



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

November 17, 2017

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

Re: Docket Comments: Docket Number FMCSA-2017-0297
Hours of Service of Drivers: Application for Exemption; National Pork Producer's Council (NPPC)

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the National Pork Producers Council's (NPPC) application for an exemption for all livestock haulers from the requirement that motor carriers equip their vehicles with electronic logging devices (ELDs) no later than Dec. 18, 2017.

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, are likely driving fatigued. 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 drivers off the roadways. The devices will also save time for both inspectors and drivers, leading to more efficiency.

CVSA does not believe that NPPC's arguments in support of an exemption have merit. First, NPPC argues that the livestock hauling 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 two years ago, in December of 2015; legislation requiring the Federal Motor Carrier Safety Administration (FMCSA) to develop an ELD requirement was approved 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, that is their issue and not the responsibility of FMCSA to address. 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.

Next, NPPC argues that the unique nature of the livestock hauling industry is not well served by the current hours-of-service requirements. However, even if this were true, it should have no impact on whether or not a motor carrier is required to comply with the ELD rule. 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. Under the current rules, hours-of-service compliance is documented using paper log books or an automatic onboard recording (AOBRD) device. Under the ELD requirement, those hours will be recorded electronically. It does not decrease, or increase, the number of hours a driver is *legally* permitted to operate. If there are issues with the underlying hours-of-service requirements, CVSA encourages the livestock hauler industry to work with FMCSA to seek a resolution. However, exemption from the ELD mandate is not appropriate, nor will it resolve the potential hours-of-service related issues.

In the exemption request, NPPC states that requiring the livestock hauler industry to install ELDs "amounts to a radically inefficient exercise requiring the use of expensive and complicated technology, which is prone to failure and mistakes, in place of the proven, long-standing and cost-effective method of logging hours already used by the agency..." and that "the ELD mandate provides no increased safety over the current system of written log books." These statements are baseless and misleading. DOT's own research has found that the use of ELDs results in a reduction in a motor carrier's crash rate and hours-of-service violations. Requiring the installation of ELDs will improve efficiencies, reduce fraud and error in reporting, reduce the amount of time a driver spends documenting their hours and reduce the time required for a roadside inspection. While it's true that technology can and does at times fail, AOBRDs have been in place for many years and the motor carriers that use them voluntarily have seen many positive benefits from the devices. Further, the current method of using paper logs is not without its own drawbacks – human errors in calculations and documentation result in unintended violations. In addition, a major focus of the ELDs is to reduce falsification of a driver's time, which is more easily accomplished with a paper log book. Finally, there are many inexpensive ELDs available for purchase and one truck stop chain is even offering free devices and installation at their facilities. The cost of an ELD is simply part of the cost of doing business and compliance for those in the truck and bus industries – vehicles have to be maintained, drivers have to be trained and ELDs have to be installed. The only scenario in which an ELD might have a significant impact on a company financially is if it reduces the number of miles driven by forcing the company's drivers to drive within the current hours-of-service parameters. Improved compliance and the safety of the motoring public is the purpose of this requirement and not a justification for an exemption for any segment of the industry.

Finally, 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 a 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 NPPC 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.

Every new exemption is an opportunity for confusion and inconsistency in enforcement, which undermines the very 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.

Moreover, granting yet another regulatory exception only serves to confound 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
Executive Director
Commercial Vehicle Safety Alliance