

HOS regulations for certain agricultural operations in a limited geographic area during planting and harvesting seasons, the exemptions granted were in the form of a 24-hour restart of the 60- or 70-hour restrictions. In creating the Type 5 operational category, the FMCSA's intent was to accommodate all existing 24-hour restart exemptions. The ICC first allowed a 24-hour restart provision for drivers of specially constructed oilfield servicing vehicles on April 13, 1962. It did not discuss the safety or economic impacts in its decision, see 89 M.C.C. 19 and 27 FR 3553. It should be noted that the FMCSA intended that the proposed 32-hour period would operate as a "restart" of a workweek with respect to Type 5 operations.

However, associations and individuals representing agricultural transporters, the construction industry, utility vehicle operators, oil-well drillers and other operations that currently have a 24-hour restart provision stated that FMCSA's proposal to use Type 5 as a catch-all for current exemptions simply did not work. Each segment had its own operational idiosyncrasies, many duty schedules in split days off, but more often in unpredictable demand, making it, in their view, impractical for them to use not only Type 5, but also any of the other types proposed.

#### *For-Hire Trucking*

The ATA made several arguments against the NPRM's treatment of exemptions or exceptions. First, it contended that several exceptions (in addition to those created by Sec. 345) have been in place for years, and that carriers have built their businesses around them. To summarily remove them without any supporting evidence would create substantial hardship.

Second, it noted that some of the exemptions were granted by the NHS statute with a required procedure for eliminating or modifying them. The ATA alleged the FMCSA failed to follow the required procedures.

Third, it asserted that requiring the states to adopt the proposed federal requirements, eliminating even State exemptions within three years, was unreasonable and unnecessarily interfered with State discretion. The ATA addressed each of the exceptions or exemptions currently in the regulations.

#### *Associations and Carriers That May Have NHS Act Sec. 345 Subject Operations*

The Agricultural Retailers Association (ARA) stated that although farming and related supply businesses operate year

round, their busiest time is during planting and harvesting seasons. During those times, which are defined by State law, many farmers and suppliers are eligible for an exemption from the HOS regulations under Sec. 345 of the NHS Act.

The ARA commented that most drivers operate locally, on farm roads, and sleep at home every night. Although pleased that the agricultural exemption was to be retained, the ARA commented that the proposal appeared to negate the exemption. The ARA recommended that certain language be deleted.

The ARA also pointed out an apparent inconsistency between the proposed regulatory language and the section-by-section analysis. Both refer to the "weekend" provision and when it would apply to drivers, including agricultural exempt operations. One said "more than five consecutive days" and the other said "more than three consecutive days." ARA stated both were in error because they would require a driver and truck to be idled for up to 56 hours merely because a driver completed a task at a farm taking three or five days. It recommended the number of exempt driving days requiring a "weekend" rest period be set at seven.

The Agricultural Transporters Conference (ATC) stressed the importance of servicing crops at appropriate times, a situation ATC argues is analogous to emergencies. ATC members have been operating under the NHS exemption since 1995 and believe there is no evidence that safety has been compromised. ATC stated that the agriculture definitions in the NPRM are too restrictive and that problems will inevitably arise. For example, a supplier's driver delivers anhydrous ammonia to the farm, applies it to the fields, and then stops at a wholesaler to fill his tank on the way back to the supplier's yard. He would be exempt on the delivery, but not on the pick up.

The Forest Resources Association (FRA) wanted loggers and other forest harvesters to be allowed to operate under the agricultural exemption. According to FRA, its members' drivers deliver 86 percent of all raw forest products consumed in the United States. The FRA commented that drivers typically deliver three loads a day with an average round trip of 126 miles, well within a 100 air-mile radius.

The National Rural Electric Cooperative Association argued that the NPRM did not meet the statutory requirement in Sec. 345 for modifying the exemptions through rulemaking.

The Edison Electric Institute suggested that the FMCSA look to State

and local experience for the handling of small, local emergencies like power failures.

Qwest, a private motor carrier, claims that its crash rates are low and that it has experienced no rise in crashes when it increases a driver's time on-duty. In the past, Qwest claims it has worked drivers extra hours pursuant to the emergency exemption of the current HOS rules. On those occasions, Qwest claims it has had no increased crash rate. Qwest also finds no significant difference in its crash rates in States that afford it HOS exemptions as opposed to those that do not. Qwest contends this is evidence that utility service drivers do not present a highway safety risk sufficient to justify HOS regulation. Qwest sought an exemption for telephone line repair drivers, who operate mostly under emergency conditions.

#### *Special Operations*

The basic position of the Associated General Contractors (AGC) was that construction industry truck drivers operate under conditions that do not lead to fatigue or alertness problems and that HOS regulations for them are unnecessary. AGC contends that the current regulations were designed for over-the-road drivers, and that Congress recognized this in 1995 by providing the construction industry with a 24-hour restart provision in the NHS Act. AGC argues the FMCSA is seeking to undo what Congress had directed it to do. AGC argues that Congress, in the 1998 reauthorization of the national highway program, increased funding by 44 percent, recognizing the need for infrastructure improvements. The FMCSA's proposal, by placing unnecessary restrictions on construction operations, would threaten to undercut that mission.

#### *Private Carriers of Freight*

The PMAA commented that the FMCSA treated the agricultural exemption too narrowly, defining "farm supplies" to mean only those products "directly relating to farming activities of planting, fertilizing, and harvesting crops that are delivered *directly* to a farm." The fuel demands of farmers during the planting, harvesting and crop-drying seasons only add to the constant demands of other consumers. This places a great strain on the workday of typical drivers, because of long delays at the terminal rack.

The PMAA argued that FMCSA: (1) Need not preempt the ability of States to manage these matters; (2) should allow intermediate deliveries to be covered under the exemption; and (3)