



# Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

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January 11, 2018

Docket Services  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
West Building, Ground Floor  
Room W12-140  
Washington, DC 20590-0001

RE: Docket Number: FMCSA-2017-0360  
*Hours of Service of Drivers of Commercial Motor Vehicles: Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities*

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) notice of regulatory guidance and request for comments on proposed guidance addressing the transportation of agricultural commodities, docket number FMCSA-2017-0360.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

CVSA commends and thanks FMCSA for attempting to provide additional clarity regarding the transportation of agricultural commodities. As noted in the Dec. 20, 2017 notice of regulatory guidance and request for comments, currently states vary in their interpretation of the existing exception set forth in 49 CFR 395.1(k), which results in inconsistent enforcement from jurisdiction to jurisdiction. Below, please find both comments to some of the specific questions posed by FMCSA, as well as general comments from the Alliance.

## **CVSA Responses to Specific Questions Posed by FMCSA**

FMCSA Request for Comment: Regarding the proposed guidance for Question 35 in 49 CFR 395.1, FMCSA requested public comment on how “the agricultural commodity exception would apply if the driver were to pick up partial loads at two or more locations.”

CVSA Response: The guidance should be updated to provide clarification on how the exception should apply when agricultural commodities are loaded at multiple sources during the trip. The number of sources should not impact the exception. The trip begins with the first source and the exception should apply to the first 150 air-miles from the original source. Stopping at a second or third source does not constitute a new trip, as the load picked up at the first source has not yet been delivered. Instead, it is a continuation of the original trip.

FMCSA Request for Comment: How does the flexibility provided in this guidance impact a carrier’s need for an electronic logging device?

CVSA Response: The guidance should have no impact on a motor carrier’s need for an electronic logging device (ELD). The exception in 49 CFR 395.1(k) is an exception to the hours-of-service requirements for the transportation of agricultural commodities. The electronic logging device requirement is a separate regulatory requirement. The ELD requirement does not change the underlying hours-of-service regulations in any way and changes to or exceptions from other hours-of-service requirements should not impact the ELD requirement. There are numerous exemptions and exceptions to the various hours-of-service requirements for various sectors of the motor carrier community. Those exemptions apply only to the identified provisions and do not automatically exempt that segment of industry from compliance with other regulatory requirements. The 150-air mile radius exception for the transportation of agricultural commodities should have no bearing on whether or not a motor carrier is required to comply with the ELD requirement.

### **General CVSA Comments**

While CVSA appreciates the agency’s efforts to further clarify the terms of the exception for the transportation of agricultural commodities and understands that the exception is Congressionally-required, we have concerns over the potential impacts to safety. The Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations exist to ensure that those operating in the transportation industry are equipped to do so safely. The federal hours-of-service requirements exist to help prevent and manage driver fatigue. While it’s true that we cannot regulate sleep, the hours-of-service rules set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. Unfortunately, hours-of-service violations continue to be some of the most frequently found violations by enforcement officials who conduct roadside safety inspections and motor carrier compliance reviews. What this tells us is that too many drivers and motor carriers either don’t understand the hours-of-service rules or are intentionally violating them – and, as a result, undermining safety. The proposed guidance will only add to the potential for increased driver fatigue, as it allows for a driver to

drive for as long as they want, provided they stay within the parameters of the exception. This is the very scenario the hours-of-service rules are intended to prevent.

We recognize that FMCSA must act in accordance with the direction from Congress and this guidance is intended to bring the enforcement of the exception in 49 CFR 395.1(k) in line with Congressional intent. However, given our concerns and the potential impact to safety, CVSA would like to work with FMCSA to identify a method to monitor the impact of this guidance on safety to ensure that lives are not being lost as a result of drivers using the exception to operate well beyond what is reasonable.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the opportunity to comment on this proposal and the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at [collinm@cvsa.org](mailto:collinm@cvsa.org).

Respectfully,

A handwritten signature in black ink, appearing to read 'Collin B. Mooney'.

Collin B. Mooney, MPA, CAE  
Executive Director  
Commercial Vehicle Safety Alliance