

February 20, 2018

Ray Martinez  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

RE: Hours of Service of Drivers of Commercial Motor Vehicles: Transportation of Agricultural Commodities, Docket No. FMCSA-2017-0360

Dear Administrator Martinez,

The undersigned allied organizations representing the entirety of the fresh fruit and vegetable supply chain write to express our concerns with the conditions of the current state of the fresh produce transportation industry. With the Electronic Logging Device (ELD) mandate, driver shortages, and other issues, there have been considerable increases in transportation costs for fresh produce causing devastating effects on our industry. We are hearing from many of our members across multiple commodities and sectors throughout the country that shippers are having to pay two or three times, occasionally more, the normal rate for transporting their product.

As an industry we are committed to working with the Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) to ensure the safe, efficient and timely transportation of fresh produce without unnecessary and overly burdensome requirements. We understand your responsibilities for ensuring the safety of American roadways and share in this goal. As you know, transportation companies face numerous obstacles on a daily basis from inadequate road systems to overcrowded ports so we appreciate the work done thus far by FMCSA to alleviate some of these difficulties. We are appreciative of your extension of this comment period so that we had time to adequately speak with our membership and craft comments which best represent their needs while ensuring the safety of our highways.

The American Trucking Association already projects that the U.S. marketplace is in a shortage of nearly 35,000 over-the-road, Class 8 tractor-trailer drivers. One of the issues they see driving the shortage is the introduction of new regulations, which reduces the industry productivity and drives smaller carriers or owner-operators to exit the marketplace. For many produce farmers in rural areas, they rely on small and local carriers who have homes or operations nearby. Without these carriers who are on stand-by to haul produce cargo, they become dependent on calling trucks from the nearest major city. This not only has a massive economic burden and increased costs for the farmers, but it also means a lack of assurance

for capacity as well as the additional time which the product will sit idle waiting for the carrier to arrive.

As the hours of service (HOS) regulations stand today, our industry is on track to pay billions of dollars in additional over-the-road transportation expenses. National spot rate markets show refrigerated transportation was on average 36% more expensive this January. While the consumer effects of this increase on fresh produce are regionalized to small price increases at grocery stores and restaurants today, the billion plus dollars must come from somewhere in the supply chain. Farmers would be challenged to take on this cost burden. Retail outlets, whether grocery or foodservice, must maintain their profit margins as any other business, thus they would increase their prices. That translates to inflation of food prices. Ultimately, the cost will be the burden of the American consumer.

Fresh produce is a highly perishable cargo. After harvest, every hour that fresh produce is on the road, it loses a little of its value as the shelf life diminishes with each passing moment. Substantial delays in delivery will result in losses for farmers, transportation providers, retailers and ultimately consumers. This uniquely vulnerable status is recognized in the Hours-of-Service exemption for agricultural commodities.

It is important that a balanced solution for the perishable agricultural industry be developed to enhance driver safety and also avoid creating a trucking supply shortage via government regulations. The soaring costs of freight rates now common in the industry will have far reaching impacts on future production decisions, as in many cases the trucking costs are far greater than the value of goods inside the truck.

In order to balance safety and consumers' reasonable access to American fruits and vegetables, we have crafted the following solutions we believe will address some of our concerns:

- 1) **An additional two year extension of the current waiver for trucks carrying agricultural commodities.** Currently, we are receiving feedback from producers and trucking operations that the ELDs on the market are not able to accommodate the agricultural exemption that is provided under the Hours-of-Service regulations. Although annotations to times in which trucks are operating under the agricultural exemption are available in some programs, they're not available in all ELDs. More importantly, without a clear means in which to convey the truck was operating under the agriculture exemption, it exposes the driver to a situation with law enforcement in which the carrier must attempt to describe regulatory compliance, rather than have a mechanism in place to show compliance. Without that ability, the exemption that was created due to the perishable nature of our cargo

effectively does not exist. We believe that this extension would provide a reasonable period of time for FMCSA to work with the technology providers in developing a program to verify that the ELDs on the market can perform the tasks that the rule mandates and allow trucks hauling agricultural commodities to fully utilize the 150 mile exemption.

