



March 7, 2019

BY ELECTRONIC SUBMISSION

The Honorable Raymond P. Martinez
Administrator, Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Electronic Address: <http://www.regulations.gov> (Docket No. FMCSA-2018-0334)

Re: Comments on FMCSA's Request for Comments on Notice of Application for Exemption from Certain Provisions of Hours of Service of Drivers Rule by Livestock and Related Drivers

Dear Administrator Martinez:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Motor Carrier Safety Administration's (FMCSA) *Request for Comments on Notice of Application for Exemption from Certain Provisions of Hours of Service of Drivers Rule by Livestock and Related Drivers* that was published in the Federal Register on February 6, 2019.¹ The application was made on behalf of drivers who transport livestock, insects, and aquatic animals with special transportation needs,² and was filed 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. The applicants request approval of a sixteen-hour on-duty period during which these drivers would be permitted to drive up to fifteen hours and would only commence after ten consecutive hours off duty. All other aspects of the current Hours of Service of Drivers rules for these drivers would remain unchanged.

¹ 84 Fed. Reg. 2304 (February 6, 2019). (See, <https://www.govinfo.gov/content/pkg/FR-2019-02-06/pdf/2019-01276.pdf>)

² 84 Fed. Reg. 2305.



For the reasons discussed below, Advocacy recommends that FMCSA provide maximum flexibility to these drivers and approve this application if it will achieve an equivalent or greater level of safety and is consistent with the agency's statutory safety objectives.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, the Small Business Jobs Act of 2010 requires federal agencies to give every appropriate consideration to comments provided by Advocacy.⁵ Specifically, the agency must include, in any explanation or discussion of a final rule published in the Federal Register, the agency's response to comments submitted by Advocacy and a detailed statement of any changes made to the final rule as a result of those comments, unless the agency certifies that the public interest is not served by doing so.⁶

Background

On February 3, 2017 and March 1, 2017, respectively, the President issued two Executive Orders concerning regulatory reform. The first, Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs,⁷ requires federal agencies to review existing regulations and eliminate two existing regulations for each new one it promulgates. The second, Executive Order 13777, Enforcing the Regulatory Agenda,⁸ required agencies to appoint a Regulatory Reform Officer (RRO) and a Regulatory Reform Task Force (RRTF) to review existing regulations and make recommendations of regulations that are priorities for review and reform.⁹

In furtherance of these Executive Orders, and as part of its core mission to represent the views of small entities within the federal government, Advocacy has hosted a series of Regional Regulatory Reform Roundtables around the country to hear directly from small businesses about which regulations are most burdensome and should be prioritized for review and reform.¹⁰

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁵ Small Business Jobs Act of 2010 (P.L. 111-240) §1601.

⁶ *Id.*, codified at 5 U.S.C. 604(a)(3).

⁷ 82 Fed. Reg. 9339 (February 3, 2017)

⁸ 82 Fed. Reg. 12285 (March 1, 2017)

⁹ Section 610 of the Regulatory Flexibility Act of 1980 has required retrospective review of existing regulations since 1980. See, 5 U.S.C. Sec. 610.

¹⁰ An initial report of Advocacy's activities and finding can be found at <https://s3.amazonaws.com/advocacy-prod.sba.fun/wp-content/uploads/2018/12/20091536/What-Small-Businesses-Are-Saying-What-Advocacy-Is-Doing.pdf>.

Many trucking and transportation issues have been raised at Advocacy's roundtable meetings, including the need for greater flexibility under FMCSA's Hours of Service of Drivers regulations, particularly for industries that transport vulnerable items such as livestock, perishable agricultural and aquaculture products, explosives, fireworks, and hazardous materials and waste.¹¹ These carriers and drivers – many or most of whom are small businesses – seek regulatory relief because it is not feasible to stop if they reach their Hours of Service ceiling because of the special nature of their loads. They have stated that stopping is not practicable because there are not enough safe and secure rest areas or other places to stop and it is essential that their loads be properly delivered in an expeditious fashion.

Currently, commercial drivers are permitted to drive a maximum of eleven hours in a fourteen-hour period. The application for exemption requests that drivers who transport livestock, insects, and aquatic animals be allowed to drive for fifteen hours in a sixteen-hour period after taking ten hours off duty. There are already exemptions from the Hours of Service of Driving rules for commercial drivers in the applicant's sectors who drive within a 150-mile air radius of the origin of the source of the agricultural commodity, so there is a recognition by FMCSA of the special character of their loads and the nature of their trips.¹²

Conclusion

Thank you for the opportunity to comment on FMCSA's *Request for Comments on Notice of Application for Exemption from Certain Provisions of Hours of Service of Drivers Rule by Livestock and Related Drivers*. Advocacy recommends that FMCSA provide these and similarly situated drivers with maximum flexibility and approve this and similar applications if it will achieve an equivalent or greater level of safety and is consistent with the agency's statutory safety objectives.

One of the primary functions of the Office of Advocacy is to assist federal agencies in understanding the impact of their regulatory programs on small entities. To that end, Advocacy

¹¹ ¹¹ Advocacy notes that two related issues with respect to FMCSA regulations have been widely raised by motor carriers and commercial drivers at these roundtables, including: 1) Complaints from small motor carriers and commercial drivers that the FMCSA's Compliance Safety Accountability (CSA) program and its Safety Measurement System (SMS) methodology is arbitrary and does not accurately evaluate motor carrier and driver performance or predict the likelihood of a commercial driver being involved in an accident; and, 2) Significant small motor carrier and commercial driver opposition to the FMCSA's regulations that mandate the installation and use of Electronic Logging Devices (ELDs).

¹² The application and Federal Register notice do not quantify the economic impact (i.e., cost savings) of the proposed exemption, but do indicate that according to the 2018 Motor Carrier Management Information System that there are 60,569 livestock motor carriers with 179,406 vehicles and 190,661 drivers. It also indicates that 78,154 of those drivers operated within the existing air-mile radius exemption, leaving 112,507 CMV drivers who would likely be subject to the Hours of Service regulations.

hopes these comments are helpful and constructive. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov if you have any questions or require additional information.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel for Advocacy

/s/

Bruce E. Lundegren
Assistant Chief Counsel for Advocacy

Copy to: The Honorable Neomi Rao, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget