



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

March 18, 2010

1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Luetkemeyer:

Secretary of Transportation Ray LaHood, in identical letters to you and Congressman Sam Graves dated January 20, addressed concerns you raised during your meeting with him relating to the Federal Motor Carrier Safety Administration's (FMCSA) interpretation of the hours-of-service (HOS) exemption for agricultural operations. As a result of that meeting and a subsequent meeting on December 10, 2009, with members of your staff, Congressman Graves' staff, representatives of the agricultural transportation industry, and me and other FMCSA officials, I directed my staff to reexamine the Agency's interpretation of the agricultural exemption set forth in section 345(a) of the National Highway System (NHS) Designation Act of 1995, Pub. L. 104-59, November 28, 1995, 109 Stat. 568, 613, 49 U.S.C. 31136 note.

The discussion at the December 10, 2009, meeting focused particularly on the delivery of anhydrous ammonia during the busy planting and harvest seasons. The Agency has long understood that limited farm storage capacity necessitates a "just in time" delivery system from retail distributors of farm supplies to farms (or other locations where the farm supply product will be used) during these seasons. Longstanding FMCSA guidance on its HOS regulations has consistently held (*see* Question 33, 49 CFR 395.1 on the Agency's website: www.fmcsa.dot.gov) that the agricultural operations exemption applies to the transportation of farm supplies within a 100 air-mile radius from the local farm retailer to the ultimate consumer.

The FMCSA's interpretation has not extended the HOS exemption to deliveries from wholesalers located at port or terminal facilities to either local farm retailers or farms. Our recent re-examination of the issue has made it clear that the exclusive emphasis of the Agency's guidance on deliveries from local retailers to the ultimate farm consumer may not reflect economic reality. Local retailers also have limited storage capacity and therefore must constantly replenish their supplies during the planting and harvest season. They are part of the "just in time" distribution system that extends from a wholesaler to the ultimate consumer of the supplies.

Given this reality, FMCSA today posted the enclosed notice on the Agency's website granting a limited, 90-day waiver from the HOS regulations for the 2010 spring planting season. FMCSA has also delivered the notice for publication in the Federal Register. This waiver extends the agricultural operations exemption from the Federal HOS regulations to motor carriers in the distribution system, provided that: 1) the motor carrier is delivering anhydrous ammonia; 2) none of the transportation movements within the distribution chain – whether from the wholesale

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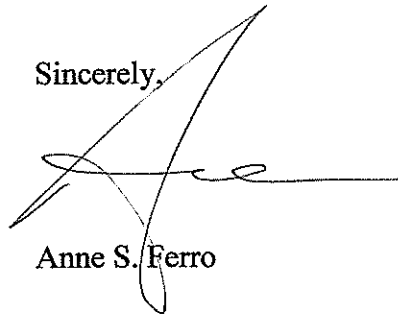
distribution point or from the retailer – exceed a 100 air-mile radius; and 3) the motor carrier has a “satisfactory” safety rating; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from taking advantage of the waiver.

In other words, the 90-day waiver allows motor carriers with a satisfactory safety rating to use the HOS exemption when their drivers are delivering anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the wholesale distribution point or the local farm retailer. This waiver is effective immediately.

I am pleased that FMCSA has had the opportunity to reexamine this issue. The FMCSA is continuing to assess additional actions it might take in light of the concerns that have been raised.

A similar letter has been sent to Congressman Sam Graves. If I can provide further information or assistance, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne S. Ferro". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Anne S. Ferro

Enclosure