



Transportation Updates and Regulatory News (TURN)

A quarterly publication of the Agricultural Marketing Service

www.ams.usda.gov/rules-regulations/transportation/turn

January 2018

FMCSA Requests Comments on Independent Driver Petition for ELD Exemption

On January 2, the Federal Motor Carrier Safety Administration (FMCSA) [announced](#) the Owner Operator Independent Drivers Association, Inc. (OOIDA's) [petition](#) for an exemption from the electronic logging device (ELD) requirements for motor carriers considered to be small transportation trucking businesses. This exemption would allow small trucking businesses, that do not have a carrier safety rating of "unsatisfactory" and can document a proven

history of safety performance with no attributable at-fault crashes, to complete paper records of duty status (RODS) instead of using an ELD device. OOIDA believes the exemption would not have any adverse impacts on operational safety, as motor carriers and drivers would remain subject to the hours of service regulations, as well as the requirements to maintain paper RODS. FMCSA requested public comment on OOIDA's application for exemption on or before February 1, 2018.

FMCSA Requests Comments on Agricultural Retailers Petition for ELD Exemption

On December 28, 2017, FMCSA [announced](#) the Agricultural Retailers Association's (ARA) [petition](#) for an exemption from the requirement that ARA members use an ELD to record their drivers' hours of service. ARA said the ELD requirement imposes undue economic, and other burdens, on its member retailers and distributors of farm-related products and services. It asserts ELDs fail to properly record the complex hours of service data, are not properly



certified by the FMCSA, and do not provide appropriate cyber-security safeguards. ARA also asserts ELDs will not function properly in many locations in rural America because of poor internet and cellular connectivity. ARA said the operations of its members, under exemption from the ELD requirements, will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requested public comment on ARA's application for exemption on or before January 29, 2018.

FMCSA Clarifies Agricultural Commodity Exception to Drivers' Hours of Service Regulations

On December 20, 2017, the Federal Motor Carrier Safety Administration (FMCSA) [published proposed regulatory guidance](#) to clarify that the 150 air-mile radius agricultural commodity exception to the drivers' hours of service regulations applies to: (1) drivers while driving unloaded to a source where an agricultural commodity will be loaded; (2) an unloaded return trip after delivering an agricultural commodity; and (3) the initial 150 air-miles from the source of the agricultural commodity, on the outbound and return trips to the source of the

agricultural commodity, when operating beyond the initial 150 air-mile radius. FMCSA requested [public comments](#) on the proposed regulatory guidance on or before February 20, 2018. The statutory definition of agricultural commodity (49 U.S.C. § 31136 note) is as follows:

“(7) AGRICULTURAL COMMODITY — The term ‘agricultural commodity’ means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).”

FMCSA Provides 90-day Temporary Waiver from ELD Requirement for Agricultural Commodities

On December 20, 2017, FMCSA [published](#) a limited 90-day waiver from the drivers' hours of service regulations pertaining to ELDs for the transportation of agricultural commodities. FMCSA “has determined that the waiver is in the public interest and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. The waiver will also, through

notice and comment, provide FMCSA with time to consider certain exemption applications from segments of the agricultural industry concerning the use of ELDs to document drivers' hours of service and clarify applicability of the requirements and the need for certain carriers to begin using ELDs by the December 18, 2017 deadline.” This waiver expires on March 18, 2018.

FMCSA Proposes to Revise Regulatory Guidance Concerning “Personal Conveyance”

On December 19, 2017, FMCSA [published](#) a proposal to revise the regulatory guidance concerning driving a commercial motor vehicle (CMV) for personal use while off-duty, referred to as “personal conveyance.” This provision is available to all CMV drivers required to record their hours of service who are permitted by their employer to use the vehicle for personal use. The revision would allow CMVs with loads to be used for personal conveyance. Comments on the guidance and its economic impact are due by February 20, 2018.



FMCSA Plans Congressionally Mandated Driver Commuting Practices Survey

On November 27, 2017, FMCSA [announced](#) it is seeking approval from the Office of Management and Budget (OMB), and public comments by January 26, 2018, on the proposal to survey driver commuting practices. The survey will fulfill Section 5515 of the Fixing America's Surface Transportation Act, 2015 (FAST Act), which requires FMCSA to conduct a study on the safety effects of motor carrier operator commutes exceeding 150 minutes. FMCSA is required to submit a report to Congress containing the findings of the study. The survey will gather information on the prevalence of excessive (greater than 150 minutes) driver commuting in the commercial motor vehicle (CMV) industry, including: (1) the number and percentage of drivers who commute; (2) the distances traveled, time zones crossed, time spent commuting, and methods of transportation used; (3) research on the impact of excessive commuting on safety and CMV driver fatigue; and (4) the

commuting practices of CMV drivers and policies of motor carriers.

FMCSA Announces Flexible Sleeper Berth Pilot Program Details

On October 27, 2017, FMCSA [announced](#) it submitted an Information Collection Request (ICR) on the flexible sleeper berth pilot program to OMB for review and approval, and for public comment by November 27, 2017. FMCSA [first proposed](#) the pilot program on June 6, 2017, and [proposed the information collection](#) on June 27, 2017. The goal of the pilot program is to allow temporary regulatory relief from the FMCSA's sleeper berth regulation for a limited number of commercial drivers who have a valid commercial driver's license (CDL), and who regularly use a sleeper berth to accumulate their required 10 hours of non-duty work status. During the pilot program, participating drivers would have the option to split their sleeper berth time within parameters specified by FMCSA. Driver metrics would be collected for the duration of the study, and participants' safety performance and fatigue levels would be analyzed.

The pilot program seeks to produce statistically reliable evidence on the question as to whether split sleeper berth time affects driver safety performance and fatigue levels.

U.S. Department of Transportation Continues Regulatory Review

On October 2, 2017, the U.S. Department of Transportation (USDOT) [announced](#) it is reviewing its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of these reviews, USDOT invited the public to [provide input](#) through December 1, 2017, on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. USDOT may also hold a public meeting to discuss and consider comments from members of the public.

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