



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**[Docket No. FMCSA-2017-0297]**

**Hours of Service of Drivers: Application for Exemption; National Pork Producers Council (NPPC)**

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the National Pork Producers Council (NPPC) has requested an exemption from the requirement that a motor carrier require each of its drivers to use an electronic logging device (ELD) no later than December 18, 2017, to record the driver's hours-of-service (HOS). NPPC states it requests the exemption for all livestock haulers as defined in the application (i.e., transporters of livestock, poultry, aquaculture, and insects) to address an incompatibility between the FMCSA's HOS rules and the current structure and realities of the U.S. livestock industry. NPPC states that the livestock haulers will not be prepared to meet the December 18, 2017, compliance date for installing ELDs. NPPC believes that the exemption, if granted, would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA requests public comment on NPPC's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0297 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. E-mail: [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:**

**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-2017-0297), 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 e-mail 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-2017-0297” 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**

NPPC filed this application for exemption on behalf of itself and the following organizations: American Beekeeping Federation; American Farm Bureau Federation; Livestock Marketing Association; National Aquaculture Association; National Cattleman's Beef Association; North American Meat Institute; and the U.S. Cattlemen's Association.

NPPC requests an exemption for all livestock haulers, which they define as "livestock, poultry, aquaculture, and insect producers, processors and transporters," from the requirement in 49 CFR part 395 that no later than December 18, 2017, a motor carrier require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS).

NPPC states that it is seeking this limited exemption from ELDs for livestock haulers because:

- (1) Livestock haulers are not, and will not be prepared to meet the December 18, 2017 compliance date;
- (2) The current ELD retail marketplace does not clearly support the needs of livestock haulers and questions remain as to whether current ELD devices can accommodate HOS exemptions currently utilized by the livestock industry;
- (3) There is a significant lack of education and awareness by livestock haulers and the livestock producers they service regarding the ELD mandate,

current exemptions, and the use and operation of ELDs, requiring time for adequate outreach and training to take place; and

- (4) Concern over the ELD mandate has exposed incompatibilities between the HOS rules and the livestock industry, and is causing disruption for livestock haulers, increasing already severe driver shortages, and endangering the health and welfare of the millions of animals transported by livestock carriers daily.

NPPC notes that their industry is encountering two problem areas regarding the use of ELDs. First, because the ELD initiative fails to directly address the unique requirements of the livestock industry, those drivers who are aware of the program have had difficulty researching the ELD marketplace and identifying cost-effective solutions that are compatible with livestock hauling. NPPC claims that the vendors in the commercial ELD marketplace lack an understanding of the unique needs of the livestock industry and essential design features for their products. Second, nationwide, the average age of American truck drivers is 49. For livestock haulers, the age is likely significantly higher. As a result, these drivers are less familiar with the use of new technology and require more time to train on ELD use. Forcing these drivers to comply with the ELD mandate without appropriate training unfairly discriminates against older drivers who are otherwise more experienced and qualified to haul livestock.

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

NPPC claims that granting this exemption for the extremely limited segment of the overall transportation economy engaged in the shipment of livestock, will achieve a

level of safety that is equivalent to, or greater than, the level that would be achieved absent an exemption.

In their application, NPPC explains that livestock haulers are responsible for the daily transportation of millions of animals. They state that the welfare and safety of the animals in transit, together with the safety of other drivers on the road, are the industry's top priorities. NPPC advises that most livestock haulers have participated in additional specialized training, including the pork industry's Transport Quality Assurance (TQA) program and the beef industry's Master Castle Transporter (MCT) program, which provide instruction on proper animal handling and transportation methods. These voluntary education programs were developed by and are offered through the U.S. Department of Agriculture.

The pork industry's TQA program is designed to address the driver safety and animal welfare needs of the approximately 600,000 pigs transported every day on U.S. roads. While the program is voluntary, most major packers require that any driver arriving on their property be TQA-certified. The beef industry's MCT training program was designed by cattle experts and volunteers to educate haulers about low-stress safe handling and transportation methods for cattle. According to the MCT training program, proper handling and transport of cattle reduces sickness, prevents bruising, and improves the quality of the meat. These drivers also transport live fish, which requires a driver to focus on road safety, equipment maintenance, fish health, and water quality. Moving live fish by truck also requires specialized equipment, species-specific loading, and on-time delivery.

NPPC states that the emphasis these programs place on animal welfare benefits driver safety, as it encourages livestock haulers to slow down, be more aware of their surroundings and road conditions, and avoid rough-road situations that could result in animal injury. In addition to general highway safety and accident prevention measures, these programs also focus on the primary underlying goal of the HOS rule – addressing fatigue. For example, the pork industry’s TQA program educates haulers about driver fatigue prevention by stressing adequate rest, appropriate climate conditions in the cab, a healthy diet, and how to recognize the signs of fatigue.

NPPC states that granting a limited exemption from the ELD mandate for livestock haulers will enable FMCSA and the livestock industry to undertake the training and education necessary for livestock haulers to understand ELDs. It will also provide an opportunity for FMCSA to develop livestock-specific solutions to the underlying HOS concerns of the industry.

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

**Issued on:** October 25, 2017

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Larry W. Minor  
Associate Administrator for Policy

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