



October 10, 2018

The Honorable Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: FMCSA Announced Notice of Proposed Rulemaking – Hours of Service of Drivers; Docket # FMCSA-2018-0248

Dear Administrator Martinez:

On behalf of the Agricultural Retailers Association (ARA) I am submitting comments on the Announced Notice of Proposed Rulemaking (ANPRM) regarding the potential revisions of certain Hours of Service (HOS) regulations for drivers of commercial motor vehicles (CMVs). ARA supports the HOS revisions being considered by FMCSA and we support additional revisions which we believe will make necessary improvements to the regulations that will not adversely impact transportation safety.

Statement of Interest

ARA is 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, fertilizers, 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. Also, agricultural retailers perform approximately 45 percent of crop pesticide applications who 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 season as their facilities are busiest during planting and harvesting seasons. ARA members have a strong commitment to vehicle safety and support FMCSA's mission to reduce crashes, injuries and fatalities involving large trucks.

Comments

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. Commercial truck traffic is a vital component to the nation's economic prosperity. Our industry, like many others, are experiencing a growing driver shortage due to increased regulatory costs and burdens from

the Electronic Logging Device (ELD) requirements as well as retirements. ARA supports the FMCSA's ANPRM as these modest reforms will provide additional regulatory relief

Short Haul Operations

ARA supports expanding the current 100 air-mile "short-haul" exemption from 12 hours on-duty to 14 hours on-duty, to be consistent with the rules for long-haul truck drivers. We believe this modest reform will provide more flexibility for these drivers and alleviate an unnecessary regulatory burden.

ARA also recommends FMCSA immediately propose expanding the 100 air-mile "short-haul" exemption, which is applicable to CDL drivers, to 150 air-miles to ensure consistency with the non-CDL "short-haul" exemption and the Hours of Service (HOS) "agricultural operations" exemption. The "Moving Ahead for Progress in the 21st Century Act" (MAP-21), which was effective October 1, 2012, included statutory exemptions from the FMCSRs that apply to the agricultural transportation of farm supplies. The MAP-21 reforms expanded the HOS "agricultural operations" exemption from 100 air-miles to 150 air-miles. Since that time there has been no adverse impact on transportation safety. ARA believes that expanding all "short-haul" exemptions to 150 air-miles will provide commercial drivers the ability to meet their customer's needs, alleviate an unnecessary burden, while maintaining safety on our nation's highways and roads.

Adverse Driving Conditions

ARA supports the FMCSA proposal to extend the current 14-hour on-duty limitation by up to two hours when a truck driver encounters adverse weather conditions such as a highway covered with snow, ice, or other unusual road and traffic conditions that were known at the time the driver depart their normal work location.

30-Minute Break

ARA supports revising the current mandatory 30-minute break for truck drivers after 8-hours of continuous driving. The current 30-minute rest break federal regulations are overly rigid, and this proposal would give drivers the options they need to safely operate under today's regulatory environment.

Split Sleeper Berth Time

ARA supports reinstating the option for splitting up the required 10-hour off-duty rest break for drivers operating trucks that are equipped with a sleeper-berth compartment.

HOS Agricultural Operations Exemption

ARA supports the HOURS Act (H.R. 6178), which includes a provision to eliminate the planting and harvesting season provision included under the HOS agricultural operations exemption. Over 30 states already have a year-round "planting and harvesting season" designation. The elimination of this provision would ensure the HOS ag exemption is year-round for all states to promote regulatory consistency and alleviate an unnecessary regulatory burden that has been highlighted following the new Electronic Logging Device (ELD) mandate that went into effect on December 16, 2017.

300 Air-Mile Radius Pilot Program

ARA supports the creation of a pilot program where participating companies can operate under the Short Haul HOS exemption within a 300 air-mile radius of their normal reporting location. FMCSA could collect safety data from participating companies over a one-year time frame to compare with existing HOS exemptions. With continued consolidation taking place within our

industry as well as the growing driver shortage, ARA believes this type of pilot program is necessary and would not adversely impact transportation safety on roads and highways given the improvements in highway accessibility and commercial vehicle technology. Several members of Congress have introduced legislation encouraging FMCSA to update the Short Haul air-mile radius to 300 air-miles.

Drive Safe Act

ARA urges FMCSA to support an expanded pilot program for short haul drivers between the ages of 18 to 20 operating no more than a 150 air-mile radius from their normal work reporting location. A pilot program expanded beyond individuals in the military or ex-military provides a great opportunity for young adults to gain the necessary experience and training operating CMVs to fill a growing need. The federal requirement for drivers in interstate commerce goes back to the 1930s. In all contiguous 48 states the age requirement for an individual to obtain a 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 reports for large trucks and buses shows that fatal accidents involving commercial truck drivers are not significantly higher among younger drivers. In fact, data from 2012-2013 shows that persons killed in crashes involving larger trucks were lower among the Age Group of 18-25.

As you know, legislation has been introduced in the Congress referred to as the *Developing Responsible Individuals for a Vibrant Economy (Drive-Safe) Act* (S. 3352 / H.R. 5358) to address the driver shortage in the trucking and logistics industry and enhance safety training and job opportunities for young truckers. The Drive-Safe Act creates a training program that would allow for the legal operation of a CMV in interstate commerce by commercial driver's license holders under the age of 21. The apprenticeship training program would help ensure younger drivers are trained beyond current standards while instituting rigorous safety standards and performance benchmarks.

The apprenticeship program established by the Drive-Safe Act would require young drivers to complete at least 400 hours of on-duty time and 240 hours of driving time with an experienced driver in the cab with them. ARA supports the inclusion of safety technology in the CMV such as active braking collision mitigation systems and a speed governor set at 65 miles per hour or below. However, we do not believe the expense of any installation of video event capturing system is necessary or warranted.

Truck Weights

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.

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. FMCSA should also ensure grant funding is available for private sector applicants interesting in partnering with the agency on training opportunities.

Conclusion

Thank you for the opportunity to provide input to FMCSA 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. We encourage FMCSA offer future opportunities to provide comments on necessary regulatory reform. Please contact me at 202-595-1699 or richard@aradc.org if you have any questions or need additional information.

Sincerely,



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