



December 1, 2017

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Docket # DOT-OST-2017-0069

On behalf of the Agricultural Retailers Association (ARA), I am submitting comments per the request issued by the U.S. Department of Transportation (DOT) that it is reviewing its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of these reviews, the DOT has invited the public to provide input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification.

Statement of Interest

Agricultural Retailers Association

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. Agricultural retailers play an important role in feeding the world by providing farmers with crop input products like seed, fertilizer, crop protection products and equipment. Agricultural retailers also provide their farmer customers with crop consulting and custom application services. Agricultural retailers can perform soil sampling so that the right kind and amount of fertilizer is applied in the right place; thus, preventing leaching. Also, agricultural retailers perform approximately 45 percent of crop pesticide application. Agricultural retailers are trained and certified to perform these activities. Agricultural retailers primarily rely on trucks to deliver crop input products to the farm. Retailers usually employ their own drivers and the work is generally seasonal as the business is busiest during planting and harvest seasons. ARA members have a strong commitment to vehicle safety and support FMCSA's mission to reduce crashes, injuries and fatalities involving large trucks.

Need to Lower Federal age requirement to obtain a CDL from 21 to 18 years old for short haul drivers and other reforms to CDL programs to increase number of available commercial drivers.

ARA urges the Federal Motor Carrier Safety Administration (FMCSA) to initiate a pilot program for short-haul drivers between the ages of 18 to 21 operating no more than a 150-



air-mile radius from their normal work reporting location and only for the purposes of transporting farm supplies, agricultural commodities, livestock, farm machinery, and other agricultural products.

Commercial truck traffic is a vital component to the nation's economic prosperity. The current shortage of drivers is roughly 35,000 to 40,000 and growing due to retirements and individuals leaving the industry. Agricultural retailers heavily depend on commercial drivers for "just in time" delivery of farm supplies and other essential products and services to their farmer customers during the planting and harvesting seasons. This pilot program is a great opportunity for younger individuals with experience and training operating heavy vehicles to gain much needed experience in the private sector and fill a growing need. The federal requirement for drivers in interstate commerce goes back to the 1930s. In all the contiguous 48 states the age requirement for an individual to obtain a commercial driver's license (CDL) is 18 years old. All drivers under the age of 21 with a CDL are only allowed to operate within their state lines (intrastate). However, FMCSA's annual report for large trucks and buses shows that fatal accidents involving commercial drivers are not significantly higher among younger drivers. In fact, data from between 2012-2013 shows that persons killed in crashes involving larger trucks were lower among the Age Group of 18-25.

Agricultural retailers hiring drivers between the age of 18 to 21 under this program or one focused on short haul drivers will take the necessary steps to ensure they obtain rigorous training and supervision in order to guarantee CMVs are operated in a safe manner. Any motor carrier participating in this pilot program should ensure they have a satisfactory safety fitness determination by FMCSA. The agency should collect all relevant safety data from all states during the 3-year pilot program regarding commercial drivers between the ages of 18 to 21 operating CMVs intrastate. This would be a great control group for the pilot program and provide FMCSA with critical safety data in helping determine if the federal age requirement of 21 is outdated and unnecessary.

Allow conventional semi-trucks, equipped with a sixth axle, to have access to the federal Interstate system with gross vehicle weights up to 91,000 pounds

The current Gross Vehicle Weight (GVW) limit for Federal Interstate Highways of 80,000 lbs. on 5 axles was established in 1982, prior to the standardization of anti-lock brakes on Class-8 tractors. While significant progress has been made in vehicle safety and pavement technology, it has been 35 years since the US updated GVW limits on Federal Interstate Highways. Yet, states are seeking greater flexibility for GVW limits on most roads. Currently due to exceptions in the law, 31 US states allow trucks over 80,000 pounds on Federal Interstate Highways under special permits, categorical exemptions, or on designated corridors. Furthermore, 18 states currently allow trucks at GVW greater than 80,000 lbs. on non-Interstate highways as a matter of right, and all 50 states allow trucks to haul at GVW



greater than 80,000 lbs. on state roads under special permits, categorical exemptions, or on designated corridors.

While states have rightfully updated GVW limits to better suit their individual needs, this often means trucks hauling more than 80,000 lbs. are using less ideal infrastructure this traveling on more local roads past schools, churches, and playgrounds where pedestrians are often present. DOT needs to seek more information to determine if there are more safe, sustainable, and productive ways to modernize the current limit of 80,000 lbs. on Federal Interstate Highways and give the states flexibility to move those loads on the safer Interstates and away from roads with pedestrians.

Government research has identified a lack of adequate data and research regarding safety implications, or benefits, of modernizing GVW limits. The 2016 US Department of Transportation, Comprehensive Truck Size and Weight Limit Study (CTSWLS), Report to Congress concluded that Congressional changes in GVW limits were a matter of policy and more data and evidence would enable DOT to provide Congress with better guidance. The report specifically referenced the lack of information on the number of vehicle axles and actual loaded weight at the time of a crash. The report cited a study from 2002 that said, “the difficulty in studying actual truck weight in crash-based analyses was (previously) noted in a Transportation Research Board study.”

