

March 9, 2018

The Honorable Elaine Chao  
Secretary, U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

The Honorable Raymond Martinez  
Administrator, Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E., Suite 600  
Washington, D.C. 20590

**Re: 49 CFR 381 Request for Waiver and Exemption for Agricultural Commodity Haulers from Department of Transportation, Federal Motor Carrier Safety Administration, Final Rule: Electronic Logging Devices and Hours of Service Supporting Documents, Final Rule 80 Fed. Reg. 78292 (Dec. 16, 2015)**

Dear Secretary Chao and Administrator Martinez:

On behalf of the undersigned organizations representing the nation's farmers, ranchers, and livestock, poultry, aquaculture, and insect producers, processors, and transporters ("agricultural commodity haulers") and in accordance with 49 CFR 381, we hereby request that you grant a waiver to run consecutively with the waiver granted to a petition filed on behalf of industry by the National Pork Producers Council available at docket no FMCSA-2017-0297, which will expire on March 18, 2018. Further, the undersigned entities renew their request for a limited exemption from compliance with the implementation of the Final Rule on Electronic Logging Devices (ELD) and Hours of Service (HOS) 80 Fed. Reg. 78292 (Dec. 16, 2015) for agricultural commodity haulers.

As detailed below, in the previous request, and as discussed multiple times with FMCSA staff, the public interest is served by granting a waiver and limited exemption for agricultural commodity haulers. This exemption is sought because:

1. The ELD devices currently available do not support the needs of agricultural haulers, thus rendering these haulers unprepared for compliance with the mandate;
2. Agriculture-specific flexibilities continue to be defined and clarified by the Agency and an important comment period with respect to the definition of the "source" of an agricultural commodity closes a mere month before the expiration of the current ELD compliance waiver;
3. A significant lack of education and awareness remains throughout the agricultural sector due to a delay in Agency outreach.

Thus, we urge you to grant this limited ELD waiver/exemption petition to run consecutively with the waiver granted to the National Pork Producers Council petition available at docket number FMCSA-2017-0297, which is filed by a broad cross-section of the agricultural commodity hauling industry and do so well in advance of the March 18 deadline.

**DOT and the FMCSA Have the Authority to Grant a Waiver and Limited Exemption of the ELD Mandate with Respect to Agricultural Haulers that Runs Consecutively with the Waiver Granted the Petition Found at Docket Number FMCSA-2017-0297**

The Secretary has the authority under both Section 553(e) of the Administrative Procedure Act (APA) and 49 USC § 31315 to grant petitioners both a compliance waiver and a regulatory exemption if she finds the exemption “is in the public interest, and it is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.”

**1. Granting this Petition Will Maintain the Status Quo and Achieve an Equivalent Level of Safety**

Granting this petition, and maintaining the status quo for the limited segment of the overall transportation economy engaged in the shipment of agricultural commodities will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent an exemption.

Agricultural commodity haulers boast a fantastic safety record. For instance, the Large Truck Crash Causation Study, conducted by the FMCSA and the National Highway Traffic Safety Institute, showed that of 1,123 accidents involving trucks hauling cargo, a mere five involved livestock transporters. Similarly, Trucks Involved in Fatal Accidents Factbook 2008, a report conducted by the Transportation Research Institute, shows that of 4,352 trucks involved in fatal accidents, livestock haulers accounted for just 0.6 percent.

The goal of the ELD mandate, and the underlying Hours of Service regulations, is to prevent driver fatigue and therefore reduce the number and severity of both fatal and non-fatal accidents. The long record of safe operation by the agricultural commodity hauling industry is evidence of the seriousness which the industry takes these issues and shows that these haulers will be able to achieve an equivalent level of safety with an exemption from the ELD mandate.

