

# GROWERTALKS

## Features

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## Rules of the Shipping Game

*Jennifer Zurko*

In late August, the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) announced that it was exploring measures to provide flexibility for Hours of Service (HOS) rules. (Note that even with the new Electronic Logging Device [ELD] mandates, the HOS rules never changed.)

According to AmericanHort, the agency issued an advance notice of proposed rulemaking, asking for public comments and initiating the process to potentially modify rules now in place for drivers.

The four areas that are being considered for change are:

- Expanding the current 100 air-mile "short-haul" exemption from 12 hours on-duty to 14 hours on-duty, in order to be consistent with the rules for long-haul truck drivers.
- Extending the current 14-hour on-duty limitation by up to two hours when a truck driver encounters adverse driving conditions.
- Revising the current mandatory 30-minute break for truck drivers after eight hours of continuous driving.
- Reinstating the option for splitting up the required 10-hour off-duty rest break for drivers operating trucks that are equipped with a sleeper-berth compartment.

As of press time, there was no guarantee that the changes would be made, only that FMCSA is "exploring" the idea. However, if the new measures are adopted, they would be the first major changes to HOS rules in over a decade.

*GrowerTalks* gave Tal Coley, AmericanHort's Director of Government Affairs, a quick call for his take on the DOT's latest regulations and its effort to make changes to some of the rules.

**GrowerTalks:** What happens after the FMCSA has collected all of the comments from the parties affected by the HOS rules?

**Tal Coley:** The good news is that the FMCSA has asked the public for comments. We've been advocating for some flexibility on those HOS rules and they're starting to explore it. It doesn't mean it's going to happen, but it is the start to the process. It's kind of a big deal because they don't normally open that Pandora's Box very often and this will be the first time that they'll be potentially making changes to the HOS rules in about 15 years. Is it the clarity for the ag exemption? No, but at least it's a little bit of movement on one of the bigger issues.

**GT:** How do the new ELD mandates affect the possibility of making changes to the HOS rules?

**TC:** Here's the rub—the ELD rules are very, very strict and were put in place because some drivers have been

alleged to “fudge” the numbers on their paper logs. So the argument is that we needed the new laws. But I think the answer is somewhere in the middle. Drivers come into situations that are out of their control, like traffic or the weather—things that you can’t really prepare for.

**GT:** Where are we at with the ELD mandates?

**TC:** The “soft-enforcement dates” started in December of 2017. They initially did not plan for soft enforcement, but they saw that there were going to be a lot of problems, so they took about four or five months to do a soft-enforcement period. The hard-enforcement date started on April 1.

It’s been challenged in court numerous times on constitutionality by the smaller, independent trucking companies and it’s held up. There has been legislation to delay the actual mandate. There was an amendment written by a Texas congressman that was voted on last fall, but it was defeated in the House. So, as far as the ELDs going away, it’s here to stay.

Nobody has come up to me and said, “We need to get rid of ELDs.” Everybody has known that this has been on the horizon for a long time and shouldn’t have been a surprise. The confusion comes in with all of the exemptions. It’s almost overwhelming to try and talk about articulately; there’s just no way to focus on every individual situation because the exemptions are so varied.

Now, going forward for us, we just want to make sure we have clarity around the rules and where we think we should be included on decision making.

**GT:** There’s been a lot of talk about the “ag exemption,” which allows drivers more leeway when they’re hauling livestock or dairy products and that plants aren’t currently included. Will horticulture products eventually be included within the ag exemption along with other perishable/live goods?

**TC:** There are a couple of layers here. Livestock is already included in the ag exemption, but they are actually looking to be completely exempt from the ELD mandate itself. There’s a continual waiver for livestock that keeps getting renewed every year. With a one-size-fits-all approach with these regulations, it gets problematic with defining who gets what when, so they have to look at it on a case-by-case basis.

But people are aware of the situation we’re in. Once you make the case to a lawmaker, everybody understands. But it’s frustrating because it’s been a rather slow process. My hope is that we can get a conclusion before peak season this coming spring and I think our chances are good that it will happen, even though legislators will be busy with budgets and the Farm Bill after the recess.

**GT:** Is it because the DOT is worried about setting too much of a precedent? Will it get to a point where regulators won’t accept any more exemptions?

**TC:** That is their worry, that you let in one and the floodgates open and it becomes a toothless regulation that has no ability to be enforced because everybody has an exemption. And we get it—[DOT] has to be very careful about how they do this.

**GT:** How is the current driver shortage related to all of this?

**TC:** I think it’s been the perfect storm. You already had a labor shortage and then on top of that you throw large regulatory change in there—almost like a paradigm shift, so to speak. The ELD mandates were almost like the gasoline on the fire; it just made it bigger and that much more troublesome.

Rates did increase 20% to 30% and have since stabilized based on feedback from some members, although some states were reporting increases over 50%. But here’s the worry: What happens when the holiday season starts and you have all of those deliveries? Do those rates skyrocket again? When you have all of these industries affected by

freight and the prices going up, there are inflation worries.

I don't really have the answer, but we need more people to drive trucks. It seems like the whole life cycle of what growers do, labor is the issue—from getting products into the greenhouse to when we're trying to get them to where they need to go. It's a different shade of labor issue, but it all ties back to needing people to do these jobs.

**GT:** Didn't you hear that some growers were paying close to a \$100,000 annual salary to entice more drivers?

**TC:** It is out there. If you've got a CDL (commercial driver's license), you're in a position of power right now. You can pick and choose where you'd like to go and it's become a bidding war for some of these guys, from what I've heard. And what happens when there's a shortage in an industry? People flood it because there are opportunities—at least this is what we're hoping!

**GT:** And expectations have changed. People want their stuff in less than two days now. (Thanks, Amazon.)

**TC:** Right! People want it and they want it now. And they will pay to get it there quickly. Many companies realize the bar is very high now and it makes it more difficult when regulatory changes affect that.

**GT:** What can greenhouse owners do in the meantime while they're waiting to see if they'll be part of the ag exemption?

**TC:** They can let us know if they're experiencing any issues, like citations issued for certain things that fall into our category that we need to know about and can elevate to the agency. And be ready when the trucks arrive—if you're offsite or are difficult to find, this can cause unnecessary delays.

They can also have conversations with their state enforcement officials and share it with us. Stay informed and keep everyone informed.

For more information, go to [AmericanHort.org](https://AmericanHort.org). **GT**