

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III to chapter 99 by inserting after the phrase “imposed by heading 9903.88.01” the following phrase:

“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99”;

4. by amending the first sentence of U.S. note 20(b) to subchapter III to chapter 99 by inserting after the phrase “the following 8-digit subheadings” the following phrase:
“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99”;
and

5. by amending the Article Description of heading 9903.88.01:

- a. by deleting: “Articles the product of China,” and
- b. inserting in lieu thereof: “Except as provided in heading 9903.88.05, articles the product of China,”.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0037]

Request for Comments and Notice of a Public Hearing Regarding the 2019 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative (USTR) conducts a Special 301 review to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Based on this review, the United States Trade Representative (Trade Representative) determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country’s identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List. USTR also requests notices of intent to appear at the public hearing.

DATES:

February 7, 2019 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from the public.

February 21, 2019 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.

February 27, 2019: The Special 301 Subcommittee will hold a public hearing at the Office of the United States Trade Representative, 1724 F Street NW, Rooms 1&2, Washington, DC. If necessary, the hearing may continue on the next business day. Please consult the USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, for confirmation of the date and location and the schedule of witnesses. March 5, 2019 at 11:59 p.m. EST: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.

On or about April 26, 2019: USTR will publish the 2019 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the submission instructions in section IV below. The docket number is USTR–2018–0037. For alternatives to on-line submissions, please contact USTR at Special301@ustr.eop.gov before

transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Sung Chang, Director for Innovation and Intellectual Property, at special301@ustr.eop.gov. You can find information about the Special 301 Review at www.ustr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the “Special 301” provisions, requires the Trade Representative to identify countries that deny adequate and effective IPR protections or fair and equitable market access to U.S. persons who rely on intellectual property protection. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country’s identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a “Priority Watch List” and “Watch List” to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons that rely on

intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee (Subcommittee) of the Trade Policy Staff Committee. The Subcommittee reviews information from many sources, and consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2019, USTR will conduct a public hearing as part of the review process and will allow hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

The Special 301 provisions also require the Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the NTE Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 26, 2019.

II. Public Comments

To facilitate the review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to

warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Hearing

The Special 301 Subcommittee will convene a public hearing on February 27, 2019, in Rooms 1 and 2, 1724 F Street NW, Washington DC, at which interested persons, including representatives of foreign governments, may appear to provide oral testimony. If necessary, the hearing may continue on the next business day. Because the hearing will take place in Federal facilities, attendees must show photo identification and will be screened for security purposes. Please consult the USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR also will post the transcript and recording of the hearing on the USTR website as soon after the hearing as possible. Witnesses must deliver prepared oral testimony, which is limited to five minutes, before the Special 301 Subcommittee in person and in English. Subcommittee member agencies may ask questions following the prepared statement.

Notices of intent to testify and hearing statements from the public are due on February 7, 2019, and from foreign governments on February 21, 2019. The submissions must be in English and must include: (1) The name, address, telephone number, fax number, email address, and firm or affiliation of the individual wishing to testify, and (2) a hearing statement that is relevant to the Special 301 review.

IV. Submission Instructions

All submissions must be in English and sent electronically via www.regulations.gov using docket number USTR–2018–0037. To submit comments, locate the docket (folder) by entering the number USTR–2018–0037 in the ‘Enter Keyword or ID’ window at the www.regulations.gov home page and click ‘Search.’ The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ‘Notice’ under ‘Document Type’ on the left side of the search-results page, and

click on the link entitled ‘Comment Now!’.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol, as appropriate: Commenter Name, or Organization_2019 Special 301_Review_Comment, or Notice of Intent to Testify or Hearing Testimony. Please include the following information in the ‘Type Comment’ field: “2019 Special 301 Review” and whether the submission is a comment, a request to testify at the hearing, or hearing testimony. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the ‘Type Comment’ field. For further information on using the www.regulations.gov website, please select ‘How to Use Regulations.gov’ on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains business confidential information, the file name of the business confidential version should begin with the characters ‘BC’. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily released it to the public. Additionally, the filer should type ‘Business Confidential’ in the ‘Type Comment’ field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ‘P’. The ‘BC’ and ‘P’ should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments

through www.regulations.gov. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at Special301@ustr.eop.gov.

USTR will place comments in the docket and they will be open to public inspection, except business confidential information. You can view comments on the www.regulations.gov website by entering Docket Number USTR–2018–0037 in the ‘Search’ field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting), Office of the United States Trade Representative.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0304]

California’s Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption

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

ACTION: Order; grant of petition for determination of preemption.

SUMMARY: The FMCSA grants petitions submitted by the American Trucking Associations and the Specialized Carriers and Rigging Association requesting a determination that the State of California’s Meal and Rest Break rules (MRB Rules) are preempted under 49 U.S.C. 31141 as applied to property-carrying commercial motor vehicle (CMV) drivers covered by the FMCSA’s hours of service regulations. Federal law provides for preemption of State laws on CMV safety that are additional to or more stringent than Federal regulations if they have no safety benefit; are incompatible with Federal regulations; or would cause an unreasonable burden on interstate commerce. The FMCSA has determined that the MRB Rules are laws on CMV safety, that they are more stringent than the Agency’s hours of service regulations, that they have no safety benefits that extend beyond those already provided by the Federal Motor Carrier Safety Regulations, that they are incompatible with the Federal hours of service regulations, and that they cause an unreasonable burden on interstate commerce. The California MRB Rules,

therefore, are preempted under 49 U.S.C. 31141(c).

ADDRESSES: You may see all the comments online through the Federal Document Management System (FDMS) at <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> or 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., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010. 75 FR 82132.

FOR FURTHER INFORMATION CONTACT:

Charles J. Fromm, Deputy Chief Counsel, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–3551; email Charles.Fromm@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2018, the American Trucking Associations (ATA) petitioned the Federal Motor Carrier Safety Administration (FMCSA) to preempt California statutes and rules requiring employers to give their employees meal and rest breaks during the work day, as applied to drivers of commercial motor vehicles (CMVs) subject to the FMCSA’s hours of service (HOS) regulations. On October 29, 2018, the Specialized Carriers and Rigging Association (SCRA) also filed a petition seeking a preemption determination concerning the same meal and rest break requirements. The SCRA opted to submit a petition in lieu of comments as part of Docket No. FMCSA–2018–0304; therefore, the Agency will not open a separate docket for the SCRA’s petition. For the reasons set forth below, the FMCSA grants the petitions insofar as the provisions at issue apply to drivers of property-carrying CMVs subject to the FMCSA’s hours of service regulations.¹

¹ While the Agency received comments in support of the ATA’s petition from the American Bus Association, Coach USA, Greyhound Lines, and the United Motorcoach Association, this

California Meal and Rest Break Rules (MRB Rules)

Section 512, Meal periods, of the California Labor Code reads, in part, as follows:

“(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

“(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.”

Section 516 of the California Labor Code reads, in relevant in part, as follows:

“(a) Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

Section 226.7 of the California Labor Code reads, in relevant part, as follows:

“(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission

“(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Section 11090 of Article 9 (Transport Industry) of Group 2 (Industry and Occupation Orders) of Chapter 5 (Industrial Welfare Commission) of Division 1 (Department of Industrial Relations) of Title 8 (Industrial Relations) of the California Code of

determination of preemption does not apply to drivers of passenger-carrying CMVs in interstate commerce. The Agency, however, would consider any petition asking for a determination as to whether the MRB Rules are preempted with respect to such drivers.