



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2017-0248]**

**Hours of Service; YRC Worldwide Inc. Application for an Exemption from Certain Electronic Logging Device Requirements**

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

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

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application from YRC Worldwide Inc. (YRCW) for an exemption from various provisions of the mandate to use electronic logging devices (ELDs).

**DATES:** Comments must be received on or before [Insert 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0248 using any of the following methods:

- Web site: *http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*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).

*Public participation:* The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mike Huntley, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-4325, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** YRCW is requesting an exemption (1) to allow an alternative ELD phase-in method for fleets using compliant automatic on-board recording devices (AOBRDs); (2) from the requirement that an ELD automatically record certain data elements upon a duty status change when a driver is not in the vehicle; (3) to allow ELDs to be configured with a special driving mode for yard moves that does not require the driver to re-input yard move status every time the tractor is powered off; and (4) to allow vehicle movements of less than one mile on YRCW property by non-CDL YRCW drivers to be annotated as “on property – other.” YRCW believes that the requested temporary exemptions will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

### **Background**

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

#### **YRCW Application for Exemption**

YRCW is a holding company that, through its operating companies, offers its customers a wide range of transportation services. Its operating companies include YRC Freight (a North American less-than-truckload (LTL) company), and Holland, Reddaway, and New Penn (regional LTL companies). YRCW has applied for an exemption from various provisions of 49 CFR part 395 regarding the use of ELDs. Specifically, YRCW has requested a temporary exemption (1) to allow an alternative ELD phase-in method for fleets using compliant automatic on-board recording devices (AOBRDs); (2) from the requirement that an ELD automatically record certain data elements upon a duty status change when a driver is not in the vehicle; (3) to allow ELDs to be configured with a

special driving mode for yard moves that does not require the driver to re-input yard move status every time the tractor is powered off; and (4) to allow vehicle movements of less than one mile conducted on YRCW property by non-CDL YRCW drivers to be annotated as “on property – other.”

YRCW states that its request is almost identical to an exemption application submitted by United Parcel Service (Ups) regarding the implementation and use of ELDs (see Docket FMCSA-2017-0054), and notes that it filed comments in support of the UPS application on July 7, 2017.

A copy of the application is included in the docket referenced at the beginning of this notice.

#### **Alternative ELD Phase-In Method**

Subject to limited exceptions, section 395.8(a)(1)(i) of the FMCSRs requires motor carriers to install and use ELDs that comply with the technical specifications prescribed for those devices no later than December 18, 2017. However, section 395.8(a)(1)(ii) allows a motor carrier that installs, and requires its drivers to use, compliant AOBRDs before the December 18, 2017, compliance date to continue to use those AOBRDs until December 16, 2019, thereby providing a 2-year grandfather period for devices installed prior to the compliance date.

In support of its application, YRCW states:

Like UPS, current requirements restricting the use of new AOBRDs in the transition period would cause company drivers to operate a “mixed fleet” of AOBRDs and ELDs. A “mixed fleet” introduces significant training challenges and inefficiencies. Groups of driver employees at terminals lead safety training with guidance from issue experts. As such, in addition to the training challenges highlighted by UPS, under the current rule a “mixed fleet” would result in the

added complexity of peer-to-peer trainers being responsible for training both AOB RD and ELD systems.

Unlike UPS, YRCW's operating companies currently utilize paper logs. As such, the adoption of electronic logs is the single largest change in recording record of duty status in decades. Many of our drivers are long-tenured and may face challenges in adopting a new system. Since operational flexibility does not allow a driver to be assigned a tractor, a 'mixed fleet' scenario forces drivers to be trained to use both AOB RD and ELD systems and introduce more complexity, errors, and challenges for all stakeholders.

Based on the above, for YRCW operating companies who plan to operate AOB RDs past December 18, 2017, YRCW requests an exemption from section 395(a)(1)(i) to allow the installation of AOB RDs on new truck tractors delivered to a facility after the December 18, 2017, compliance date, where existing vehicles at that facility are equipped with compliant AOB RDs.

### **Recording of ELD Data Elements**

An ELD is required to automatically record a number of specific data elements at certain events, to include (1) when a driver indicates a change of duty status under section 395.24(b) (see section 395.26(c)), and (2) when an authorized user logs into or out of an ELD (see section 395.26(g)).

