

#### Non-Compliance Observation #1: Incomplete Project Files Submission

During Audit #1, ADOT submitted incomplete project files to FHWA by not uploading all files requested by FHWA to the file sharing website. For Audit #2, ADOT provided FHWA direct access to the project files requested for the project file review. ADOT has stated it intends to continue to utilize this method for sharing files with FHWA. ADOT also indicated it will continue to identify improvements in technology to increase efficiencies in file sharing. FHWA appreciates ADOT's efforts towards increasing the transparency and communication during the audit process, and better utilizing available technologies.

#### Non-Compliance Observation #2: Project-Level Conformity Compliance Issues

During Audit #1, the audit team found that ADOT's protocols do not provide for the appropriate consultation, coordination, and communication with FHWA and other agencies to ensure the projects meet the project-level conformity requirements where required. The audit team found documentation for two projects showing that ADOT staff did not coordinate with FHWA on the application of conformity requirements and found multiple projects that did not demonstrate ADOT's compliance with interagency consultation requirements (per 40 CFR 93.105). As part of Audit #2, the audit team learned that ADOT has made progress toward addressing these issues. ADOT and FHWA established a joint working group that resulted in developing draft coordination procedures and identifying increased communication methods, including monthly coordination meetings. During the file review for Audit #2, the audit team identified additional inconsistencies in the project files as described in the observations above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

#### Observation #1: Use of the Federal Infrastructure Permitting Dashboard

ADOT is responsible for inputting project information for assigned projects into the Federal Infrastructure Permitting Dashboard, per MOU Section 8.5.1 and in accordance with the Federal Permitting Dashboard Reporting Standard. During Audit #1, the audit team found that the dashboard did not include information for any of the applicable projects assigned to ADOT.

ADOT has since obtained access to the dashboard, designated staff responsible for entering project data, and has updated the dashboard with relevant project information.

#### Observation #2: Inconsistencies and Deficiencies Based on the Review of Project File Documentation

After completing the project file review for Audit #1, the audit team identified several procedural deficiencies relating to the MOU, ADOT's procedures, and FHWA's regulations, policies, and guidance. To address this issue, ADOT has developed standard templates (forms, checklists) to increase consistency in project file documentation and has informed staff of documentation requirements. The audit team identified additional procedural deficiencies during Audit #2 as identified in the observations described above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

#### Observation #3: Incomplete Development and Implementation of Performance Measures

During Audit #1, the audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). The Self-Assessment Report did not include reporting data for any of the performance measures. Due to the lack of performance measure data, the audit team determined that ADOT had not fully established and initiated data collection as it relates to performance metrics per the MOU. For Audit #2, the audit team reviewed ADOT's performance measures and reporting data submitted for the review period. ADOT has made progress toward developing and implementing its performance measures, though FHWA continues to identify this program objective as an area of concern, described in the observations above, and will continue to evaluate this area in subsequent audits.

#### Finalizing This Report

FHWA provided a draft of the audit report to ADOT for a 14-day review and comment period. ADOT provided comments which the audit team considered in finalizing this draft audit report. The audit team acknowledges that ADOT has begun to address some of the observations identified in this report and recognizes ADOT's efforts toward improving their program. FHWA is publishing this notice in the **Federal Register** for a 30-day comment period in

accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will address all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Subsequently, FHWA will publish the final audit report in the **Federal Register**. FHWA will consider the results of this audit in preparing the scope of the next annual audit. The next audit report will include a summary that describes the status of ADOT's corrective and other actions taken in response to this audit's conclusions.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0298]

#### Hours of Service of Drivers: Application for Exemption; Motion Picture Association

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

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

**SUMMARY:** FMCSA announces its decision to provisionally renew an exemption from the electronic logging device (ELD) requirements for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. The exemption requested by the Motion Picture Association (MPA), formerly known as the Motion Picture Association of America, allows these drivers to complete paper records of duty status (RODS) instead of using an ELD. The exemption renewal is for five years.

**DATES:** This renewed exemption is effective January 19, 2023, and expires on January 19, 2028. Comments must be received on or before December 5, 2022.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0298 using 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 Operations, 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., ET, Monday through Friday, except Federal holidays.

- Fax: (202) 493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2017-0298). 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

**Privacy Act:** In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption 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 <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4225. Email: [pearlie.robinson@dot.gov](mailto:pearlie.robinson@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-2017-0298), 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

email 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 comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2017-0298" in the "Keyword" box, and click "Search." When the new screen appears, click on the "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.

#### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations for a five-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." MPA has requested a five-year extension of the current exemption in Docket No. FMCSA-2017-0298.

#### III. Background

##### Current Regulatory Requirements

FMCSA's hours-of-service (HOS) regulations in 49 CFR 395.8(a)(1)(i) specify that a motor carrier subject to the requirements of part 395 must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in § 395.8(a)(1)(i)-(iv), as applicable. Subject to § 395.8(a)(1)(ii) and (iii), a motor carrier operating CMVs must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with 49 CFR part 395, subpart B.

