2017-0243, FMCSA-2017-0296, FMCSA-2017-0337, FMCSA-2017-0340, FMCSA-2017-0342, FMCSA-2017-0356, FMCSA-2017-0361, FMCSA-2017-0373, FMCSA-2018-0003, FMCSA-2017-0336]**

**Hours of Service (HOS) of Drivers; Applications for Exemption from the Electronic Logging Device Rule**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of applications for exemption.

**SUMMARY:** As required by statute, FMCSA announces denials of 10 applications for exemptions from the hours-of service (HOS) electronic logging device (ELD) rule. The applicants are as follows: Power and Construction Contractors Association; Western Equipment Dealers Association; Association of Energy Service Companies; Cudd Energy Services, Inc.; SikhsPAC and North American Punjabi Trucker Association; Owner- Operator Independent Drivers Association, Inc.; American Disposal Service; Towing and Recovery Association of America; National Electrical Contractors Association; and the Agricultural Retailers Association. The Agency reviewed each application and any comments received and rendered each decision based upon the merits of the application.

**DATES:** On June 16, 2018, FMCSA denied 9 applications for exemption and on July 26, 2018, the Agency denied the application of the Agricultural Retailers Association.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone:

202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. In the case of denials, 49 U.S. C. 31315 explicitly states that the Agency may meet the requirements by periodically publishing in the Federal Register the names of persons denied exemptions and the reasons for the denials.

### **Applications for Exemption**

The current hours-of-service (HOS) regulations in 49 CFR 395.8(a) require motor carriers subject to the regulation to ensure their drivers use ELDs in place of written logs to record their duty status for each 24-hour period. Additionally, Part 395 lists certain ELD

exceptions for short-haul operations within a 100 air-mile radius and agricultural operations within a 150 air-mile radius.

The 10 applicants cited below applied for an exemption from the requirement to use an ELD to record HOS for drivers subject to the regulation for various reasons. FMCSA published **Federal Register** notices requesting public comment on each application. Each notice established a docket to provide the public an opportunity to inspect the application and other docketed information, such as comments of others submitted to the docket. Details of the Agency's analysis follows.

*Power and Construction Association (PCCA)*

The PCCA requested that motor carriers and drivers operating commercial motor vehicles (CMVs) in the power and communication construction industry be allowed to use paper records of duty status (RODS) instead of ELDs. PCCA noted that construction contractors spend considerable time off-road on varying jobsites; a single CMV may have several different drivers over the course of a day, moving the vehicle short distances around the jobsite. Due to the limited time that their drivers spend driving on public roads within a workday, PCCA states that the ELD and RODS requirements for drivers in its industries do not result in a significant safety benefit.

FMCSA reviewed the application and the 259 public comments submitted. On June 16, 2018, FMCSA denied PCCA's application for exemption because the Agency could not ensure that the exemption would provide the requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2017-0243).

*Western Equipment Dealers Association (WEDA)*

WEDA requested this exemption from ELD use on behalf of several organizations and their members. Effectively, the requested exemption would eliminate the requirement for agricultural equipment dealers to install ELDs on their CMVs. WEDA stated that equipment dealer operations in agriculture present unique circumstances that warrant the requested exemption and that the failure to grant it would pose an undue burden on equipment dealers and their customers without a measurable safety benefit.

FMCSA reviewed the application and the 125 public comments submitted. On June 16, 2018, FMCSA denied WEDA's application for exemption because the Agency could not ensure that the exemption would provide the requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2017-0296).

*Association of Energy Service Companies (AESC)*

AESC requested this exemption to allow all drivers of well service rigs to complete paper RODS instead of using an ELD whenever the drivers exceeded the requirements of the short-haul exception. According to AESC, complying with the ELD requirement would be overly burdensome for well service rig contractors without providing any measurable safety benefit. AESC further explained that well service rig drivers spend very little time on public roads, in contrast to long-haul truck drivers who spend most of their on-duty hours driving on public roads.

FMCSA reviewed the application and the 8 public comments submitted. On June 16, 2018, FMCSA denied AESC's application for exemption because the Agency could not ensure that the exemption would provide the requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2017-0337).

*Cudd Energy Services, Inc. (CES)*

CES requested an exemption from the ELD requirements for its specially trained drivers of specially constructed CMVs used in oilfield operations to allow drivers of these infrequently driven CMVs to complete paper RODS instead of using an ELD. FMCSA regulations prohibit these drivers from using the short-haul exceptions to the HOS rules. CES believes that the exemption would not have any adverse impacts on operational safety because drivers would remain subject to the HOS regulations as well as the requirements to maintain paper RODS.

FMCSA reviewed the application and the 8 comments submitted. None of the comments supported the exemption. On June 16, 2018, FMCSA denied AESC's application for exemption because the Agency could not ensure that the exemption would provide the requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2017-0340).

*SikhsPAC and North American Punjabi Trucker Association (applicants)*

These applicants requested an exemption from the ELD requirements on behalf of their members (fresh produce shippers and small truck businesses). According to the applicants, many of their members were not fully prepared to meet the December 18, 2017, compliance date. The exemption would allow members involved in segments of America's agricultural transportation industry to delay using ELDs for one year. The applicants asserted that the exemption, if granted, would give the marketplace time necessary to develop cost-effective and practical solutions for the specific needs of impacted stakeholders and would allow FMCSA time to address training programs with compliant ELD options.

