

Should it become evident that the project will not meet the statutory deadline, FHWA reserves the right to revoke the provisional approval prior to the deadline and re-offer the program slot to other State DOTs.

**Brandye L. Hendrickson,**

*Acting Administrator, Federal Highway Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0166]

#### Hours of Service of Drivers: Application for Exemption; MBI Energy Services (MBI)

**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 application of MBI Energy Services (MBI) 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. MBI had requested the exemption for all of its vehicles equipped with a single-passenger cab, which are used in applications where travel is incidental to normal work activities and which require special oversize/overweight permits to travel on public roads. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies MBI's application for exemption.

**DATES:** FMCSA denies this application for exemption effective October 20, 2017.

**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. Email: [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:**

### Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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.

FMCSA 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also 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 381.300(b)).

### Request for Exemption

MBI is a provider of water management logistics and well-intervention services in North Dakota, South Dakota, Wyoming, Montana, and Colorado. The requested exemption would affect 65 MBI Energy Services drivers operating 42 single-cab vehicles classified in North Dakota as Special Mobile Equipment (SME). These vehicles meet the definition of a commercial motor vehicle (CMV) in 49 CFR 390.5 and therefore are subject to the ELD or AOB RD mandate. These specialized vehicles perform various work activities in an environment where connectivity is limited, working and road conditions are rough, and the necessity for driving on public roads is sporadic and incidental to the overall work being performed. The vehicles may sit on work locations for long periods of time, up to weeks or even months. These vehicles are typically oversize and overweight, requiring special permits for transport. Many States do not require registration, as they build the registration fees into the permit process.

Examples of SMEs meeting the definition of a CMV having a single cab include cranes, workover rigs, and swab units. Single cabs have reduced space

for installing rough-terrain-capable AOB RDs or ELDs. The devices used must be capable of satellite communication where cell communication is poor to non-existent. The installation of rugged logging units, weighing more than typical units used in highway applications, would reduce driver visibility in an already large vehicle due to the limited space found in single-cab vehicles. Additionally, installation may require a unit being positioned over the driver's head, increasing the risk of the unit falling on the driver resulting in injury given the rough terrain upon which the vehicles travel or a vehicle accident involving the travelling public.

While these vehicles normally travel little, business demand may require MBI vehicles to move more often than 8 days in a 30-day period, the maximum frequency allowed by 49 CFR 395.8(a)(1)(iii)(A)(1) for the use of paper RODS instead of ELDs. According to MBI, the current regulations do not address circumstances where the vehicle's exemption status is sporadic in nature, thus requiring MBI to install an ELD to remain compliant during times not covered by the exemption. While alternatives exist to industrial-grade logging units, the alternatives usually involve cell phones or cell-capable tablets where the terrain or remote locations of work may inhibit logging device communication for extended periods of time. Many worksites prohibit cell phone usage due to safety concerns. Additionally, installations in special vehicles will increase costs substantially due to the unusual configurations of single cab vehicles requiring specialized wiring harnesses and custom installation kits. MBI requested a 5-year exemption.

### Public Comments

On July 10, 2017, FMCSA published MBI's application for exemption and requested public comment (82 FR 31798). The Agency received five comments to the docket, from CMV drivers, a Commercial Vehicle Safety Alliance (CVSA) inspector, and the Owner-Operator Independent Driver's Association (OOIDA). All of the commenters opposed the MBI application for exemption. According to commenters, MBI's request would place a burden on law enforcement officers in tracking exceptions from the regulations and open the door for other oil field service companies and crane operating companies to request similar exception status. Commenters stated that the purpose of the ELDs is to force drivers and carriers to record their HOS

accurately due to years of abuse by the industry.

All comments are available for review in the docket for this notice.

#### FMCSA Decision

When FMCSA published the rule mandating ELDs, it relied upon research indicating that the rule improves commercial motor vehicle (CMV) safety and reduces the overall paperwork burden for both motor carriers and drivers by increasing the use of ELDs within the motor carrier industry, which will in turn, improve compliance with the HOS rules. The primary reason for denial of this exemption is that MBI did not demonstrate how, without using ELDs, they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

For these reasons, FMCSA has denied the applicant's request for exemption.

Issued on: September 28, 2017.

**Daphne Y. Jefferson,**  
Deputy Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0054]

#### Hours of Service; United Parcel Service Inc. Application for an Exemption From Certain Electronic Logging Device Requirements

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

**ACTION:** Notice of final disposition.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant part of United Parcel Service Inc.'s (UPS) application for a limited 5-year exemption from various provisions of the mandate to use electronic logging devices (ELD). FMCSA published a final rule in December 2015 that requires most motor carriers and drivers who are currently required to prepare and retain paper records of duty status (RODS) to use ELDs for hours-of-service (HOS) compliance effective December 18, 2017. Among other things, the December 2015 rule requires (1) certain data elements to be automatically recorded when an authorized user logs in or out of an ELD or changes duty status, and (2) a driver's indication of special driving status to reset to none (except in the case of personal use) if the ELD or commercial motor vehicle's (CMV) engine goes through a power-off

cycle. FMCSA grants exemptions to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. The Agency has determined that granting these temporary exemptions would not have an adverse impact on safety, and that a level of safety equivalent to or greater than the level of safety provided by the regulation would be maintained.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Amina Dines, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-2782, [Amina.Dines@dot.gov](mailto:Amina.Dines@dot.gov), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) [Pub. L. 105-178, 112 Stat. 107, 401, June 9, 1998] 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(a)).

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)).

#### UPS Application for Exemption

UPS applied for an exemption from various provisions of 49 CFR part 395 regarding the use of ELDs. Specifically, UPS 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 on UPS property by non-CDL UPS drivers to be annotated as "on property—other."

On June 9, 2017, FMCSA published notice of the UPS application and requested public comment (82 FR 26832). FMCSA received 55 comments, most of which opposed the exemption on the ground that UPS should comply with the ELD rule which it had actively supported. Where comments focused on a particular issue, they are addressed in the discussions below.

##### 1. Alternative Method of ELD Phase-In

###### Background

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.

###### UPS Request

In its application, UPS states:

UPS firmly believes that the best way to transition its operations from AOBRDs to ELDs will be on a site-by-site basis. UPS currently plans to convert approximately 2800 tractors at approximately 35 sites from AOBRDs to ELDs in 2017, and plans to convert the remaining tractors (at 141 sites) during 2018. Deploying ELDs by site will minimize the significant costs, including training costs, related to moving the fleet and workforce from AOBRDs to ELDs. A site-by-site approach will also minimize the risk of errors and confusion that would be encountered if two different types of devices were used simultaneously at a given location.