



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2018-0312]**

**Hours of Service of Drivers: American Bakers Association and International Dairy Foods Association; Application for Exemption**

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

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

**SUMMARY:** FMCSA announces that it has received a joint application from the American Bakers Association (ABA) and the International Dairy Foods Association (IDFA) requesting an exemption from the hours-of-service (HOS) regulations for drivers engaged in the delivery of baked goods and milk products during periods and in geographic areas reasonably anticipated to be impacted by an impending natural disaster or emergency situation. ABA/IDFA requests a 5-year exemption from 49 CFR part 395 for their drivers engaged in the delivery of essential food staples to extend their driving hours to help communities prepare for anticipated disaster conditions, such as extreme weather events, natural disasters, and other emergencies. The applicants state that the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on ABA/IDFA'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 Number FMCSA-2018-0312 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. E.T., 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, 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, please contact Mr. Richard Clemente, Transportation Specialist, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; E-mail:

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-2018-0312), 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 comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2018-0312” 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 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 (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## **III. Request for Exemption**

The American Bakers Association (ABA) represents the wholesale baking industry. ABA advocates on behalf of more than 1,000 baking facilities and company suppliers. Their members produce bread, rolls, crackers, bagels, sweet goods, tortillas, and many other baked products. ABA advises that the average number of drivers and commercial motor vehicles (CMVs) per company is approximately 1,050, ranging from 70 to 5,500.

The International Dairy Foods Association (IDFA) represents the dairy manufacturing and marketing industry. Their members range from large multinational organizations to single-plant companies, and together they represent more than 85 percent of the milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the U.S. and sold throughout the world. IDFA states that, based on statistics for the fluid milk industry, the sector has approximately 15,500 drivers and 18,000 trucks (both tractor-trailers and smaller delivery trucks). The industry believes that approximately 450,000,000 miles are driven each year in milk and dairy product deliveries.

ABA/IDFA requests an exemption from the provisions of 49 CFR 395.3, “Maximum driving time for property-carrying vehicles” for their drivers delivering “essential food staples,” particularly baked goods and milk products, *in advance of anticipated natural disasters or other emergency conditions*. The requested exemption would only cover the period of time in advance of, during, and shortly after the emergency condition, where the HOS rules can be an unintended barrier to efficient disaster preparations and operations.

The applicants proposed that the exemption apply during periods of disaster preparation in anticipation of disaster conditions, to be defined based on the existing

definition of “Emergency” in 49 CFR 390.5, but modified to encompass conditions that are reasonably anticipated. The exemption would apply from the time that a natural disaster or emergency is reasonably anticipated until a reasonable time after the disaster has resolved. ABA/IDFA states that, although some element of reasonable judgement is necessarily inherent in this proposed approach, a definition that is tied to an official Declaration of Emergency would defeat the public purpose of a disaster preparation exemption by forcing suppliers to wait until an official declaration of emergency by the President, State governors, or FMCSA, which would often leave insufficient lead time for disaster preparation. Accordingly, the requested exemption should allow suppliers to use reasonable judgment based on early warning announcements, such as hazardous weather announcements.

ABA/IDFA advises that disaster preparation is not limited to hurricanes, as serious storms such as ice storms, heavy rains, or strong frontal patterns that spawn tornadoes can also wreak levels of havoc in certain regions throughout the country. The need of consumers for essential food staples significantly increases in advance of and during emergency conditions, and emergency preparations are often exacerbated by a rush on retail establishments prior to announced emergency events.

The increased demand for essential food staples prior to threatened natural disasters and other emergencies requires changes to delivery logistics, schedules, and HOS for at least a 72-hour period prior to an anticipated disaster event, as it is critical to move a large volume of supplies into the disaster-affected area, and supplies often must be sourced from regional distribution centers, other manufacturing facilities that are able to increase production, or in the case of widespread disasters, distribution systems in other regions. Disaster preparations significantly and abruptly increase the need for

driving time, delivery routes and drivers, due to heavy traffic on roads, challenging driving conditions, use of alternative or evacuation routes, and disruptions such as downed trees and traffic accidents. Furthermore, emergency conditions may create situations in which rest breaks on normal schedules are infeasible or dangerous due to road or parking conditions.

