

### III. Request for Exemption

WEDA filed this application for exemption on behalf of its own organization and the following: Northeast Equipment Dealers Association; North Dakota Implement Dealers Association; Midwest-South Eastern Equipment Dealers Association; Far West Equipment Dealers Association; Deep South Equipment Dealers Association; Equipment Dealers Association and the United Equipment Dealers Association.

These groups represent approximately 6,000 farm, industrial and outdoor power equipment dealers in North America. WEDA states that in the agriculture sector, equipment dealers play a key role in selling and servicing equipment for farmers and ranchers, as they transport machinery to and from farms and between dealerships. They partner with agricultural producers to increase productivity through the training and use of new equipment technologies. Complying with the ELD requirement will be unduly burdensome for equipment dealers and their customers—farmers and ranchers, without providing the sought-after safety advancements contemplated by the rule.

Many of the vehicles owned by equipment dealers require a commercial driver's license to operate. When transporting equipment to and from the farm, on behalf of the farmer, they are either delivering new equipment or transporting equipment to a dealership to be serviced. Equipment dealers also employ service trucks that drive to farms and ranches to work on customer's equipment and deliver parts to the customer's location. In either instance, these vehicles usually operate within a confined distance from the dealership of less than 150 miles, and are primarily in rural regions of their respective states.

WEDA states that due to the seasonal, unpredictable and rural nature of agriculture production, Congress has granted agriculture businesses numerous exemptions from transportation requirements. The clear intent was to accommodate agricultural operations by broadening the scope of existing agribusiness exemptions in terms of distance and types of entities covered by the exemption because the reality of farming and ranching operations required it.

WEDA explains that the agribusiness exemption to the HOS rules is separate and distinct from the short-haul exemption. Under 49 CFR (k)(1-3), equipment dealers are exempt from HOS and log book requirements during

State-defined harvest and planting seasons when: (1) Transporting farm supplies for an agricultural purpose; (2) from the dealership to a farm; and (3) within a 150 air-mile radius of the distribution point. This exemption, however, does not cover transportation of equipment from the farm to a dealership.

The ELD rule, according to WEDA, creates confusing and overlapping scenarios due to the conflicting rules placed on equipment dealers. Depending on the State definition of harvest and planting season, an equipment dealer may be required to install an ELD for only the couple of months of the year when the agribusiness exemption is not in effect. The agribusiness exemption is limited in scope; therefore, an equipment dealer could be exempt from using an ELD in certain cases, while still required to utilize an ELD in others.

The ELD requirements threaten to limit the exemptions and weave a complex regulatory framework that would be difficult for equipment dealers to comply with, advises WEDA. The short-haul and agribusiness exceptions apply in different scenarios at different times, and it is unclear in the first instance whether both can be combined to cover a single driving operation. For example, the agribusiness exemption would not currently apply to an equipment dealer hauling a broken tractor from a farm to the dealership for repair. The short-haul exemption would apply, though, so long as the farm is within 100 miles and the HOS requirements are met. However, suppose a service truck hauling a trailer visits a farm 120 miles from the dealership to repair a tractor. After attempting repairs for several hours and working beyond 12 hours in the day, the technician must return with the tractor or another piece of equipment to perform services at the dealership. The short haul exemption would not apply because it is beyond the 100-mile radius and the HOS requirements have been exceeded, nor would the agribusiness exemption apply because a driver is not covered while transporting equipment from a farm to the dealership. The driver would then be required to record the entirety of the day's driving on an ELD because no exemption applies. This is but one scenario of many where three complex rules overlap at different intervals to create confusion about the regulations that should be followed, and do not contribute to increased safety for the driver or the driving public.

As a practical matter, WEDA states that equipment dealers are required to install ELDs in all of their commercial

vehicles despite never or very rarely utilizing them. Because of the complex and confusing overlap, many dealers will install and utilize ELDs when unnecessary to avoid harsh penalties including thousands of dollars in fines and potential shutdown orders. Equipment dealers will not claim the exemptions intended for them by Congress because the confusion and complexity spawned by the ELD rule creates the risk of penalties being imposed which outweigh the benefits. The result will be severely diminished hours of operation for equipment dealers, and, consequently, reduced responsiveness to their customers. Costs and downtime for farmers and ranchers will undoubtedly increase making their agriculture producers less competitive in a global market.

### IV. Method To Ensure an Equivalent or Greater Level of Safety

WEDA states that its request falls within the FMCSA's discretion to grant because the law currently provides overlapping exemptions and exceptions that, taken together with the ELD mandate, create confusing and contradicting requirements for equipment dealers. In addition, equipment dealers' operations constitute unique aspects that should warrant an exemption from the ELD rules. WEDA therefore seeks a five-year, renewable exemption from the ELD requirements in the Federal regulations. WEDA believes the request should be granted because the exemption will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption.

