



Owner-Operator Independent Drivers Association

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November 7, 2023

The Honorable Julie Su
Acting Secretary
United States Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Amy DeBisschop, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
United States Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Regulatory Information Number (RIN) 1235-AA39, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees”

Dear Acting Secretary Su and Director DeBisschop:

The Owner-Operator Independent Drivers Association (OOIDA) represents approximately 150,000 small-business motor carriers with their own operating authority, owner-operators leased to motor carriers, and employee truck drivers that collectively operate more than 240,000 individual heavy-duty trucks. America’s truck drivers are some of the hardest working men and women in the country, almost always working over 40 hours a week. The Fair Labor Standards Act (FLSA) generally requires that employees receive overtime pay when they work more than 40 hours in a week. Unfortunately, because of the FLSA statutory exemption in Section 13(b)(1), truckers are denied guaranteed overtime pay. The FLSA motor carrier exemption was originally enacted in 1938 to prevent truckers from working excessive hours, but now prevents them from receiving adequate compensation in the modern trucking industry. Ironically, this exemption is now part of the reason why drivers regularly work more than 40 hours a week.

Today, drivers are commonly compensated by the number of miles they drive. This generally means if a driver isn’t moving, they aren’t earning money. This compensation structure discounts the time a driver spends working when they are not behind-the-wheel.

One of the most egregious examples of this unpaid work is detention time, also known as dwell time. Detention refers to the time that a driver spends waiting for their cargo to be loaded or unloaded. A 2018 Department of Transportation Office of Inspector General report estimated that detention time is

associated with reductions in annual earnings of \$1.1 billion to \$1.3 billion for for-hire commercial motor vehicle drivers in the truckload sector and that detention reduces net income by \$250.6 million to \$302.9 million annually for motor carriers in that sector.¹

A 2021 survey of our members found that over 60% of respondents spend at least twelve hours a week in detention time. In this same survey, a majority (80%) said they were in favor of removing the FLSA overtime exemption, and 57% believe this would help address excessive detention time. Removing the motor carrier exemption enables truckers to be paid during all work-related hours, not just when the truck is in motion. This means that a driver is entitled to the full compensation earned during their duty period. Better pay will encourage more experienced, safer drivers to stay in the industry.

While denying guaranteed overtime pay is first and foremost unfair to truckers, the motor carrier exemption also contributes to supply chain inefficiency. For far too long, the trucking industry has generally only offered compensation for detention time if waiting times exceed two hours. But even this pay is not provided to all drivers. As a result, entities throughout the supply chain, including shippers, receivers, and others, lack a financial incentive to load and unload trucks in an efficient manner. If a shipper or receiver knows that they won't be on the hook to pay overtime, they simply don't care as much about respecting a driver's time. If the FLSA motor carrier exemption is repealed, drivers would either be fairly compensated for the extra hours they work, or shippers and receivers would find ways to reduce delays to avoid paying overtime. In 2022, the Department of Transportation concurred and recommended that the exemption be repealed in a report assessing the supply chain.² Shippers and receivers should not be awarded a complimentary two-hour grace period at the driver's expense.

We acknowledge that this Notice of Proposed Rulemaking excludes transportation workers subject to FLSA section 13(b)(1). Regardless, it is important that the Department understands the effect of this exemption on truckers and the trucking industry. If this exemption were eliminated, drivers would otherwise qualify for overtime as they generally do not satisfy any of the criteria of the executive, administrative, or professional (EAP) exemption.

We urge the Department to support this policy as it considers ways to help improve fair pay and working conditions for all workers.

Sincerely,



Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.

¹ U.S. Department of Transportation Office of Inspector General, *Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis*, U.S. Department of Transportation (Jan 2018).

² U.S. Department of Transportation, *Supply Chain Assessment of the Transportation Industrial Base: Freight and Logistics*, pg. 85. https://www.transportation.gov/sites/dot.gov/files/2022-03/EO%2014017%20-%20DOT%20Sectoral%20Supply%20Chain%20Assessment%20-%20Freight%20and%20Logistics_FINAL_508.pdf.