



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0334]

Hours of Service of Drivers: National Cattlemen's Beef Association; Livestock Marketing Association; American Farm Bureau Federation; American Beekeeping Federation; American Honey Producers Association; and National Aquaculture 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 National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and the National Aquaculture Association for an exemption from certain provisions in the hours-of-service (HOS) rules. The applicants request approval to, after 10 consecutive hours off duty: drive through the 16th consecutive hour after coming on duty; and drive a total of 15 hours during that 16-hour period. The requests are made on behalf of drivers who transport livestock, insects, and aquatic animals. FMCSA requests public comment on the joint applicants' request for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0334 by any of the following methods:

- Federal eRulemaking Portal: 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, 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 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.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; 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-2018-0334), 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 and put the docket number, "FMCSA-2018-0334" 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 and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

A joint exemption application has been submitted by the National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and the National Aquaculture Association ("applicants").

The applicants seek an exemption from the hours-of-service (HOS) requirements that: (1) limit the maximum driving hours for property-carrying drivers to 11 [49 CFR 395.3(a)(3)]; and (2) limit the duty period for those drivers to 14 consecutive hours [49 CFR 395.3(a)(2)]. The applicants seek an exemption that after 10 consecutive hours off duty would allow them to: (1) drive through the 16th consecutive hour after coming on duty; and (2) drive a total of 15 hours during that 16-hour period. The applicants cite the fact that livestock haulers are currently permitted to operate in “an exempt zone within a radius of 150 air miles” of the source of an agricultural commodity. The Agency, in implementing this provision, has stated that time spent working within the 150 air-mile radius does not count toward the driver’s daily and weekly HOS limits. Accordingly, the 15- and 16-hour limits requested by the applicants would begin after a livestock hauler travels outside the 150 air-mile radius. The requested exemptions would apply to all livestock, insect, and aquatic animal transporters and their drivers.

According to applicants, for purposes of this exemption application, livestock is defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471]. The term “insects” should be interpreted to mean insects that are used as pollinators such as honeybees. The term “aquatic species” is defined in the National Aquaculture Policy Act as “any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.” 16 U.S.C. § 2801. However, this application does *not* seek to include aquatic plants.

Applicants advise that their drivers would comply with all other HOS rules, including the 60/70 hour limits. They advise that drivers operating under the proposed exemption would reach the 60-hour on-duty limit as early as at the end of the 90th hour

and would then take 34 consecutive hours off duty. They then could resume duty at the start of the 125th hour.

The applicants cite 2018 Motor Carrier Management Information System data from the Agency that identified 60,569 livestock motor carriers with 179,406 vehicles and 190,661 drivers. The FMCSA noted that 78,154 of those drivers operated within a 100 air-mile radius HOS exemption, leaving 112,507 CMV drivers who would likely be subject to the Agency's HOS regulations. The applicants are concerned that the 11- and 14-hour rules were not crafted with livestock haulers in mind and thus do not accommodate the unique character of their loads and nature of their trips. In certain circumstances, livestock haulers are required to carry live animals over significant distances. Those circumstances are dictated by factors primarily related to the health and welfare of the livestock; the lifecycle of the livestock; and the locations of farms and ranches, viable grazing lands and feedlots, and final processing facilities. The applicants state that the maximum driving and on-duty limits of the HOS regulations as applied to their operations may place the well-being of livestock at risk during transport and impose significant burdens on livestock haulers, particularly in rural communities across the country.

The applicants state that, while the majority of their trips fall within the current HOS regulations, some of the longer trips cannot be completed under the 11- and 14-hour rules. These trips are affected by "immutable factors" such as weather. In the cattle industry, the locations of cow-calf operations, grazing lands, feedlots, and processing facilities necessarily determine how far a livestock hauler must travel in a single trip. Livestock haulers transport animals from farms and ranches to auction markets, where the stock is sold. Once sold, the animals are often transported to grazing lands and feed

yards, mostly located in the Central Plains and Southwest. After grazing and feeding, livestock are transported a final time to processing facilities, where they are transformed into consumable meat and sold. In addition, transportation of bees necessary to pollinate numerous crops, tree nuts, fruits, and vegetables are some of the longest trips in the country. While most these trips can be concluded within the current HOS rules, the applicants estimate that 25-30 percent of livestock-hauling trips would be conducted under the requested exemption.

The applicants cite the following negative impacts to their industry if the exemption is not granted: (1) livestock haulers would be unable to test innovative fatigue risk-management safety countermeasures; (2) public safety measures to ensure animal welfare and prevent the spread of disease would continue to be hampered by the current HOS rules; and (3) driver shortages and resulting transportation cost increases would be further aggravated.

The applicants assert that granting this exemption would not negatively impact motor vehicle safety because the exemption would likely be used by a limited number of commercial drivers who are experienced, plan their trips carefully, operate specialized equipment, and routinely undergo transportation training. The applicants add the following relating to an equivalent level of safety if the exemption is granted: (1) livestock haulers are a defined, safe subset of all CMV drivers; (2) transporting live animals requires prudent route planning, specialized equipment, and safe driving practices; and (3) many livestock haulers already undergo specialized training that includes fatigue prevention, recognition, and management. As this last point relates to an equivalent level of safety, according to the applicants, the HOS rules are intended to mitigate the risk of driver fatigue and its role in CMV crashes. However, research

demonstrates that the number of driving hours is only one aspect of fatigue management – as many factors contribute to safe driving. The applicants propose to craft industry-sponsored training programs that include appropriate fatigue management principles.

The exemption is requested for a period of five years. A copy of the application for exemption is available for review in the docket for this notice.

Issued on: January 30, 2019.

Larry W. Minor,

Associate Administrator of Policy.

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