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

Issued on: October 23, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 395

[Docket No. FMCSA-2017-0298]

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

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

**ACTION:** Application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Motion Picture Association of America (MPAA) has requested 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. MPAA request this exemption to allow these drivers to complete paper records of duty status (RODS) instead of using an ELD device. MPAA believes that the exemption would not have any adverse impacts on operational safety because 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 MPAA's application for exemption.

**DATES:** Comments must be received on or before November 27, 2017.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0298 by 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 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](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. 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](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).

**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. Email: [MCPSPD@dot.gov](mailto:MCPSPD@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 comments 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 "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**

MPAA is requesting an exemption from the ELD requirements in 49 CFR part 395 published in the **Federal Register** on December 16, 2015 (80 FR 78292). If granted, the exemption would allow all drivers of CMVs providing transportation of property to and from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD device on or after the December 18, 2017 compliance date. The term of the requested exemption is for five years, subject to renewal.

MPAA reports that approximately 6,500 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 on average less than four hours each day driving 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. MPAA asserts that industry's success in HOS management is based on a system that is driver-based rather than vehicle-based.

According to MPAA, few production drivers qualify for the short-haul driver exception in 49 CFR 395.1(e)(1) and

(e)(2) and will be subject to the ELD requirements when compliance becomes mandatory. Each time a production driver operates a CMV for a different studio or production company the motor carrier and the driver must reconcile the driver's HOS record for the past week. At present, cooperation between production companies, various Teamsters locals, and drivers can reduce the burden of this detailed reconciliation. And under the current rules, drivers themselves can 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.

MPAA contends that the lack of interoperability among ELD platforms developed by various manufacturers means that motion picture company drivers will not be able to transfer HOS data from one carrier or vehicle to other carriers or vehicles. A driver who is required to use an ELD may operate a CMV that has one operating system installed on the truck. When the driver transfers to operating for another studio or production company, that company may use a different ELD operating system for its vehicles. The HOS data cannot automatically be transferred from the first company's vehicle to the second company's system unless both ELD devices are on the same platform.

MPAA believes that requiring production company drivers to record their HOS using incompatible ELD platforms would prevent them from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the requested exemption. Allowing production company drivers to continue using paper RODS to record their HOS data will not jeopardize operational safety or increase fatigue-related crashes.

MPAA states that Congress and FMCSA already recognized the minimal safety concerns presented by motion picture production drivers due to the limited numbers of hours and miles they operate CMVs and the availability of frequent and extended periods of off duty time throughout the workday. As a result production drivers are already exempted from the typical HOS driving and on duty time limits as long as they operate within a 100 air-mile radius of the location where the driver reports to and is released from work.

Because production drivers operate CMVs so few miles and hours per day, motion picture production companies have driver and vehicle out-of-service

rates that are substantially below the national averages for carriers in general. Until such time as all ELD platforms are fully interoperable, motion picture production drivers should be allowed to continue recording their HOS data using paper RODS.

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

Issued on: October 23, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 170901859-7999-01]

RIN 0648-BH19

#### Atlantic Highly Migratory Species; Charter/Headboat Permit Commercial Sale Provision

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would make HMS Charter/Headboat permits a non-commercial category and create a separate regulatory provision for the commercial sale of Atlantic highly migratory species (HMS) by HMS Charter/Headboat permit holders. Currently, all vessels issued an HMS Charter/Headboat permit could be categorized as a commercial fishing vessel and subject to United States Coast Guard (USCG) commercial fishing vessel safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder engages or intends to engage in commercial fishing. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling Atlantic tunas or swordfish unless they obtain a "commercial sale" endorsement for their permit. This proposed rule would clarify which HMS Charter/Headboat permitted vessels are properly categorized as commercial fishing vessels. This action would be administrative in nature and would not affect fishing practices or result in any significant environmental or economic impacts.

This proposed rule has a 15-day comment period. The abbreviated comment period is necessary to implement any management changes before January 1, 2018 to ensure all HMS charter/headboat vessels are appropriately categorized as commercial or non-commercial upon initial application or renewal of 2018 HMS Charter/Headboat permits. We do not anticipate the proposal to be controversial or to generate significant public comment and believe that a 15-day comment period will be sufficient to attract any substantive public input.

**DATES:** Written comments must be received by November 13, 2017. An operator-assisted, public conference call and webinar will be held on November 1, 2017, from 2:00 p.m. to 4:00 p.m., EST.

**ADDRESSES:** The conference call information is phone number 1 (888) 664-9965; participant passcode 5355311. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by an opportunity for public comment. To join the webinar go to: <https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=efb2b4e48c0c4b75f50900b90743b7a18>, event password: noaa. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA-NMFS-2017-0124, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0124](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0124), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will