However, the 2016 CTSWLS included information indicating that a 91,000 lb., 6-axle GVW limit for Federal Interstate Highways could help address several of our nation’s long-term infrastructure challenges, including but not limited to: safety, infrastructure maintenance costs, greenhouse gas emissions, congestion, competitiveness and productivity. Specifically, the report found that the 91,000 lb., 6-axle configuration, when implemented on Federal Interstate Highways in all 50 states, would result in:

- one-foot reduction in stopping distance during braking tests when compared to the current 80,000 lb., 5-axle configuration
- 2.4 – 4.2% reduction in life-cycle pavement costs for Federal Interstate and NHS Highways - 0.4% reduction in annual program enforcement costs
- 1.2-billion-mile reduction in annual Vehicle Miles Traveled on US roads
- \$358 million reduction in annual congestion costs
- 109-million-gallon reduction in annual fuel consumption
- 2.4-billion-pound reduction in annual carbon dioxide emissions
- \$5.6 billion reduction in annual logistics costs for American businesses

Given the potential benefits of modernizing the baseline GVW limit on Federal Interstate Highways to a 91,000 lb., 6-axle, bridge formula compliant configuration, DOT and Congress should obtain information they need to determine if there is a correlation between GVW and serious accidents.



ARA encourages the DOT work with Congress to create a voluntary program under which 10 states could opt-in to allowing 91,000 lb., 6-axle, bridge formula compliant trucks on Federal Interstate Highways within their borders, and collect additional safety data regarding the GVW and axle configurations of Class-8 and Class-9 commercial vehicles involved in accidents resulting in serious injury or death. To enable carriers to recoup the investment of an additional axle, this pilot should be for 15 years, which is the average life span of a commercial trailer. Such a pilot, will provide critical information currently lacking but necessary to determine if significant benefits affiliated with this configuration can be realized in a way to preserve or enhance the safety our nation's roads.

Delay Electronic Logging Devices (ELD) Requirement and Provide Year-Round Exemption for Agricultural Operations

ARA urges FMCSA to grant our Electronic Logging Device (ELD) request for a one-year waiver from the December 18, 2017 compliance enforcement requirements and grant all "agricultural operations" as defined under the hours of service regulations a year-round exemption from this new unfunded federal mandate. ARA submitted a petition to Secretary Chao and FMCSA in October 2017 raising serious concerns on the impact this new regulation will have on farm supply dealers and their farmer customers.

As detailed in ARA's ELD petition to the agency, we believe the public interest clearly favors a one-year compliance deadline delay followed by the granting of exemptions for impacted industries such as agricultural operations. ARA is seeking a delay for the following reasons:

- Many within our industry is not fully prepared to meet the December 18, 2017 compliance date;
- The current ELD retail marketplace does not accommodate the needs of our impacted industry segment and are not able to factor in existing HOS exemptions currently being utilized by agricultural retailers (i.e. farm supply dealers) and other impacted industry sectors. The current ELD self-certification system is completely inadequate and needs to be revised where all ELD devices sold are FMCSA certified, like the process used by the agency to certify medical examiners.
- ARA members operate in rural areas of the United States where connectivity issues continue to remain a major problem. It is highly questionable whether any ELD self-certified device, especially an App, would fully function given the lack of access to rural broadband in many rural areas.
- Cybersecurity also continues to remain a major area of concern as the transportation of products could become known to terrorists using an ELD system vulnerable to a cybersecurity attack.



- Cyber-attacks via the communication system links could impact Homeland Security since a significant number of transported products involve hazardous chemicals.
- ELD Mandate Inconsistent with Other Federal & State Laws Banning Use of Electronic Devices.
- Enforcement and necessary compliance monitoring will be a significant new cost and administrative challenge to the governing departments to accomplish as pointed out in the recent letter from the Indiana Attorney General to FMCSA.

Revise Entry Level Driver Training (ELDT) Program Requirements

All new operators of Commercial Motor Vehicles must receive “behind the wheel” training beginning in 2020. Compliance to this new regulation will be inhibited by:

- Lack of training facilities
- Length of course is longer than a seasonal driver is used
- Compounds driver shortage
- Cost prohibitive for small fleet
- Not applicable for the type of units in a farm supply dealers fleet

ARA requests FMCSA ensure the ELDT requirements exclude farmers and applicants seeking restricted CDLs from farm-service related industries. As previously discussed, the agricultural industry is already competing for a shrinking pool of CDL drivers. The Spring and Fall are critical times of the year for ARA agricultural retail members, a farm-service related industry, to apply essential crop nutrient and crop protection products to agricultural fields. These types of farm supplies must be available when farmers are ready to plant – “just in time delivery” – or they may miss a critical window of time to plant their crop. The huge temporary peak demand may be a 3 to 4-week season that is dependent on the crop and weather conditions. Typically, there can be 2 to 5 truckloads on slower days and up to 20 truckloads on busy days. Without an adequate supply of seasonal CDL drivers this work will not be able to be completed in a timely manner. For example, we have one member that hires over 150 seasonal drivers to fill empty truck seats. These drivers typically come from very rural areas such as farms with existing experience operating larger CMVs. As our nation continues to face an aging farmer population and rural depopulation in many areas, the challenge to hire qualified drivers will only get worse.

