



## National Grain and Feed Association

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### *Submitted Electronically*

February 20, 2018

TO: Federal Motor Carrier Safety Administration, U.S. Department of Transportation

**RE: Docket No. FMCSA-2017-0360**

Dear Reviewing Officials:

The National Grain and Feed Association (NGFA) submits this statement in response to the Federal Motor Carrier Safety Administration's request in the December 20, 2017 edition of the *Federal Register* seeking input on Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities.

**The NGFA commends FMCSA for seeking comment on its plans to clarify the agricultural commodity exception to the hours of service of drivers' regulations and strongly urges FMCSA to clarify in its proposed regulatory guidance that grain elevators, feed and feed ingredient manufacturers, biofuels companies, grain and oilseed processors and millers, and livestock and poultry integrators are a source of agricultural commodities eligible for the exception.**

NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies that operate more than 7,000 facilities and handle more than 70 percent of all U.S. grains and oilseeds. Its membership includes grain elevators, feed and feed ingredient manufacturers, biofuels companies, grain and oilseed processors and millers, exporters, livestock and poultry integrators, and associated firms that provide goods and services to the nation's grain, feed and processing industry. NGFA also consists of 34 affiliated State and Regional Grain and Feed Associations, and has strategic alliances with the North American Export Grain Association and Pet Food Institute.

Commercial motor vehicles (CMVs) and those who drive them are vitally important to the agricultural industry because of the large volumes of commodities that are handled and the flexibility that CMVs provide for transporting agricultural products between numerous origin-destination pairs.

For example, each year CMVs transport approximately 500 million tons of U.S.-produced grains and oilseeds from field to commercial storage facilities, which is the equivalent of 20 million truckloads. Further, after the initial movement to storage, agricultural commodities often are transported – frequently by motor vehicle – at least one more time before arriving at the final domestic destination.

It is imperative that U.S. freight laws and regulations accomplish their goals without disadvantaging U.S. agriculture, given the highly competitive global marketplace that exists for agricultural products. Having access to a highly efficient freight transportation system and a pool of qualified drivers is critical for U.S. agriculture's competitiveness.

Concerning the request for comments on the agricultural commodity exception to the hours of service regulations, NGFA specifically urges clarity on the following situations:

- **Source of Agricultural Commodities;**
- **Trips beyond 150 Air-Miles; and**
- **Request for Exemption from Electronic Logging Devices (ELD) Requirements.**

## **Source of Agricultural Commodities**

Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) provides relief from the federal hours-of-service rules during planting and harvesting seasons, as determined by the states in which the carriers are operating. This exemption covers:

(A) drivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

(B) drivers transporting farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

(C) drivers transporting farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

The agricultural commodity exception is important for U.S. agriculture given the relatively short hauls that are common for agricultural transportation and the surges in transportation demand that occur during harvest and planting seasons. For instance, grain elevators often experience surges in harvest season demand for truck transportation because of the need to make space for newly harvested grain. This process most often involves drivers transporting grain from country elevators to terminal elevators to allow farmers to continue unloading their newly harvested grain at country elevators, which are often in close proximity to farmers' fields.

The NGFA is aware the state of Kansas has enforced the agricultural commodity exception differently than other states. The state of Kansas has not allowed grain elevators to be considered a source of agricultural commodities. NGFA believes the state of Kansas' interpretation of source is unjustifiably narrow, and in conflict with the underlying statute. NGFA does not believe Congress intended for "source" to be restricted to the location where the commodity was grown. Rather, NGFA believes Congress used the term "source" instead of "harvested area" because the agricultural commodity exception was intended to apply to multiple locations along the agricultural commodity supply chain.

The agricultural supply chain can vary by commodity, region and even market condition. For grain and oilseeds, it is common for farmers to deliver to nearby country elevators, although grain and oilseeds also may be delivered directly to terminal elevators, feed ingredient manufacturers, feed manufacturers, grain and oilseed processors and millers, biofuel facilities, livestock and poultry integrators or exporters depending upon the region and market conditions.

Many factors determine how grain and oilseeds will flow through the supply chain, and most often transportation costs are factored into prices paid to farmers for commodities or into prices charged to consumers. Either way, elevated transportation costs cause financial harm. To reduce transportation costs through the supply chain and minimize financial harm, NGFA urges that FMCSA consider all types of agribusinesses that are part of the agricultural supply chain as a "source" of agricultural commodities for eligibility under the agricultural commodity exception. This would include agribusiness that handle raw agricultural commodities and those that handle processed agricultural commodities,

**NGFA believes at a minimum the agricultural commodity exception should apply to grain elevators, but to prevent additional financial harm, the agricultural commodity exception should apply to all facility types within the agricultural supply chain.**

## **Trips beyond 150 Air-miles**

For drivers operating under the agricultural commodity exception, NGFA requests FMCSA to apply the hours-of-service regulations only to situations in which a driver operates beyond the 150-air mile radius. Therefore, starting at the time and location where the CMV goes past the 150-air mile radius, the driver must maintain logs.

## **Request for Exemption from ELD Requirements**

Every level of the agricultural supply chain involves truck transportation and NGFA has heard from its members that the electronic logging device (ELD) rule will increase transportation costs unnecessarily with no commensurate safety benefit due to the short-hauls that prevail in agriculture.

To prevent unnecessary regulatory burden, NGFA urges FMCSA to exempt from the ELD requirement drivers who predominantly transport agricultural commodities. As previously noted, most NGFA members operate under the agricultural commodity exception and, therefore, are exempt from hours-of-service requirements for all or most of the year depending upon their state's definition for planting and harvesting seasons. Thus, requiring ELDs to be purchased for use during the non-planting and harvest seasons when demand for truck transportation has eased is nonsensical and also is inconsistent with the letter and the spirit of President Trump's Executive Order 13777 – reducing regulatory burdens that impose costs in excess of benefits and are unnecessary. NGFA believes this unique operating issue could be resolved by granting a five-year exemption from the ELD requirements for transporters of agricultural commodities.

In addition, NGFA is aware drivers transporting agricultural commodities are not required to use an ELD if they do not operate outside of the 150 air-mile radius for more than eight days during any 30-day period. However, there may be temporary, intermittent situations throughout the year (such as at harvest time) that requires drivers to exceed the eight-day limit during a 30-day period, thus necessitating the purchase of expensive ELDs and associated logging subscription services. To prevent such costs for temporary, transitory situations, NGFA urges FMCSA to remove the eight-day limitation during any 30-day period and allow drivers that predominantly transport agricultural commodities to use paper logs in lieu of ELDs to satisfy requirements under hours of service regulations.

## **Conclusion**

NGFA looks forward to working with DOT and FMCSA on additional solutions to address the needs of our industry while continuing to protect the safety of the nation's highways.

Please contact me at 202-289-0873 or by email at [mfisher@ngfa.org](mailto:mfisher@ngfa.org) if you have any questions.

Sincerely,

*Max Fisher*

**Max Fisher**  
Director of Economics and Government Relations  
National Grain and Feed Association