



AFTC Leads Coalition in Support of H.O.S. Waiver for Anhydrous Ammonia

August 13, 2010

The attached letter was submitted today to the Federal Motor Carrier Safety Administration (FMCSA) in support of their proposed exemption from the federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer. The exemption proposed for a two-year period and limited to transportation within a 100 air-mile radius of the retail or wholesale distribution point. AFTC was joined on the letter by 14 other groups representing agricultural interests.

This move would extend the 90 day waiver which was announced on March 22, 2010 for motor carriers engaged in the distribution of anhydrous ammonia during the 2010 spring planting season. This proposal was the subject of a 30 day public comment period.

A letter of support was also sent by 23 members of Congress. It is attached here as well.

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August 13, 2010

The Honorable Anne Ferro  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE, Suite 600  
Washington, DC 20590

RE: Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations, Docket No. FMCSA-2010-0230

Dear Administrator Ferro:

We are writing in support of the proposal by the Federal Motor Carrier Safety Administration (FMCSA) to grant a 2-year limited exemption from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer.

We appreciate the time and effort your agency has put into this issue including extensive discussions with industry stakeholders. As has been discussed, due to the tight supply chain, it is very important that the agricultural exemption to hours-of-service (Ag HOS exemption) be allowed for all segments of transportation of farm supplies from the source of origin to the retail distributor and ultimately to the farm. For fertilizer and other farm supplies the transportation segment from the pipeline, manufacturing plant, or port to the local retailer is often just as critical as the direct transport to the farm. If any link in the chain breaks down and causes delays then farmers could miss a critical window of time to get in the field and plant their crop.

The demand for farm supplies is unpredictable and wildly variable based on immediate climatic conditions. Deliveries to the local distributor must be timely since the supply is often quickly depleted and needs to be replenished many times per day. Long term storage capacity is virtually non-existent at the farm level and often very inadequate at the local retailer level. It is not economically feasible for retail farm suppliers nor the transportation companies which serve them to install additional operating capacity since these assets would only be utilized for such a short, seasonal period.

We appreciated the 90-day waiver from the HOS regulations for the distribution of anhydrous ammonia that was issued earlier this spring. This waiver was critical to prevent delays in the planting of crops this season. As you know, this temporary waiver expired on June 21, 2010. A permanent solution to this issue is now needed.

We appreciate and support this proposal to extend this waiver to a two year period. However, we must note that we believe that adequate legal authority and justification exists for a permanent solution to this issue. We believe that the agency focused on the inappropriate section of law as the legal basis to remedy their prior interpretation.

Congress first enacted this necessary exemption in the National Highway System Designation Act of 1995 (P.L. 104-59), which granted an exemption from the Federal hours of service regulations for “*drivers transporting agricultural commodities or farm supplies during planting and harvesting seasons as established in each state and operating within a 100 air mile radius of the source of the commodities or the distribution point of the supplies.*”

As noted in the proposal, the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, 401, June 9, 1998) provided authority for an exemption process lasting up to two years. However, we believe that Congress provided adequate legal authority for FMCSA to issue a permanent resolution to this issue in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005, 119 Stat. 1144, 1726). This legal

authority is permanent and does not involve a two year period that would need to be renewed by the agency and could be revoked by the agency at any time.

In the notice the agency acknowledged the likelihood that such constraints (regarding limited storage capacity and the need to constantly replenish supplies during the planting and harvesting seasons) are likely to “continue for some time” and thus, proposed a two year period. We believe that the agency is being too limited in proposing a two year period. These constraints have existed in the agricultural industry supply chain for many years and have only gotten worse, not better, so they are likely to continue for many years into the future. This issue is not a short temporary issue to be covered by a two year period. Further, since the data indicates that such an exemption will not come at the detriment of safety, a more permanent exemption is reasonable and justified.

As you know, 49 U.S.C. 229 (a)(1) states: “Transportation of Agricultural Commodities and Farm Supplies – Regulations prescribed by the Secretary under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.”

The statutory language provides three explicit limits to the exemption:

- 1) time of year – “planting and harvesting periods, as determined by each state” – this provides the opportunity for each state to limit the exemption to the time period of the year which is most appropriate for local conditions
- 2) type of cargo – “agricultural commodities or farm supplies for agricultural purposes”
- 3) distance of move – “limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies”

The congressional history makes it clear that Congress did not intend for this exemption to be further limited by agency action. If Congress wanted this exemption limited to moves directly to a farm then it would have been clearly expressed in a congressional hearing, floor statement, or report language. Instead, the focus of such discussions was always on the need for regulatory flexibility for the industry due to the seasonal nature of the business and the clear intention to include those critical moves of agricultural commodities and farm supplies that are essential to the timely planting and harvesting of crops. In addition, P.L. 109-59 defined the term “farm supplies for agricultural purposes” to mean “*products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and all livestock feed at anytime of the year.*” Congress intended for this exemption to cover all farm supplies, not just one specific product.

We are glad to see the discussion by the agency in this notice regarding the critical nature of the “just in time” distribution system that extends from a wholesaler to the ultimate consumer of the supplies. We believe that Congress understood this concept when crafting this law and the agency should implement it as Congress intended instead of through a two year waiver process. Attached is a copy of the “Hours of Service Agricultural Exemption: A Legislative History” for your review and consideration.

We are glad that the 90 day period for this year’s spring planting season seems to have been free of accidents related to excessive work hours. We realize that your agency doesn’t yet have a full accounting of the reporting regarding accidents which occurred during this waiver period. However, we are very pleased to know that your staff recently reported to congressional staff and industry stakeholders that you are only aware of a very few accidents, none of which seem to be attributable to HOS issues. The information we have heard back from our respective members confirms the FMCSA report of no accidents related to driver hours.

Further, while highly unlikely, even if data is presented by another entity citing accidents operating during this 90 day period it should be taken into the context of the study, “Agricultural Commodity and Utility Carriers Hours of Service Exemption Analysis,” published in May 2010 which examined the safety experience of carriers operating under this exemption on a longer term basis than a limited 90 day period. This exemption has been used safely for many years. A longer term analysis would provide more meaningful data.

Thank you for working with us to resolve this matter. We look forward to continuing our shared mission of maintaining public safety without disruption to the just-in-time transportation movement of agricultural commodities.

Sincerely,

Agricultural and Food Transporters Conference of the American Trucking Associations  
Agricultural Retailers Association  
American Sugarbeet Growers Association

National Agricultural Aviation Association  
National Association of Wheat Growers  
National Barley Growers Association  
National Corn Growers Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Farmers Union  
National Sunflower Association  
North American Equipment Dealers Association  
The Fertilizer Institute  
USA Rice Federation  
U.S. Canola Association