##### Application for Renewal of Exemption

FMCSA published notice of MPA's initial application for exemption to this docket on October 27, 2017 (82 FR 49771). That notice described the nature of MPA's operations. FMCSA published a notice granting MPA's exemption request on January 19, 2018, which expires on January 19, 2023 (83 FR 2869). FMCSA found that MPA outlined

the motion picture industry's unique operational issues and clearly explained the special handling of driver RODS that ensures a high level of accuracy to provide the equivalent level of safety.

MPA requests a renewal of the exemption for a five-year period. MPA states that approximately 8,300 CMV drivers operate CMVs on a full- or part-time basis for the motion picture industry. According to HOS data developed by third party compliance services, these drivers spend two hours, on average, driving each day, and drive about 40 miles per day. Their resulting RODs are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires. MPA asserts that the industry's success in HOS management is based on a system that is driver-based, rather than vehicle-based.

According to MPA, few drivers qualify for the short-haul driver exceptions in 49 CFR 395.1(e)(1) or 49 CFR 395.1(e)(2). Each time a driver operates a CMV for a different studio or production company, the motor carrier and driver must reconcile the driver's HOS record for the past week. Drivers manage the necessary paper RODS, carry them to each new CMV, and transfer paper copies to each new motor carrier as needed. When a roadside inspection occurs, a driver can produce paper RODS for review by the enforcement official.

MPA states that the motion picture industry maintains a database of driver HOS data. Drivers are required to submit their RODS within 24 hours of the duty period to which the record pertains. The RODS are reviewed by third-party auditing companies.

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

#### IV. Equivalent Level of Safety

FMCSA determined in 2018 that exempt drivers and motor carriers would likely achieve an equivalent level of safety. FMCSA noted that Congress has recognized the unique aspects of the motion picture industry's operations and has provided statutory exceptions from some HOS regulations.<sup>1</sup> The industry's drivers generally operate short distances and normally spend much of their time off duty. Therefore, Congress has allowed these drivers longer workdays and drive time.

<sup>1</sup> See Section 4133 of SAFETEA-LU (119 Stat. 1744) (set out as a note to 49 U.S.C. 31136).

Because of the nature of their operations, motion picture industry drivers often use the same paper RODS from one carrier to another. In these unique circumstances, using an ELD system would not provide additional accuracy because most duty status information would be manually entered by the drivers. As MPA states, the paper log provides continuity for the carrier and enforcement to evaluate compliance, regardless of the number of carriers for which the driver is operating in a given 7-day or even 24-hour period. FMCSA acknowledges that, given the unique arrangements under which drivers in the motion picture industry routinely operate for multiple carriers over brief periods of time, paper RODS may prove more efficient than ELDs.

In addition, MPA members are required to submit their RODS within 24 hours, rather than waiting for the 13-day period allowed by 49 CFR 395.8. According to MPA, these “RODS are reviewed by a third-party auditing company, resulting in accelerated reporting of HOS compliance and an independent assessment of accuracy.”

FMCSA concludes that provisionally extending the exemption for another five years, under the terms and conditions listed below, will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption.

## V. Exemption Decision

### A. Grant of Exemption

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Sec. V.F. below. The exemption from the ELD requirement under 49 CFR 395.8(a), is otherwise effective January 19, 2023, through January 19, 2028, 11:59 p.m. local time, unless renewed or rescinded.

### B. Applicability of Exemption

The exemption allows all CMV drivers providing transportation to or from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD.

### C. Terms and Conditions

When operating under this exemption, motor carriers and drivers are subject to the following terms and conditions:

(1) Motor carriers and drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350–399);

(2) Drivers must have a copy of this notice in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request;

(3) Drivers must not be subject to any out-of-service order or suspension of their driving privileges; and

(4) Carriers operating under this exemption may not have an “Unsatisfactory” rating with FMCSA or be subject to any imminent hazard or out-of-service orders.

### D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

### E. Notification to FMCSA

Motor carriers operating under this exemption must notify FMCSA within five business days of any crash (as defined in 49 CFR 390.5), involving any of their CMVs operating under the terms of the exemption. The notification must include the following information:

- (a) Identity of Exemption: “MPA,”
- (b) Name and USDOT number of the operating motor carrier,
- (c) Date of the crash,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver’s name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the crash,
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- (k) The driver’s total driving time and total on-duty time since the last ten (if operating under 49 CFR 395.3(a)) or eight (if operating under 49 CFR 395.1(p)) consecutive hours off-duty prior to the crash.

Reports filed under this provision shall be emailed to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

### F. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. The exemption will be

rescinded if: (1) motor carriers and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

## VI. Request for Comments

FMCSA requests comments from parties with data concerning the safety record of CMV drivers providing transportation to or from a theatrical or television motion picture production site. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to rescind the exemption of the company or companies and drivers in question.

**Robin Hutcheson,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0105]

### General Qualifications of Drivers: Small Business in Transportation Coalition; Application for Exemption

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

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

**SUMMARY:** FMCSA announces its decision to deny the Small Business in Transportation Coalition’s (SBTC) request for an exemption from the requirement that motor carriers not permit a person to drive a commercial motor vehicle (CMV) unless the driver is capable of reading and speaking the English language sufficiently to communicate with the public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records drivers. SBTC requests the exemption on behalf of all motor carriers in North American Industry Classification System (NAICS) category 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance) with