



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0319]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the Agricultural and Food Transporters Conference of American Trucking Associations.

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

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

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA) to allow certain alternate methods for the securement of agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and hay, straw, and cotton bales that are grouped together into large singular units. The Federal Motor Carrier Safety Regulations (FMCSR) generally require loads to be secured by a minimum number of tiedowns based on article length, and the aggregate working load limit of those tiedowns must be at least one-half times the weight of the article or group of articles being transported. Based on the results of a comprehensive test program conducted by FMCSA in collaboration with the California Highway Patrol (CHP), the California Department of Food and Agriculture, the California Trucking Association, and others, AFTC believes that use of certain alternate cargo securement methods will maintain a level of safety that is equivalent to, or greater than, the level of safety

achieved without the exemption because the test results confirmed that the performance requirements of the regulations are met when using the alternate securement methods.

DATES: Comments must be received on or before [Insert 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0319 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- Hand Delivery: Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below.

Note that all comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12–140, DOT Building, 1200

New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e)

to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with 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 the safety analyses and the public comments 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

AFTC Application for Exemption

AFTC applied for an exemption from 49 CFR 393.102, 393.106, 393.110, and 393.114 to allow alternate methods for the securement of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay,

straw, and cotton bales that are grouped together into large singular units. A copy of the application is included in the docket referenced at the beginning of this notice.

On September 27, 2002, FMCSA published new cargo securement rules (67 FR 61212). The rules were based on the North American Cargo Securement Standard Model Regulation, reflecting (1) the results of a multi-year research program to evaluate U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials, and other interested parties.

The cargo securement rules include general securement rules applicable to all types of articles or cargo, with certain exceptions (§§ 393.100 – 393.114), and commodity-specific rules for cargoes that require specialized means of securement (§§ 393.116 – 393.136). The commodity-specific requirements take precedence over the general rules for a commodity listed in those sections. This means all cargo securement systems must meet the general requirements, except to the extent a commodity-specific rule imposes additional requirements that prescribe in more detail the securement method to be used. There are no commodity-specific rules applicable to the transportation of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units.

AFTC states that “For the past several years, Agricultural haulers in California have been utilizing annual exemptions granted by the CHP to continue to allow the use

of previously existing cargo securement methods for hauling agricultural products. The California annual exemptions were granted because the strict application of the cargo securement requirements that FMCSA identified in a Final Rule in 2002 and became effective in 2004 would have resulted in a less secure agricultural commodity cargo securement environment.”

In support of its application, AFTC states that “We are requesting this exemption after the Federal Motor Carrier Safety Administration (FMCSA) performed testing and evaluation of various methods utilized in securing a wide variety of agricultural products for transport that occurred in 2007 and 2008. Many cargo securement methods were tested including those used to secure plastic and wood bins, large fiberglass tubs, and hay and cotton bales. The study with FMCSA was a collaborative effort with the California Highway Patrol . . . , California Department of Food and Agriculture, California Trucking Association and several of our carrier members.” A copy of the draft report has been included in the docket referenced at the beginning of this notice.

AFTC notes that the alternate securement methods for boxes, bins, and tubs are intended to apply only to the transportation of agricultural products from the field or storage to the first point of processing and the return or delivery of empty containers to the field or storage location. Additionally, loads transported in vans or that are contained on four sides by racks, or for other than agricultural operation as described above must be transported in accordance with the general cargo securement rules of §§ 393.100 – 393.114. AFTC states “The reason for the requested variances is because

these agricultural commodities are ‘grouped’ into larger singular ‘units’ and these larger grouped units of cargo behave differently when tested to the performance requirements under 49 CFR 393.102.”

Interested parties are referred to the detailed cargo securement requirements outlined by AFTC in an attachment to its exemption application for each box/bin/tub scenario and for hay and cotton bales. The attachment includes information regarding (a) the applicability of the alternative securement methods and definitions, (b) general provisions relating to required tiedowns and other securement devices, (c) construction of loads, and (d) securement of loads.

The exemption would apply to all commercial motor vehicle operators nationwide that transport agricultural commodities in interstate commerce as described in the attachment to the exemption application. AFTC states that the alternative securement requirements “will provide an increased level of safety and these securement techniques have been tested by the Volpe National Transportation Systems Center in cooperation with FMCSA and the California Highway Patrol.” Further, AFTC notes that granting the exemption “will provide an increased level of safety as the alternate securement methods require more cargo securement than is currently required under the California exemptions the industry has been operating under for the past few years.”

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on AFTC’s application for an exemption from 49

CFR 393.102, 393.106, 393.110, and 393.114. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the ADDRESSES section of this notice.

Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file relevant information in the public docket that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: December 28, 2017

Larry W. Minor
Associate Administrator for Policy

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