



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

January 25, 2018

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

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

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the Agricultural Retailers Association's (ARA) application for an exemption for its members from the requirement that motor carriers equip their vehicles with electronic logging devices (ELDs).

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout the United States, Canada and Mexico by providing guidance and education to enforcement, industry and policy makers.

CVSA strongly opposes the exemption request. First and foremost, exemptions from federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations exist to ensure that those operating in the transportation industry are equipped to do so safely.

The federal hours-of-service requirements exist to help prevent and manage driver fatigue. While it's true that we cannot regulate sleep, the hours-of-service rules set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. Unfortunately, hours-of-service violations continue to be some of the most frequently found violations by enforcement officials, who conduct roadside safety inspections. What this tells us is that too many drivers and motor carriers either don't understand the hours-of-service rules or are intentionally violating them – and, as a result, undermining safety. Deployment of ELDs will help address both of these issues.

For those drivers and motor carriers who don't understand the intricacies of the hours-of-service requirements and for those who make the occasional mistake when using their paper log, ELDs will remove the guess work and the risk of human error. This will result in better compliance and fewer violations. For those who are using their log books to find 'wiggle room' in the current hours-of-service regulations, ELDs will make it easier for inspectors to identify violations and take unsafe, noncompliant carriers and drivers off the roadways. The devices will also save time for both inspectors and drivers, leading to more efficiency.

CVSA does not believe that ARA's arguments in support of an exemption have merit. First, ARA argues that the agricultural retail industry is not prepared for the ELD mandate and should therefore receive a waiver and exemption. While it may be true that those in the industry are unprepared, that is hardly justification for an exemption. The ELD final rule was published more two years ago, in December of 2015; legislation requiring the Federal Motor Carrier Safety Administration (FMCSA) to develop an ELD requirement was passed by Congress in 2012. The ELD requirement is not a new development and industry has had more than enough time to prepare for implementation. If some in industry have failed to do so, while it may be unfortunate it is not FMCSA's responsibility to resolve. Further, understanding of and compliance with the Federal Motor Carrier Safety Regulations is part of every motor carrier's responsibility and a condition of receiving operating authority from the agency.

ARA also argues that the rule is complicated and not designed to accommodate the agricultural retail industry. The ELD requirement does not change the underlying hours-of-service regulations in any way. All the requirement does is change the way a driver documents those hours. This is straightforward. Mechanisms have been put in place to accommodate drivers operating under an exemption and FMCSA has issued proposed guidance to address the 150-air mile radius exemption. If there are issues with the rule that should be addressed, industry has had two full years to work with FMCSA to find a resolution. Because the industry has not done so does not justify an exemption from the requirement.

ARA's argument that the ELD mandate is inconsistent with federal and state laws banning the use of electronic devices while driving has no merit. Drivers are not required or intended to be using the ELD while operating the commercial motor vehicle. Instead, drivers are expected to input change of duty status information and any notations when the vehicle is parked.

Finally, ARA argues that enforcement of the regulation will be costly for the states. CVSA's member jurisdictions strongly support implementation of the ELD requirement and the benefits, both to safety and efficiencies, that will come with it. The ELD requirement will save both the enforcement community and the motor carrier industry time, effort and financial resources, reducing the amount of time a driver spends documenting their hours and reducing the time required for a roadside inspection.

Every new exemption is an opportunity for confusion and inconsistency in enforcement, which undermines the foundation of the federal commercial motor vehicle enforcement program—uniformity. For these reasons, exemptions should be awarded only when there is a proven, *critical* need and, in those instances, the exemption should be as specific as possible. Exemptions should be the exception, not the rule. 49 C.F.R. § 381.310, which allows for exemptions from federal regulations, clearly states that the applicant must demonstrate how the

exemption would “achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.” The exemption request from ARA does not demonstrate how an equivalent level of safety can be maintained, or how it will be monitored should the exemption be granted. Therefore, the exemption should not be granted.

Moreover, granting yet another regulatory exception only serves to inhibit law enforcement and industry's understanding of the rules. Every exception and change to regulations requires additional training for inspectors, resulting in the potential for a higher level of confusion surrounding the applicability of the regulations. More confusion will ultimately lead to less enforcement on our highways.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'Collin B. Mooney'.

Collin B. Mooney, MPA, CAE
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Commercial Vehicle Safety Alliance