



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

December 24, 2020

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

RE: Docket Number: FMCSA-2018-0348
Hours of Service of Drivers; Definition of Agricultural Commodity

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) interim final rule (IFR) on the definition of agricultural commodity, docket number FMCSA-2018-0348.

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.

General Comments:

Clear, enforceable regulations are the cornerstone of an effective regulatory framework designed to ensure safety on our roadways. CVSA commends and thanks FMCSA for attempting to clarify the terms agricultural commodity, livestock and non-processed food. While CVSA recognizes this IFR only concerns these definitions, the Alliance has great apprehension for the safety implications of the hours-of-service exemptions these definitions directly impact. 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. The changes in the IFR will likely expand the number of motor carriers eligible for the agricultural commodity hours-of-service exemption, allowing more drivers to operate far beyond the hours-of-service limits, exposing them to fatigue.

Regulations that lack clarity and detail place the burden on state agencies and roadside inspectors to interpret how to enforce the regulations, posing a threat to uniformity. The changes made by the IFR are not specific enough, leaving room for interpretation. The lack of specificity will lead to confusion and abuse of the exemptions. FMCSA should make the necessary changes to make sure the definitions are specific, enforceable and reduce confusion.

FMCSA should make the following changes to the IFR:

- Clarify that a driver does not qualify for this exemption if any part of the cargo in a mixed load does not meet the agricultural commodity definition.
- Provide additional details on the extent to which a raw agricultural product can be altered before being considered processed.
- Require drivers to annotate in their electronic logging devices (ELD) when they are operating under an exemption as a result of hauling an agricultural commodity or livestock.

Mixed Loads

The IFR should be amended to clarify that mixed loads do not qualify a driver for the agricultural commodity exemption. If a driver is transporting both agricultural commodities and cargo that would subject the driver to the standard hours-of-service regulations, the driver should not be eligible for the agricultural commodity exemption. The current definition of agricultural commodity does not address this issue. Under the current definition it is unclear if motor carriers with limited quantities of agricultural commodities as part of the load would qualify for the exemption. If they are intended to qualify for the exemption, that would vastly increase the number of carriers that qualify. For example, a driver hauling goods to a box store (that also sells groceries) with a load that includes just a few boxes of unprocessed fruit from an agricultural source, could qualify for the exemption if FMCSA does not clarify that the entire load must be an agricultural commodity to qualify.

Processed Items

Although the IFR creates a new definition for non-processed foods, it still does not provide enough clarity to determine the extent to which a raw agricultural product can be altered before it is considered processed. While the change does provide some additional detail, it is still too vague, leaving room for interpretation which challenges uniformity. In particular, the phrase “significant post-harvest changes” in the definition, which is not otherwise defined, provides unclear guidelines on what is considered processed. Without additional clarity, what changes are considered “significant” is subject to interpretation. For example, both milk and corn are transported in bulk in various forms that may or may not be considered the result of significant change without additional clarity. Chocolate milk is often transported in bulk before packaging. The milk hasn’t been processed to the extent that it has been put into retail containers, but it has been altered from its raw form by going through the process of pasteurization, adding flavoring and mixing. Based on the definition provided it is unclear if this level of alteration to the raw milk product is considered significant and as a result if that product is considered an agricultural commodity. Corn also goes through several stages of processing, often at the farm where it was harvested. The definition doesn’t make it clear if removing husks from corn, removing the corn from the cob, etc. are considered significant processing. These examples are just a few of many agricultural products that are shipped with some level of processing. The definition of non-processed should be updated to define more clearly that only raw, bulk products are considered non-processed.

ELD Annotation

FMCSA should amend the IFR to require drivers who qualify for exemptions based on the definitions of agricultural commodity and livestock to note in their ELD when they are operating under the exemption and what qualifying commodity they are hauling. This change would improve enforcement of the hour-of-service rules for these motor carriers and simplify the process for roadside inspectors. ELDs record a commercial motor vehicle’s movement regardless of whether a driver is subject to the hours-of-service requirements during those movements or not. This greatly complicates hours-of-service enforcement for these drivers during roadside inspections and compliance reviews because an inspector must determine which hours recorded by the ELD count towards a driver’s maximum

limits and which do not, based on these exemptions. Additionally, without being required to note the exemption on the ELD while driving under the exemption, a driver can later claim they were operating under the exemption, when they were not, to avoid being cited for an hour-of-service violation. Requiring a driver to annotate when they are operating under the exemption and what commodity they are hauling will reduce confusion at roadside and reduce the risk of fraud.

CVSA Response to Specific Questions Posed by FMCSA

FMCSA Request for Comments:

1. Will the clarifications of the terms “any agricultural commodity,” “non-processed food,” and “livestock” result in more consistent application of the hours-of-service exemptions in §§ 395.1(k)(1) and 395.1(v)?

CVSA Response:

The changes will not result in more consistent application. While the changes made did address some points of confusion with the previous definition of agricultural commodity, it has created new areas of inconsistencies and is still not specific enough to provide the clarity that the law enforcement community and motor carrier industry need. Making the changes outlined above will provide the clarity needed to make sure the outlined hours-of-service exemptions are uniformly interpreted and enforced.

FMCSA Request for Comments:

2. Will the clarifications impact the number of drivers who would use the exemptions in § 395.1(k)(1) or 395.1(v)? If so, how and to what extent? For example, how, if at all, will including all living animals cultivated, grown, or raised for commercial purposes, including aquatic animals, within the definition of “livestock” impact the number of drivers?

CVSA Response:

CVSA is unsure if the definition change will impact the number of drivers eligible for the exemption, however, the Alliance anticipates that by undergoing this rulemaking process, the agency has brought additional attention to the exemptions in § 395.1(k)(1) and 395.1(v) and, as a result, more motor carriers will be aware of their eligibility for the exemptions. The additional awareness will likely result in more drivers utilizing the exemption. In particular, because the definition does not clarify that the entire load has to be an agricultural commodity, it is likely that drivers that have agricultural commodities as a part of their load, like drivers who deliver supplies to box stores or distribution centers, who may not have previously known about this exemption, will start utilizing it.

FMCSA Request for Comments:

4. Will any of the clarifications result in other benefits to stakeholders, including consumers and State enforcement personnel?

CVSA Response:

These changes, while partially addressing some challenges with the previous definitions, have presented new issues, as outlined above, and do not provide the clarity needed to benefit state enforcement personnel. Without the necessary steps to improve clarity, there will continue to be inconsistent interpretation of these definitions and as a result who qualifies for the related exemptions.

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.

Respectfully,

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

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