



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2016-0428]**

**Hours of Service of Drivers: Application for Exemption; Truck Renting and Leasing Association, Inc. (TRALA)**

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Truck Renting and Leasing Association, Inc. (TRALA) has requested an exemption from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS) no later than December 18, 2017. TRALA requests the exemption for all drivers of property-carrying vehicles rented for 30 days or fewer because the ELD mandate will result in unintended technical and operational consequences that will unfairly and adversely affect short-term rental vehicles. TRALA believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would remain subject to the standard HOS limits and maintain a paper record of duty status (RODS). The term of the requested exemption is 5 years. FMCSA requests public comment on TRALA's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2016-0428 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0428), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2016-0428” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11

inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## **II. Legal Basis**

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 (FMCSRs). 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 also 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. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## **III. Request for Exemption**

TRALA is a national trade association of companies whose members engage in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. Its membership encompasses major independent firms such as Ryder System, Penske Truck Leasing, U-Haul, Budget, and Enterprise Truck Rental, as well as small and medium-size businesses that generally participate as members of four leasing group systems: Idealease, NationaLease, PACCAR Leasing Company, and Mack Leasing System-Volvo Truck Leasing System. In total, its nearly 500 member companies operate more than 5,000 commercial leasing and rental locations, and more than 20,000 consumer rental locations throughout the United States, Mexico and Canada.

“Renting” is a term of art in the vehicle leasing industry, generally meaning a transaction granting the exclusive use of a vehicle for 30 days or less, whereas a lease generally means a transaction granting the exclusive use of a vehicle for more than 30 days. TRALA’s petition is on behalf of the drivers of property-carrying commercial motor vehicles (CMVs) rented for 30 days or less.

While TRALA fully supports the FMCSA’s final rule to mandate ELDs, it is concerned about unintended technical and operational consequences that will unfairly and adversely affect short-term rental vehicles. The commercial vehicle rental industry provides short-term rental services to a large population of drivers on a daily basis. Most of these drivers will employ an ELD to comply with the new rule. Considering the significant number of different device platforms and subscription options, it is highly unlikely that the driver’s device would be able to communicate properly with the rental company’s telematics platform. TRALA states that while FMCSA recognized these issues presented by a lack of interoperability among ELD systems, and required certain

technical specifications in the final rule, the Agency stopped short of requiring full interoperability among ELDs.

According to TRALA, many commenters to the proposed ELD rule raised these same interoperability concerns. However, the rule requires only that ELDs be able to transfer data electronically via either a “telematics” approach capable of wireless web service, or a “local” method capable of Bluetooth and USB 2.0 transfer. Furthermore, the Agency decided “not to require full interoperability between all ELDs,” reasoning that “[a]lthough full interoperability would have some benefits, it would also be complicated and costly.” In essence, according to TRALA, in the final rule the Agency left it to the ELD manufacturers to address many concerns regarding non-interoperability of the various software systems on the market.

TRALA elaborates on their two primary issues of concern relating to the exemption request: (1) data transfer and, (2) data liability.

Regarding the data transfer concerns, TRALA describes two potential problems. First, a customer that is required to use an ELD may rent a truck that has one operating system, while the customer may use another operating system for its drivers; data cannot be transferred from the rental vehicle to the customer’s system unless both ELDs are on the same platform. In addition, upon request by an authorized safety official, a driver must produce and transfer the driver’s HOS records from an ELD in accordance with 49 CFR 395.24(d). This would include the driver’s duty status for the current 24-hour period and the prior seven days. However, if the driver is operating a rental vehicle with an ELD that is not compatible with the driver’s normal ELD system, the data will not transfer to the new vehicle’s ELD system. That scenario would be

considered an “ELD malfunction” and the driver would be required to reconstruct the RODS for the current 24-hour period and the previous seven consecutive days on graph grid paper logs. TRALA’s exemption application requests that drivers of short-term rental vehicles be allowed to avoid the uncertainties of attempting compliance with the HOS rules using non-compatible ELD systems, and instead use paper RODS during the rental period.

Additionally, regarding data transfer concerns, due to significant use commercial vehicles are more prone to break-downs than non-commercial vehicles. TRALA advises that when commercial vehicles break-down, they are often replaced temporarily by short-term rental vehicles until the original truck can be repaired. These repairs can take days, if not several weeks, to complete. More often than not, replacement vehicles come from a third-party rental company, which increases the likelihood that the replacement truck will have a different ELD operating system than the vehicle it is replacing, thus impeding data transfer.

TRALA’s second primary issue involves data liability concerns. TRALA states that it has been suggested that rental companies should be able to collect and report ELD data to customers, allowing customers to access the data seamlessly. However, the final rule does not require ELDs to be capable of reading and combining exported data from other providers. Furthermore, lessors do not have the ability to combine data from different devices into one report. TRALA states that requiring lessors to bear the burden of safeguarding the data for each renter would expose the rental company to tremendous risk with respect to data security and protection. All parties involved in the business

transaction would probably reject rental companies' assumption of these risks on behalf of their customers.

TRALA also briefly mentions two potential solutions related to their exemption request. One potential solution is the use of a "memory stick" to transfer data between different telematics platforms. However, the ELD rule does not require that devices be capable of moving driver HOS data from one device to another using this method.

Secondly, some drivers of short-term rental vehicles will be exempt from the ELD requirements under the short-haul provisions in 49 CFR 395.1(e)(1) or 49 CFR 395.1(e)(2). To the extent that drivers of short-term rental vehicles exceed the mileage or daily on-duty time limits of these short-haul exemptions, or do not return to their normal work reporting locations at the end of the duty period more than 8 times in any 30-day period, they will be subject to the ELD requirements when compliance becomes mandatory as of December 18, 2017. Thus, although the short-haul exemption is helpful for a small group of drivers, TRALA asserts that it does not address the underlying challenges that it raises in its exemption application.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

TRALA states that granting this exemption will result in a level of safety that is equal to or greater than the level of safety achieved by complying with the ELD rule. The exemption is requested for property-carrying CMVs rented for 30 days or less. Short-term rentals that require HOS reporting represent an extremely small percentage of trucks on the road; however, the requirements of the ELD rule would impose significant burden on the industry and its customers. By allowing drivers of short-term rentals to continue to operate with paper RODS, TRALA's members and their customers

would be able to comply with all Federal and State HOS regulations while continuing to operate efficiently and safely. TRALA further adds that an exemption from the ELD requirements for short-term rental vehicles will actually improve motor carrier safety enforcement by allowing enforcement officials to follow current requirements as opposed to a more complicated process required by the ELD rule.

A copy of TRALA's application for exemption is available for review in the docket for this notice.

Issued on: March 16, 2017

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Larry W. Minor  
Associate Administrator for Policy

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