When examining whether an equivalent level of safety exists, FMCSA has historically relied on the principle that the best predictor of future performance by a driver is his or her past record of crashes and traffic violations. For example, to qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. As the 6<sup>th</sup> Circuit Court of Appeals explained, in initiating its waiver programs FMCSA has “relied on several studies which indicated that the ‘best predictor of future performance by a driver is his past record of accidents and traffic violations.’” *Parker v. U.S. Department of Transportation*, 207 F. 3d 359 at 363 (6th Cir. 2000). This position is supported by multiple studies going back almost 100 years. 63 Fed Reg. 1524 at 1525 (1998). More recently, the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations was also the basis for granting a blanket exemption last August to monocular drivers. 82 Fed Reg. 37499 at 37500 (Col 3) – 37201 (Col. 2).

Although the authorizing statute summarily points to ELDs as easier for law enforcement to review than paper logbooks, the logical leap to greater compliance and thus a higher level of safety as compared to the tried-and-tested method of hours of service recordkeeping available by paper logs is simply unproven and not supported by any available data. The ultimate purpose of the ELD mandate is not compliance with the HOS rule, but achieving highway safety by keeping drivers from fatigue while on duty. Because the ELD mandate provides no quantifiable improvement in safety over the current system of written logbooks—and a limited waiver of the ELD mandate for agricultural haulers will maintain the status quo and provide an equivalent level of safety from some of the safest drivers in the industry—DOT and FMCSA have the authority to grant this petition.

## **2. The Public Interest is Served by Granting this Petition**

Granting this petition and maintaining the status quo for the limited segment of the overall transportation economy engaged in agricultural commodity hauling is in the public interest.

- a. The ELD devices currently available do not support the needs of agricultural haulers, thus rendering agricultural commodity haulers unprepared for compliance with the mandate*

As drivers and small agricultural commodity hauling fleets attempt to implement ELDs in their vehicles in advance of the March 18 deadline, it has become quite apparent there are problems that need to be remedied before live animals are endangered by delays in transportation. Simply put, the ELD marketplace and the basic specifications laid out by the law do not support the needs of these haulers and do not accommodate current agricultural hauling flexibilities.

Drivers consistently report that they have had difficulty researching the ELD marketplace and identifying cost-effective solutions that are compatible with agricultural commodity hauling. Indeed, vendors in the ELD marketplace remain unaware and disinterested in the needs of our industry. Devices need to be modified to be made more streamlined to account for the common event that an agricultural commodity hauler is both exempt and non-exempt status in the same day without requiring significant manual annotation or the carrying of a “backup” paper logbook.

This industry needs more time to become comfortable with ELD technology and this coupled with the impeccable track record of agricultural hauler safety demonstrated from years of paper logbook use indicates an equivalent level of safety can be found if the status quo is maintained. Granting a waiver and limited exemption from the ELD mandate for agricultural commodity haulers will give the marketplace the time necessary to develop solutions for the specific needs of agricultural commodity haulers and allow the industry to adopt the new technology.

- b. Agriculture-specific flexibilities continue to be defined and clarified by the Agency and an important comment period with respect to the definition of the “source” of an agricultural commodity closes a mere month before the ELD compliance deadline*

The agricultural hauling industry greatly appreciates and benefits from the 150-air mile agricultural exemption. Unfortunately, the recentness of this exemption’s application to livestock

haulers has rendered a large number of constituents and law enforcement agents unaware of the existence of the exemption or how to properly use it.

Further, the correct use of the exemption depends upon a driver's accurate interpretation of whether or not the agricultural commodity hauled originates from a "source of an agricultural commodity." This term, "source of an agricultural commodity," is the subject of draft guidance and a comment period that does not close until February 20, 2018. It is unrealistic to expect drivers to confidently utilize ELD devices that allow for no margin of error in conjunction with an exemption that will likely remain undefined by the March 18, 2018, ELD compliance deadline. This interplay between the timeline of a clear "source" definition and ELD compliance will also specifically impact farmers who will be in the heart of planting season across the country on March 18. Further, it is impractical to assume law enforcement agents will have sufficient awareness of this changing landscape such that improper citations will not be issued and trucks will not be put out of service with live animals in their trailers.