ARA recommends that recognition be granted for existing training programs, previous driving experience, and current industry practices for non-accredited entry-level driver classroom and behind-the-wheel training requirements for farm-related service industries such as agricultural retailers, also known as farm supply retailers / dealers. Such recognition is justified because they already obtain training, recruit trained drivers, or provide entry-level training so their



drivers may obtain a CDL as a normal part of their operating business. FMCSA allowing for more flexibility for agricultural retailers would be in line with the agricultural exemptions in the CDL rules (§ 383.3 and § 391.2) and hours-of-service rules (§ 395.1(k)).

Agricultural retailers have a strong driver safety record and present a lower risk relative to other types of commercial vehicle operations due to the nature of farming, the way trucks and application equipment are used (i.e. primarily on a seasonal basis), and drive short distances in rural areas. FMCSA providing an exemption from these new regulations for the agricultural industry would remove an undue burden of accredited training from such drivers, their employers, and the state agencies responsible for administering the CDL regulations in rural areas.

If new training requirements are implemented for agricultural retailers, the costs associated with those new requirements will be borne by industry as new drivers will not cover those costs themselves. The estimated costs of training and certification would place an undue financial burden on the agricultural industry at a time of low commodity prices and market volatility. As pointed out in the proposed rule, "FMCSA does not have scientific evidence that would suggest that an hours-based requirement improves safety." In fact, a 2008 report from the American Transportation Research Institute (ATRI) concluded that "no relationship is evident between total training program contact hours and driver safety events when other factors such as age and length of employment are held constant." ARA is also concerned that the proposal will impose additional costs on the states such as the adoption of new State legislation, regulations, administration, oversight, and information technology changes. The current processes in most states seem to be working well. If the current state testing standards are inadequate, then FMCSA should focus on improving those testing processes rather than adding another layer of regulation and process.

ARA supports the U.S. Department of Agriculture's (USDA) previous comments submitted that recommends FMCSA provide an exemption for farm-service related industries and their farmer customers from the *Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators*. The data collected by FMCSA related to heavy truck accidents continue to show a very limited number of accidents for drivers hauling farm supplies or operating agricultural equipment compared to other categories of drivers. While farm vehicles / applicator equipment represents a moderate percentage of total vehicle registrations in the United States, the risks of being involved in a fatal accident are minimal compared to all other CMVs. Agricultural retailers operate in rural areas where there is less traffic congestion and the total miles driven and average distances between locations is less than the general commercial trucking industry. As FMCSA moves forward, please keep in mind the unintended consequences that could negatively impact agricultural retailers, farmers and their rural communities.



Exercise of Preemption Authority Essential

Federal law grants the Secretary of Transportation and DOT the express authority to preempt state or local regulations that conflict with, present an obstacle to, or, in some areas, are not substantively the same as, a federal rule. The purpose of this authority is to promote safety by ensuring that myriad state and/or local regulations do not impede commerce or enable the export of transportation risks to other jurisdictions. The hazardous materials industry and the public rely upon uniform regulation, both domestic and international, to ensure the safe, secure and expedited transportation of hazardous materials. Uniform regulation has the added benefit of promoting effective hazmat employee training, which is crucial because the safe transportation of hazardous materials begins with well-trained employees. The Secretary has delegated this authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the agency has exercised it numerous times over the years to overturn various permit, inspection and local fee programs that delay hazardous materials movements and/or unnecessarily increase the cost of transportation. ARA strongly supports PHMSA's exercise of this authority. If anything, PHMSA should be encouraged to reach determinations of preemption more promptly following the receipt of petitions.

Conclusion

Thank you for the opportunity to provide input to DOT on much needed regulatory reform under the agency's jurisdiction. These items are just a portion of reforms that could provide a long-lasting, positive impact for our industry without adversely affecting transportation safety. ARA supports the regulatory reforms proposed by the Interested Parties for the Transportation of Hazardous Materials. We encourage DOT to offer future opportunities to provide comments on necessary regulatory reform, like the process taking place at the U.S. Department of Agriculture (USDA). Please contact me at 202-595-1699 or richard@aradc.org if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Richard D. Gupton". The signature is written in a cursive style.

Richard D. Gupton
Senior Vice President, Public Policy & Counsel