

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), Department of Transportation (DOT).

ACTION: Notice of final disposition; renewal of exemption.

SUMMARY: FMCSA announces its final decision to grant the exemption from the electronic logging device (ELD) requirements requested by the Motion Picture Association (MPA) for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. This renewal of the exemption allows drivers to complete paper records of duty status (RODS) instead of using an ELD. FMCSA announced its decision to provisionally renew MPA's exemption on November 3, 2022, pending a review of any comments received in response to that notice. After reviewing the four comments submitted to the docket, which are discussed in this notice, the Agency believes that drivers who qualify for the exemption will likely maintain a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the ELD requirements.

DATES: The exemption is effective January 19, 2023 and expires on January 19, 2028.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlle Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–4225 or 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; Viewing Comments and Documents**

To view comments, go to www.regulations.gov, insert the docket number “(FMCSA–2017–0298” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA–2017–0298” in

the keyword box, click “Search,” and choose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) 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.” (49 U.S.C. 31315(b)(1)). FMCSA evaluated MPA's application and provisionally renewed the exemption from 49 CFR 395.8(a)(1)(i) for a five-year period on November 3, 2022 (87 FR 66362).

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 49 CFR 395.8(a)(1)(i) through (iv), as applicable. Subject to 49 CFR 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.

Original Exemption

On January 19, 2018, FMCSA published a notice granting MPA an exemption from the ELD requirements in 49 CFR 395.8(a)(1)(i); the exemption expired on January 19, 2023 (83 FR 2869). In its 2018 decision, FMCSA explained that the motion picture industry's unique operational issues and special handling of driver RODS ensures a high level of accuracy to provide the equivalent level of safety.

Application for Renewal of Exemption

MPA requested a renewal of its exemption for a five-year period. MPA stated that approximately 8,300 CMV drivers operate CMVs on a full- or part-time basis for the motion picture industry and few qualify for the short-

haul driver exceptions in 49 CFR 395.1(e)(1) or (e)(2). Further, MPA stated that 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. The RODs they generate are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, MPA asserted that the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires.

MPA explained that the industry's success in HOS management is based on a system that is driver-based, rather than vehicle-based. 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 also explained 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.

IV. Provisional Renewal of Exemption

On November 3, 2022, after review of the renewal application, FMCSA published its decision provisionally to grant a five-year renewal of the exemption effective January 19, 2023, through January 19, 2028, and requested comment (87 FR 66362).

V. Public Comments

Four comments were submitted to the docket. DISA Global Solutions (DISA) supported the exemption and stated, “Not having this ELD exemption would adversely impact the film industry and its drivers. As in previous years, the entertainment industry will continue to exceed current regulatory requirements to achieve the primary concern for all, safety on all roads and highways.” Yellow Dragon Enterprises Ltd Co opposed the exemption renewal but provided no basis for its position. Two commenters, Scott Chapman and an individual identified as “Schneider,” opposed using ELDs but made no comments supporting or opposing the exemption renewal.

VI. Response to Public Comments and Agency Decision

FMCSA has evaluated the public comments and issues this final decision affirming its provisional decision to renew the exemption. To date, the Agency has not received any crash reports concerning drivers or motor carriers operating under MPA's exemption granted in 2018. For this reason, the Agency believes that drivers and motor carriers operating under this exemption would continue to achieve an equivalent level of safety. FMCSA also notes that Congress has recognized the unique aspects of the motion picture industry's operations and has provided statutory exceptions from some HOS regulations.¹

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(a)(2)(ii). 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 extending the exemption for another five years, under the terms and conditions listed below, will likely maintain a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption.

VII. Exemption Decision

A. Grant of Exemption

FMCSA renews the exemption for a period of five years subject to the terms and conditions of this decision. The exemption from the ELD requirement under 49 CFR 395.8(a), is 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 parts 350 through 399).

2. Drivers operating under this exemption must submit their RODS to the motor carrier within 24 hours instead of the 13-day period otherwise allowed by 49 CFR 395.8(a)(2)(ii).

3. 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.

4. Drivers must not be subject to any out-of-service order or suspension of their driving privileges; and

5. 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:

1. Identity of Exemption: "MPA 2023,"
2. Name and USDOT number of the operating motor carrier.
3. Date of the crash.
4. City or town, and State, in which the accident occurred, or closest to the accident scene.
5. Driver's name and license number.
6. Vehicle number and State license number.
7. Number of individuals suffering physical injury.
8. Number of fatalities.
9. The police-reported cause of the crash.
10. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations.
11. 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 MCPD@DOT.GOV.

F. Termination

Based on the safety record of drivers operating under the exemption up to this point, FMCSA has no basis to believe the drivers covered by this renewed 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.

Sue Lawless,

Acting Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Mazda Motor Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mazda Motor Corporation (Mazda) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its CX-90 vehicle line beginning in model year (MY) 2025. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

DATES: The exemption granted by this notice is effective beginning with the 2025 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43-439, NRM-310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms.

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