



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0356]

Hours of Service of Drivers: Application for Exemption; Owner Operator Independent Drivers Association, Inc.

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

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

SUMMARY: FMCSA announces that the Owner Operator Independent Drivers Association, Inc. (OOIDA) has requested an exemption from the electronic logging device (ELD) requirements for motor carriers considered to be a small transportation trucking business. OOIDA request this exemption to allow small trucking businesses that do not have a carrier safety rating of “unsatisfactory,” and can document a proven history of safety performance with no attributable at-fault crashes, to complete paper records of duty status (RODS) instead of using an ELD device. OOIDA believes that the exemption would not have any adverse impacts on operational safety as motor carriers and drivers would remain subject to the hours-of-service (HOS) regulations as well as the requirements to maintain paper RODS. FMCSA requests public comment on OOIDA’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-2017-0356 by any of the following methods:

- Federal eRulemaking Portal: 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, 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 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at 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. 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-2017-0356), 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 and put the docket number, “FMCSA-2017-0356” 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

OOIDA reports that it is the largest association representing the views of small-business motor carriers. OOIDA has approximately 160,000 members located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks.

OOIDA is requesting an exemption from the ELD mandate scheduled to become effective December 18, 2017, for motor carriers that are considered to be a small trucking business as defined by 13 CFR 121.201¹, who do not have a carrier safety rating of “unsatisfactory,” and can document a proven history of safety performance with no attributable at-fault crashes.

OOIDA asserts that the exemption would not have any adverse impacts on operational safety, as motor carriers and drivers would remain subject to the HOS regulations in 49 CFR 395.3, as well as the requirements to maintain a paper RODS under 49 CFR 395.8. The exemption would also allow small-business motor carriers to maintain their current practices that

¹ The Small Business Administration size standard for truck transportation and local delivery services is currently \$27.5 million. https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf

have resulted in a proven safety record. The term of the requested exemption, if granted, is for five years, subject to renewal upon application.

In its application, OOIDA addressed many of its concerns regarding cybersecurity issues, cost, and the lack of validation for ELDs in the marketplace. OOIDA believes that a five year exemption would provide necessary time for ELD manufacturers to be fully vetted by Federal regulators, would allow small-business carriers to determine which device best fits their operation, and provide additional time for law enforcement to analyze which devices fulfill regulatory requirements.

OOIDA concluded: “Many OOIDA members with millions of accident-free miles driving during their career have notified us that they will be retiring as a result of this mandate. These drivers are subject matter experts who have driven an array of trucks in severe weather, traffic and other conditions. If these drivers will remain in the trucking industry as result of an exemption, then that will achieve a level safety equal to, or greater than, the level that would be obtained by complying with the ELD mandate. If the mandates forces these skilled drivers out of the industry, they will be replaced with new, inexperienced drivers that are far more likely to crash which will not achieve an equal or higher level of safety.”

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

Issued on: December 22, 2017

Larry W. Minor
Associate Administrator for Policy

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