FMCSA reviewed the application and the 41 comments submitted. On June 16, 2018, FMCSA denied the application. The information provided by the applicants failed to distinguish the drivers who would be included under the exemption. The applicants failed to indicate how

they could ensure that the exemption would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained by compliance with the HOS regulation. A copy of the denial letter is available for review in the docket (FMCSA-2017-0342).

*Owner-Operator Independent Drivers Association, Inc. (OOIDA)*

OOIDA requested a five-year exemption from the ELD rule for certain motor carriers considered to be a small transportation trucking business under 13 CFR 121.201. If granted, the exemption would cover small trucking businesses that do not have a carrier safety rating of “unsatisfactory,” and that can document a proven history of safety performance with no attributable at-fault crashes.

FMCSA reviewed the application and approximately 4,090 comments submitted. An estimated 96 percent of the comments were from owner-operators in favor of the exemption. Approximately 4 percent of the comments were in opposition to the proposed exemption. On June 16, 2018, FMCSA denied the application. FMCSA noted that most of the content of the application challenges the basis of the ELD rule itself, rather than justifying an exemption for a specific segment of drivers under applicable statutory standards. FMCSA noted further that the application provided no consideration of the significant difficulty that would be encountered in trying to identify and validate drivers who meet the proposed exemption criteria, especially during roadside inspections. A copy of the denial letter is available for review in the docket (FMCSA-2017-0356).

*American Disposal Service (ADS)*

ADS is a trash hauling and recycling company operating in four States, with over 300 drivers who hold CDLs. ADS has been using the multiple stop rule, “treating all the stops in a village, town or city as one.” ADS operations fall under the 100 air-mile short haul exemption in

Section 395.1(e)(1). When drivers exceed the 12-hour limitation more than 8 times in any 30 consecutive days, ADS is required to install and use ELDs in its CMVs.

ADS applied for the exemption from the ELD and paper RODS requirements because the company does not believe ELDs can accurately record driving time when the CMV makes constant short movements with the driver often exiting the vehicle. FMCSA reviewed the application and the 10 comments submitted. On June 16, 2018, FMCSA denied the application. FMCSA concluded that ADS had not clearly explained how its non-use of ELDs and its discontinued use of paper RODS would reach the current level of safety that compliance with the HOS rules provides. A copy of the denial letter is available for review in the docket (FMCSA-2017-0361).

*Towing and Recovery Association of America (TRAA)*

TRAA is the national towing association representing more than 35,000 towing companies in all 50 states. TRAA has requested a 5-year exemption for all operators of CMVs owned or leased to providers of motor vehicle towing, recovery, and roadside repair services while providing such services. TRAA states that towing industry operations represent a unique and vital segment of the overall transportation industry in America that warrants exemption from the ELD regulations. TRAA believes that failure to grant the exemption will cause confusion and create an overly complex regulatory framework that will pose an undue burden on towers and their customers without any measurable benefit to public safety.

FMCSA reviewed the application and the 250 comments submitted. On June 16, 2018, FMCSA denied the application. FMCSA concluded that TRAA's plan for the continued use of paper RODS and the process for reviewing the RODS to verify accuracy would be comparable to the level of safety provided by paper RODS prior to the implementation of the ELD rule but

would not achieve the equivalent level of safety that would be achieved by the use of ELDs. A copy of the denial letter is available for review in the docket (FMCSA-2017-0373).

*National Electrical Contractors Association (NECA)*

NECA requested an exemption from the requirement to use an ELD on CMVs used by 4,000 contractor members who install, repair, and maintain the infrastructure of electrical utilities. NECA believes the ELD requirement burdens its members' operations unnecessarily. It proposed to continue to use paper logs to record their HOS.

FMCSA reviewed the application and the 275 comments submitted. Many of the comments were form letters in support of the application. On June 16, 2018, FMCSA denied the application. FMCSA was unable to determine from the application and the public comments whether operations under the requested exemption would provide a requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2018-0003).

*Agricultural Retailers Association (ARA)*

ARA applied for exemption from the ELD requirement on behalf of its members who are retailers and distributors of farm-related products and services. ARA members rely on CMVs to deliver their products and services to farms. ARA asserted that its members were not prepared to meet the December 18, 2017 deadline for complying with the ELD rule and sought to obtain postponement of the deadline.

FMCSA reviewed the application and the 117 comments submitted. On July 26, 2018, FMCSA denied the application. FMCSA was unable to determine from the application and the public comments whether operations under the requested exemption would provide a requisite level of safety. A copy of the denial letter is available for review in the docket (FMCSA-2017-0336).

**Conclusion**

FMCSA has reviewed these applications carefully and the comments received and has concluded that each application lacks sufficient merit to justify the exemptions sought. Accordingly, FMCSA denies each application.

Issued on: November 30, 2018.

**Raymond A. Martinez,**  
*Administrator.*

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