



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2017-0372]

Hours of Service of Drivers: Application for Exemption; Towing and Recovery Association of America, Inc. (TRAA)

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

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

SUMMARY: FMCSA announces that the Towing and Recovery Association of America, Inc. (TRAA) 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). TRAA has requested a 5-year exemption for all operators of commercial motor vehicles (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, and the failure to grant this exemption will cause confusion and create an overly complex regulatory framework which will pose an undue burden on towers and their customers without any measurable benefit to public safety. TRAA believes that granting this exemption will have a positive impact on highway safety by assuring that towing operators can still respond to service requests in the most expeditious and effective manner possible. FMCSA requests public comment on TRAA'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-2017-0372 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. Thomas 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-2017-0372), 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-2017-0372” 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

TRAA is the national towing association representing more than 35,000 towing companies in all 50 states. The entire industry is comprised of approximately 210,000 commercial motor vehicles (CMVs) and 350,000 commercial drivers operated by the over 35,000 companies. According to TRAA, the vast majority of towing industry companies are small, family-owned operations serving rural America.

Tow truck operators often work close to their terminals, usually operating within the scope of the short-haul exemption [49 CFR Section 395.1(e)(1)] thereby documenting hours-of-service (HOS) compliance with time card records kept at their dispatch office. Occasionally, and often without prior knowledge, these tow operators will be called upon to provide services that will require them to complete a record of duty status (RODS).

TRAA states that few towing companies will be able to utilize the exemption to the ELD mandate found in 49 CFR Section 395.8(iii)(a)(1) as it relates to completion of a RODS eight or fewer days in any 30-day period. Typically, only a few drivers at any one towing company are currently required to complete a RODS and usually most of the drivers lack the required class of license to substitute for these select few drivers, meaning the workload that requires operation outside of the local exemption cannot be

equalized or shared among the entire driver pool at any one company as could be done at a traditional motor carrier. Thus, one or two drivers will often be designated to conduct these longer, interstate trips that require RODS.

TRAA asserts that the addition of the ELD rule creates confusing and burdensome scenarios by overlapping and conflicting regulations placed on towing industry operators. The nature of the towing industry has drivers switching between intrastate and interstate regulations multiple times throughout the day, sometimes as often as between each call. Additionally, drivers employed in the towing industry often switch between commercial and non-commercial motor vehicles throughout their shift. TRAA believes that to mandate an electronic means of documenting HOS for only a small part of each towers daily operations creates an undue burden.

Moreover, an exemption from the ELD mandate helps promote the same safety goals inherent in the already existing exemption in 49 CFR Section 390.23(a)(3). This provision exempts towers who are responding to calls from law enforcement from the requirement to keep RODS. The same need to respond quickly to a highway emergency that requires the exemption in Section 390.23(a)(3) exists when a service call comes from a stranded motorist rather than law enforcement. The drivers of these vehicles sitting roadside are at the same risk as those addressed by law enforcement. The current ELD proposal will impact the ability of tow companies to respond to these owners' requests and still be compliant with the regulatory requirements.

TRAA states that, as a practical matter, towers will be required to install and maintain ELDs in all of their equipment, even seldom used spare equipment. It is common practice in the towing industry to maintain spare equipment in a state of

readiness, as do other first responder agencies to insure complete readiness for any incident. Due to the complex nature of this and the overlapping scenarios where an ELD may be required, most towers will install, pay service for and utilize costly ELDs even when not required to do so by the regulations to avoid harsh penalties such as out of service orders and expensive fines. TRAA firmly believes it is appropriate to exempt towers from the ELD regulation, and without an exemption from the ELD regulation towers' responsiveness to their customers and the motoring public would be severely reduced, and costs for towing services would increase commensurably. This will place an unfair burden on the motoring public at large that has not been accounted for in the cost benefit analysis for this regulation.

According to TRAA, towing industry operations represent a unique and vital segment of the overall transportation industry in America that warrants exemption from the ELD regulation. The failure to grant this exemption will cause confusion and create an overly complex regulatory framework which will pose an undue burden on towers and their customers without any measurable benefit to public safety.

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

According to TRAA, granting this exemption will have no negative impact on public safety or compliance with the HOS regulations by the towing industry companies given that most operate under the short haul or local provisions found in 49 CFR 395.1(e)(1) for drivers of vehicles requiring a commercial driver's license (CDL), and 49 CFR 395.1(e)(2) for drivers of CMVs not requiring a CDL. Instead, the exception will apply only to the small percentage of tow drivers who operate outside these exceptions on longer, interstate trips. The towing industry will maintain a level of safety equal to, or

greater than would be achieved while using ELDs by fully complying with the current HOS regulations and not having undue interruption to their current scheduling and staffing methods that have served the industry well in the past.

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

Issued on: December 29, 2017

Larry W. Minor
Associate Administrator for Policy

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