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February 1, 2018

Docket Management Facility  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE. Room W12-140  
Washington, DC. 20590-0001

**RE: Hours-of-Service of Drivers: Application for Exemption; Owner-Operator Independent Drivers Association, Inc. Docket No. FMCSA – 2017 - 0356**

The *Western States Trucking Association* (“WSTA” or “Agency”)<sup>1</sup> supplies these comments in response to a Notice of application; request for comments published in the Federal Register on January 2, 2018. The WSTA is supportive of allowing an exemption for small-business trucking companies from the Federal Motor Carrier Safety Administration’s (“FMCSA”) electronic logging device (“ELD”) mandate that took effect on December 18, 2017.

However, we do not believe that if FMCSA were to grant the exemption a factor to be utilized is “no attributable at-fault crashes.” We will instead suggest an alternative that is more workable. Ultimately, the WSTA believes granting this exemption request will achieve the equivalent or greater level of safety as compared to current mandatory requirement to utilize an ELD.

**Achieving a higher level of safety**

On February 20, 2016 the WSTA supplied comments to the Agency regarding establishing a Beyond Compliance Program<sup>2</sup>. The WSTA was virtually alone as a small-business trucking association supporting a unique program to incentivize motor carriers achieving a higher level of safety performance. However, we were clear that benefits of having such a program need to flow to small-business motor carriers not just their larger counterparts. This exemption request is really a test of FMCSA’s interest in incentivizing unique ways to maintain and improve commercial motor vehicle safety.

Safety is everyone’s goal and smaller entities especially one-truck operators often have stellar safety records without adding all the technological “bells and whistles” favored by their larger counterparts and they seemingly get little or no recognition especially from regulators. A key component of any Beyond Compliance Program is to “incentivize” positive safety outcomes. Ultimately, this is using a “carrot” as opposed to a “stick” to accomplish the goal.

With this exemption approved not only would those to which the exemption applies have a tremendous incentive to maintain their safety performance, we believe that smaller motor carriers not covered by the exemption would have a great impetus to improve their safety performance in order to become exempted from the ELD mandate.

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<sup>1</sup> The *Western States Trucking Association* is the oldest, independent nonprofit trucking association in the U.S. founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and affiliated motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations. Most of our members would be classified by the SBA as a small-business.

<sup>2</sup> See - <https://westrk.org/wp-content/uploads/2013/07/WSTA-Comments-Beyond-Compliance.pdf>

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## Criteria for exemption

While OOIDA's petition requests that the exemption if approved apply to motor carriers with "no attributable at-fault crashes," we believe that is a standard not achievable simply because no objective criteria exist to determine "fault" other than a motor carrier applying for a determination through FMCSA's current Crash Preventability Demonstration Program. Even then, a favorable decision doesn't eliminate the crash from a motor carrier profile thus adding complexity to roadside law enforcement being able to determine the validity of any motor carrier claiming to be covered by the exemption.

The WSTA believes a much simpler method of determining eligibility would be utilizing data readily obtained (even by roadside enforcement personnel) within the Safety Measurement System ("SMS"). Namely, the exemption could apply to any carrier without a recordable crash associated with their SMS profile. Since that data is kept current for three years any crash reported would end the exemption effectively for three years until such a time as FMCSA actually develops a meaningful way to eliminate "not-at-fault" crash data from a carrier profile.

While the WSTA does believe it is unfair to stigmatize any motor carrier for crashes in which they bear no-fault, we would not want to see the Agency get hung-up on this issue as a way to deny the exemption request.

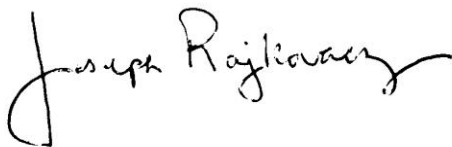
Finally, OOIDA requested the exemption not apply to motor carriers that have an "unsatisfactory" safety rating. We would add "conditional" as a reason to not be able to utilize this exemption.

## Conclusion

FMCSA has granted many various ELD related exemption requests and virtually all brought forth valid justifications for the request and it is no different in this case. Some requests have been granted to larger motor carriers who have been supportive politically of an across the board ELD mandate but also supportive of standing up a meaningful Beyond Compliance Program. Nothing could be more meaningful to smaller entities than to see the Agency recognize that a one-size-fits-all regulatory approach can actually inhibit the Agency from achieving its stated safety goals.

FMCSA should grant this exemption request and importantly use it as a basis to partially alter the Agency's approach to improving over-all motor carrier safety by relieving motor carriers from expensive regulations. With firmly established parameters there is little doubt on our part that granting this exemption request will achieve the equivalent or greater level of safety when compared to the current mandatory requirement to utilize an ELD.

Sincerely,



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Western States Trucking Association

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