- 2) **Clarify that the definition of “source” under the Hours-of-Service regulations is sufficiently inclusive to meet the needs of the fresh produce industry.** We encourage the inclusion of locations such as packing facilities, cold storage, and other locations which serve the purpose of initially preparing raw agricultural commodities for transportation up the supply chain. Rarely is produce taken directly from the field to a retail market, so these facilities are integral to the functionality of our supply chain from both a practicality point and a food safety sense. The rapid movement of fruits and vegetables from these facilities is essential as the perishable cargo is degrading with each moment it is out of the field. The produce in these cases are simply being packaged, cooled down, or otherwise prepared for the journey to retail to ensure their transportability, quality, and safety stays intact.
- 3) **Allow the agricultural exemption’s 150 air-mile radius to begin at the final pick up point for multi-point pickups.** In many cases, drivers must utilize multiple pick-up points from small packinghouses or cold storage facilities in order to fill their load before continuing to their final destination. There are small producers all over the nation who do not have the supply to fill an entire trailer. Additionally, many buying entities in the United States are not in position to accommodate the full 40,000 lbs of a single fresh fruit or vegetable commodity, so the ability to place other fresh produce items in the truck creates practicality and efficiency from the purchasing side. In these instances, the carrier must make several stops in order to fill their trailer before continuing on to the final destination. We would encourage the 150 air-mile radius to begin at the location of the last pick-up point so as not to disrupt current supply chains and accommodate the operational efficiencies organically created by the marketplace over the last 100+ years.
- 4) **Clearly define that unladen trucks are covered under the agricultural exemption.** The agricultural exemption should be clearly defined to include unladen trucks as eligible if they are traveling to a facility exclusively for the purpose of transporting an agricultural commodity. We understand that the agricultural exemption is intended to cover activities that occur within the 150 air-mile distance. The availability of equipment to pick-up a load from a source is an important component to ensuring that the intent of that exemption is fully realized. Similarly, when a carrier is transporting a commodity out of the field, it is necessary that they have the ability to

unload and travel back to reload all under the agriculture exemption. This will help minimize confusion for the carrier in having travel both exempt and nonexempt over and over, and will also help minimize confusion for enforcing officers. These clarifications would meet that goal.

- 5) **Consider Hours-of-Service modifications to suit the unique dynamics of loading and unloading fresh produce.** The unpredictability of loading and unloading times as it relates to fresh fruits and vegetables can significantly detract from the on-duty hours drivers are allowed in a day. The agricultural exemption (with our recommended modifications) would lessen this burden during loading of perishable cargo. At the point of origin, for example, produce shipments can be delayed by inclement weather delays, sizing problems in the field that take longer to fill boxes, or international inbound shipments being delayed by FDA pesticide testing or USDA insect identification. Loading often takes 2-4 hours per location. At the point of delivery, impediments such as congested port facilities, intermodal terminals or distribution facilities can result in a truck driver being forced to sit idling for hours waiting to be unloaded. Adding to these delays is the requirement under the USDA Perishable Agricultural Commodities Act (PACA) regulations which states that all produce must be inspected for quality as it is unloaded. This can take as long as eight hours and obviously impacts the ability of a truck driver to efficiently deliver his cargo. Shippers and consignees are continually improving and pushing to move trucks through their facilities quicker, but the nature of fresh produce is not without inherent challenges. We encourage FMCSA to consider flexibility under either the ELD rule or the Hours-of-Service rule for truck drivers who are idling, waiting or traveling small distances reflective of negotiating a congested terminal to be considered in an exempt status. We do not believe that this type of activity is as demanding as over-the-road driving and therefore should not contribute to maximum driving times.

Due to the complex nature of this issue and how it impacts the fresh produce industry, we respectfully request these changes so that we can continue to operate with the highest regard for safety, while addressing concerns that impact the economic viability of our industry. We commend the FMCSA's leadership and outreach to stakeholders on this issue and appreciate this opportunity to provide our comments.

Thank you for your consideration of this request. We would be happy to address any questions or concerns you may have.

Sincerely,

American Mushroom Institute  
National Potato Council  
National Watermelon Association  
United Fresh Produce Association  
U.S. Apple Association  
Eastern Cantaloupe Growers Association  
Fresh Produce Association of the Americas  
Northern Plains Potato Growers Association  
Northwest Horticultural Council  
Western Growers Association  
Grower-Shipper Association of Central California  
Florida Fruit & Vegetable Association  
Florida Tomato Exchange  
Florida Watermelon Association  
Georgia Fruit & Vegetable Growers Association  
Georgia Watermelon Association  
Idaho Grower Shippers Association  
Idaho Potato Commission  
Maine Potato Board  
Potato Growers of Michigan  
Minnesota Area II Potato Council  
North Carolina Potato Association  
Texas Citrus Mutual  
Texas International Produce Association  
Washington State Potato Commission  
Wisconsin Potato and Vegetable Growers Association