According to ABA/IDFA, the best way to prepare for anticipated disasters or emergencies is to increase delivery runs ahead of the impending situation. Because facilities in a disaster area that produce fresh bread and milk may be without power, flooded, or otherwise impacted by the disaster, it is often necessary to source replacement deliveries from more distant production facilities in other regions. Suppliers often have the ability to increase production well ahead of emergency situations, and will begin advancing product into the market 72 hours or more ahead of the anticipated stock depletion. Experience has shown the applicants that the HOS restrictions often become a limiting factor at the expense of effective emergency preparations. Perhaps the most critical factor, due to a national shortage of licensed commercial drivers, there are simply no additional drivers or contract carriers available to supplement normal driver ranks due to the spiking demand ahead of and during disasters. Accordingly, the only way to prepare for disasters is to increase routes and driving times of regular drivers in the suppliers' distribution network.

In summary, this exemption would allow suppliers of essential food staples to adapt delivery schedules to allow communities to prepare for anticipated disaster conditions, such as extreme weather events, natural disasters, and other emergencies that disrupt delivery schedules and require increased driving hours. The exemption would help avoid shortages of essential food staples at retail stores and food establishments that

could otherwise result if deliveries are restricted by the generally applicable HOS rules in 49 CFR 395.3. ABA/IDFA states that without an exemption to the HOS provisions, retail stores and food establishments are more likely to run out of product, leaving consumers lacking essential food staples during emergency conditions.

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

By providing the flexibility for bakery and milk product delivery drivers to adjust HOS during disaster conditions, suppliers will be able to supply essential food staples with greater efficiency and safety by allowing experienced drivers and employers to modify delivery routes and schedules to accommodate the safe delivery of emergency supplies.

As detailed in their application, ABA/IDFA believes the ability to utilize the judgment of experienced, well-trained and qualified drivers during weather events will promote safety. The nature of retail unloading, and familiar routes, reduces concerns regarding driver fatigue and safety. Many retail stores are open only during set hours, which provides natural limits to the use of the exemption. The ability to take breaks and end the day according to the conditions of the road and traffic during the weather event will allow drivers to take their time and use caution as appropriate under the conditions at that time, rather than feeling pressure to comply with the HOS rules that are most appropriate for normal driving conditions. ABA/IDFA further adds that the exemption perhaps most importantly will allow families to stock supplies at their regular neighborhood stores and avoid the need for residents to drive unnecessarily looking for emergency supplies of essential food staples in advance of or during a disaster situation.

Regarding an equivalent level of safety, ABA/IDFA details the following in their application regarding HOS compliance following the exemption from 49 CFR

395.3: A weather “trigger” would start a 72-hour HOS exemption period leading up to an anticipated storm, which creates two possible scenarios following the exemption period: (1) FMCSA grants a wide-scale HOS exemption period for the impacted area or a State government declares a state of emergency and suspends the HOS requirements, or (2) the storms impact on the region is too insignificant to warrant an HOS exemption on either the State or Federal level. In the case of the first scenario, the HOS requirements for that period are already suspended and concerns of equivalent safety will have already been considered in existing regulations. In the second scenario, the applicants propose an equivalent level of safety as follows: (1) For the 11 hour driving time limit, for every 2 hours a driver surpasses this limit, an additional hour will be added to the original 10-hour rest limit to be completed between runs following the exemption period; and (2) for the 60/70 hour limits, should a driver surpass these normal limits during the exemption period, two additional hours will be added to the original 34-hour off duty period required following the exemption period. In order to verify compliance, the hours would continue to be documented through the use of electronic logging devices pursuant to the current rules in 49 CFR part 395, Subpart B. The requested exemption is for 5 years. A copy of ABA/IDFA’s application for exemption is available for review in the docket for this notice.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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