



January 29, 2018

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE, West Building
Ground Floor, Room W12-140
Washington, DC 20590-0001

RE: Hours of Service of Drivers: Application for Exemption; Agricultural Retailers Association; Docket # FMCSA-2017-0336

The Agricultural Retailers Association (ARA), on behalf of its members, is writing to supplement its October 25, 2017 petition seeking an exemption from the new Electronic Logging Device (ELD) requirements that went into effect on December 18, 2017. The U.S. Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) has the authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). ARA believes agricultural retailers and distributors, also referred to as farm supply dealers, have unique operational issues that justify not using ELDs and have clearly shown that our industry will achieve a similar or greater level of safety.

ARA is seeking an exemption from the ELD requirement for transporters of farm supplies because the burden and expense of purchasing and maintaining ELDs for this industry far outweighs the purported benefit of the requirement to a much greater degree than it does for other industries. Because transporters of farm supplies are exempt from the Hours of Service (HOS) requirements in most states for most of the year (49 CFR 395.1(k)), the ELD requirements would apply to most of them for only a small portion of the year – in some states for as little as a month. Many states have defined “planting and harvesting” seasons from January 1 to December 31. However, there are other states where the state designated dates may cover most but not all the year. Requiring transporters of farm supplies to purchase and maintain an expensive ELD device and system during slow business months in their offseason when most of the year they would already be operating under the HOS agricultural exemption is inconsistent with the Trump Administration's stated goal in Executive Order (EO) 13777 of reducing regulatory burdens that impose costs that exceed benefits and are unnecessary. This problem was also highlighted by the Western Equipment Dealers Association and several other organizations in their pending ELD exemption request for equipment dealers.

Congress has recognized the unique aspects of the agricultural industry's operations and provided statutory exceptions from some HOS regulations. ARA member's drivers generally operate short

distances and much of their time is spent at the agricultural retail facility or at their farmer customer's operations either loading or unloading farm supplies. Congress has allowed these drivers longer work days and drive time compared to the normal hours-of-service rules due to the unique and seasonal nature of their work, which is crop and weather dependent.

On December 20, 2017, FMCSA published a notice in the *Federal Register* granting a 90-day waiver from the ELDs requirement for the transportation of agricultural commodities as defined in the FMCSRs. ARA was disappointed this waiver did not include the transportation of farm supplies. The agency determined the livestock and agricultural commodities waiver was in the public interest and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. In making this decision and safety determination, the agency relied on data from a safety study entitled "Agricultural Commodity and Utility Carriers Hour of Service Exemption Analysis" that was used to grant a limited 90-day waiver from the HOS requirements for the distribution of a farm supply – anhydrous ammonia. At the time (March 20, 2010), FMCSA determined farm supply transporters hauling anhydrous ammonia would achieve a level of safety equivalent, or greater than, the level of safety that would be obtained in absence of the waiver. Subsequently, on July 14, 2010 FMCSA announced a 2-year, limited exemption from the HOS regulations for the transportation of anhydrous ammonia. In making this decision, FMCSA properly recognized transportation safety would not be adversely impacted by approving the limited waiver as there were no crashes or incidents reported from states or FMCSA field offices because of the waiver.

In the July 14, 2010 notice, FMCSA also indicated that the agency had been contacted by members of Congress concerned about the Agency's interpretation of the HOS agricultural exemption and the agency's exclusion of certain distribution activities from the regulatory relief intended by Congress. In addition, the agency also recognized that its regulations related to the delivery by agricultural retailers of farm supplies to their farmer customers did not reflect today's economic reality as it pertains to the transportation of anhydrous ammonia during planting and harvesting seasons. As the FMCSA notice states, "Like farms, local retailers have limited storage capacity and therefore must constantly replenish certain supplies during the planting and harvesting seasons. They are part of the 'just in time' distribution system that extends from a wholesaler to the ultimate consumer of the supplies." The limited waiver granted by FMCSA provided that the driver is employed by a motor carrier that has a "satisfactory" safety rating or unrated; drivers for motor carriers with "conditional" or "unsatisfactory" safety ratings were prohibited from taking advantage of the exemption. FMCSA issued the final notice of disposition granting a 2-year limited exemption from the Federal HOS regulations for the transportation of anhydrous ammonia on October 6, 2010.

Given the safety data FMCSA used to grant an ELD exemption to transporters of livestock and agricultural commodities and the unique nature of agricultural retailers and distributors business operations, it is inconsistent and puzzling that the agency would also not include transporters of farm supplies. ARA members transport farm supplies, not agricultural commodities as defined by the agency, so are not able to utilize the 90-day ELD exemption/waiver. Excluding transporters of farm supplies from the ELD waiver/exemption for the transportation of agricultural commodities was an arbitrary and capricious decision. Since that decision, FMCSA has granted a 5-year ELD

exemption for the motion pictures industry citing the unique nature of that industry and limited actual driving time and distance traveled for its drivers. In addition, there is also a pending ELD exemption petition from STC, Inc., a transporter of propane fuel and anhydrous ammonia. STC's application states its operations are seasonal and weather dependent, the ELD mandate creates an undue financial burden on its business and would achieve a level of safety equal to or greater than the level that would be achieved absent the proposed exemption. STC also states that its trucks typically do not operate in trips that exceed 300 air miles. If the National Propane Gas Association (NPGA) proposal to extend the current 100 air mile radius for short haul drivers found in 49 CFR 395.1(e)(1) should be extended to 300 air miles, most agricultural retailers and distributors would be covered by the exemption as they regularly operate under the 150-air mile radius as allowed in 40 CFR 395.1(k). STC's situation is like many agricultural retailers and distributors whose business operations are seasonal and weather dependent.

For the reasons set forth in ARA's October 25, 2017 petition and reasons set forth herein, ARA hereby requests a five-year exemption from the ELD requirements for transporters of farm supplies given the unique nature of our industry, limited actual driving time, and distance traveled. FMCSA needs to ensure all agricultural operations as defined under the HOS agricultural exemption, including transporters of farm supplies, are included in an ELD exemption. Please contact me at 202-595-1699 or richard@aradc.org if any additional information is needed.

Sincerely,

A handwritten signature in blue ink that reads "Richard D. Gupton". The signature is fluid and cursive, with a long horizontal stroke at the end.

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