In support of its application, YRCW states:

Similar to UPS, all drivers at YRC Freight, Holland and New Penn and a portion of drivers at Reddaway are covered by collective bargaining agreements. Almost all drivers clock in through an electronic system when they begin their day. Once clocked in they are required to perform non-driving duties as defined by collective bargaining agreements and company policies. As such, YRCW requests the same exemption as stated by UPS in Docket 2017-0054 on behalf of its operating companies.

Based on the above, YRCW requests an exemption from the requirement to record the specific data elements identified in sections 395.26(c) and 395.26(g) if the

driver is not in the vehicle when (1) the driver indicates a change of duty status, or (2) an authorized user logs into or out of an ELD, respectively. Instead, to assure accurate recording of on-duty, not driving time, YRCW proposes that it will “systematically annotate that the driver was performing other work.” YRCW believes that the proposed exemption “will have no impact on the recordation of driving time” as all required vehicle data will be recorded when the driver is in the vehicle, and “the tractor data that would not be recorded when the driver is not in the vehicle is not relevant to assessing the accurate recordation of ‘on-duty, not driving’ time.”

### **Special Driving Mode for Yard Moves**

Section 395.28(a) of the FMCSRs permits a motor carrier to configure an ELD to authorize a driver to indicate that the driver is operating a commercial motor vehicle (CMV) under certain special driving categories, including (1) authorized personal use, and (2) yard moves. Section 395.28(a)(2) requires a driver to select the applicable special driving category on the ELD before the start of the status, and to deselect it when the indicated status ends.

In support of its application, YRCW states:

Like UPS, almost all drivers for YRCW operating companies are covered by a collective bargaining agreement which sets out a contractual agreement that specifies which categories of drivers may perform certain driving duties such as coupling, uncoupling and moving equipment around company yards. The ability to select a “yard move” status will eliminate multiple unnecessary entries. Like UPS, the facilities of YRCW’s operating companies maintain posted speed and will be “geo-fenced.” YRCW proposes that driving status should be activated once a vehicle reaches 20mph or above and/or exits the facility. In addition to making drivers more efficient, allowing the “yard move” status eliminates driver distractions and enables them to focus on safely operating vehicles in the yard.

Based on the above, YRCW requests an exemption from section 395.28(a)(2)(i) to allow its drivers to select “yard move” status and remain in that status even if the vehicle’s ignition is cycled off and back on. Under the proposed temporary exemption, and assuming that the driver does not go off duty after performing the yard moves, YRCW states that the ELD would switch to a “driving” duty status under section 395.24 if (1) the driver inputs “driving,” (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geo-fenced yard.

### **Vehicle Use by Exempt Employees Operating on UPS Property**

Section 395.26(h) of the FMCSRs requires an ELD to automatically record certain data elements when a CMV’s engine is powered up or powered down.

In support of its application, YRCW states:

YRCW operating companies have exempt employees, without commercial driver’s licenses, who move vehicles within our company yards for various purposes, including fueling, washing and maintenance. Vehicles will not be equipped with permanently attached ELD or AOB RD systems, nor will these drivers be assigned portable devices. As a result, exempt individuals will not have the ability to input data into an AOB RD or ELD device. As with UPS, these trips are under one mile and move less than 20mph on company property. Based on our similar operational practices and needs, YRCW companies requests the same exemption as requested by UPS, with the understanding that movements in the yard will not be limited to washing and fueling.

Based on the above, YRCW requests an exemption from section 395.26, and proposes to allow an alternative approach to track vehicle usage by certain yard employees on YRCW property. Specifically, YRCW proposes that vehicle usage of less than 1 mile by these exempt employees, conducted entirely on YRCW property, be annotated on an ELD as “on property – other.” YRCW states that these miles could be

easily identified using geo-fencing and time-card information for road drivers and other employees.

As noted in its application, YRCW believes that each of the requested exemptions will result in substantial operational efficiencies, and will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemptions.

### **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on YRCW's application for an exemption from 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: September 12, 2017

Larry W. Minor  
Associate Administrator for Policy

[FR Doc. 2017-19909 Filed: 9/18/2017 8:45 am; Publication Date: 9/19/2017]