Granting a waiver and limited exemption from the ELD mandate for agricultural commodity haulers will allow for draft guidance with respect to the "source" of an agricultural commodity to be clearly defined with the help of industry comments to prevent further confusion and the risk of improper violations and resulting consequences.

*c. A lack of education and awareness remains due to a delay in Agency outreach effort*

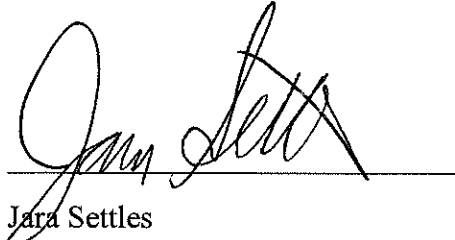
Despite being issued two years ago, industry awareness of the ELD rule is just now becoming widely seen. This can be attributed to the rural nature of agricultural commodity haulers and the relatively small size of the agricultural commodity hauling community as compared with the overall trucking industry and its level of representation and engagement with the Agency. With that said, despite assurances of rapid outreach efforts to the countryside, Agency education attempts continue to be insufficient to provide this unique segment of the truck driving population with training on how to marry new devices with agricultural exemptions that continue to be defined and refined.

Granting a waiver and limited exemption from the ELD mandate for agricultural commodity haulers will enable FMCSA to reach out to the agricultural haulers effectively in mediums such as live meetings and teleconferences, which this segment of the population will find more accessible than via webinars or websites.

The agricultural commodity hauling industry and the undersigned organizations appreciate the opportunity to work collaboratively with DOT and FMCSA and look forward to continued dialog regarding solutions that address the unique needs of the industry while maintaining roadway safety. We urge you to recognize the significant harm the ELD rule will cause the agricultural hauling industry and the American consumer and to grant a waiver and limited exemption under 49 CFR 381 for agricultural commodity haulers from compliance with the final FMCSA ELD rule that runs consecutively with the March 18, 2018 waiver granted to the petition found at docket number FMCSA-2017-0297.

If you have any questions, please do not hesitate to contact Jara Settles at (800) 821-2048.

Sincerely,



Jara Settles  
General Counsel  
Livestock Marketing Association

*On behalf of the following organizations:*

Alabama Cattlemen's Association  
American Farm Bureau Federation  
American Honey Producers Association  
American National Cattlemen  
American Quarter Horse Association  
American Sheep Industry Association  
Arizona Cattle Growers' Association  
Arizona Cattlemen's Association  
California Cattlemen's Association  
Colorado Cattlemen's Association  
Florida Cattlemen's Association  
Hawaii Cattlemen's Council, Inc.  
Illinois Beef Association  
Iowa Cattlemen's Association  
Kansas Livestock Association  
Kentucky Livestock Marketing Association  
Livestock Marketing Association  
Michigan Cattlemen's Association  
Mississippi Cattlemen's Association  
Montana Association of State Grazing Districts  
Montana Public Lands Council  
Montana Stockgrowers Association  
National Aquaculture Association  
National Cattlemen's Beef Association  
National Milk Producers Federation  
Nebraska Cattlemen Association  
Nevada Cattlemen's Association  
New Mexico Cattle Growers' Association  
New Mexico Wool Growers, Inc.  
New York Beef Producer's Association  
North American Meat Institute

North Carolina Cattlemen's Association  
North Dakota Stockmen's Association  
Oklahoma Cattlemen's Association  
Oregon Cattlemen's Association  
Pennsylvania Cattlemen's Association  
Tennessee Cattleman's Association  
Texas & Southwestern Cattle Raisers Association  
Texas Cattle Feeders Association  
Washington Cattlemen's Association  
Wisconsin Cattlemen's Association  
Wyoming Stock Growers Association