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## DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0093]

#### Hours of Service of Drivers: Turfgrass Producers International; Application for Exemption

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

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

**SUMMARY:** FMCSA has received an application from Turfgrass Producers International (TPI) asking the agency to extend the hours-of-service (HOS) exemption for agricultural operations to drivers transporting turfgrass sod for its business operations. FMCSA requests public comment on TPI'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-2019-0093 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](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:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4325; 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-2019-0093), 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-2019-0093” 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.

## **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. 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 and provide an opportunity for public comment on the request.

The Agency performs a review of 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 Agency will publish its decision 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 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**

Turfgrass Producers International (TPI) represents natural grass seed and sod farmers throughout the United States and abroad. TPI has promoted the benefits of natural grass for 51 years and has members in over 46 States and 25 nations who produce natural grass seed and sod to service customers and consumers in the green industry. The natural grass product that farming members produce is delivered to urban and suburban

areas where it is used for landscape services, home construction, and recreational industries, among others.

TPI requests that all transporters of turfgrass sod be eligible for the HOS exception for agricultural commodities provided in 49 CFR 395.1(k)(1). TPI asserts that sod producing members are concerned that sod is not included in the definition of an agricultural commodity in 49 CFR 395.2. TPI believes that the failure to define sod as an agricultural commodity is inconsistent with other Federal and State regulations and creates an unnecessary economic burden for sod farmers when transporting their product to market.

According to TPI's application, turfgrass sod is a perishable agricultural commodity that is recognized by the U.S. Department of Agriculture and, like many other agricultural commodities, is planted and harvested annually. Sod is cultivated and managed with techniques and equipment similar to those used for other crops and is subject to the same impacts of weather, weed infestations, insect pests, and plant disease factors that impact other agricultural crops. Similarly, once harvested for sale it is also subject to perishing in transport. Specifically, sod often loses its color, moisture, and vigor due to transplant shock and can die if palleted too long. Sod's perishability depends on many of the same factors that impact the transportation of other agricultural commodities including temperature, desiccation, oxygen and light deprivation, increased respiration, carbon starvation, etc., all of which negatively impact the quality of turfgrass sod.

TPI asserts that the lack of an HOS exemption granted to other agricultural commodities by 49 C.F.R. 395.1(k)(1) will impact sod haulers' business heavily. Their inability to deliver their perishable product to market in a timely manner will result in a

decrease in the amount of product they can ship and an increase in the amount of product that either perishes in transport or is damaged in transport, resulting in customers who refuse delivery or are otherwise not satisfied with sod quality at delivery. If granted, TPI estimates that the exemption would cover between 2,400 drivers (400 farm baseline) and 10,428 drivers (1,738 farm maximum).

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

TPI essentially argues that the exemption would achieve a level of safety equivalent to that of others transporting agricultural commodities within 150 air miles of the source of the agricultural commodity. TPI is requesting that the Agency exercise its statutory authority to extend to the transporters of turfgrass sod the same HOS relief provided by Congress to transporters of specified agricultural commodities. TPI states that it will work with natural grass sod haulers to ensure they understand existing safety regulations regarding the operation of commercial motor vehicles. TPI contends that nothing about weight, stacking configuration, etc., makes natural grass sod any less safe to haul than other agricultural commodities, as demonstrated by the proven track record that natural grass sod farmers have had for many years while hauling sod as an agricultural commodity.

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

**Issued on: June 12, 2019.**

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Larry W. Minor,  
Associate Administrator for Policy.

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