

*Representing the agricultural and food transportation industry*

September 27, 2019

The Honorable Raymond Martinez  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E., Suite 600  
Washington, D.C. 20590

**Re: Docket No. FMCSA-2018-0348, Hours of Service of Drivers; Definition of Agricultural Commodity**

Dear Administrator Martinez,

I write on behalf of the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA), and other interested agricultural organizations, to express sincere appreciation for the opportunity to comment on the advanced notice of proposed rulemaking (ANPRM) focused on the current definition of an agricultural commodity as it relates to the hours of service (HOS) rules.

The current definition of an agricultural commodity, albeit vague, has worked well for the majority of the industry for many years. The vagueness has allowed the industry, the Agency and enforcement officials to interpret the definition broadly. As agriculture, and its supply chain, continue to evolve we have begun to realize that certain interpretations are not sufficient for inclusion of those ever evolving products and processes. Agricultural practices that took place 30, 40, 50 years ago have drastically changed and practices 30, 40, 50 years from now will undoubtedly follow a similar evolution. Moreover, the recent mandate of electronic logging devices (ELD) and the subsequent discussion around HOS flexibility provides us a great opportunity to address the agricultural commodity definition and ensure we not only have today's products and processes covered, but we write the definition in a way that the evolving industry will be covered 50 years from now. Our goal is to address the definition in such a way that it will not have to be addressed every 10 years, but rather be something that encompasses the broad spectrum of agriculture for many years to come.

Good stuff.



The idea of listing specific commodities would be a drastic mistake. The evolution of the industry mentioned above would deem the list outdated the moment it was printed. This task was undertaken by the now abolished Interstate Commerce Commission (ICC) in 1958.<sup>1</sup> This commodity composite list of exempt and non-exempt commodities provides 31 pages of products, some of which no longer exist. Our industry is changing so rapidly that we believe the listing of specific products would only cause additional confusion among all parties involved, especially within the enforcement community. Unfortunately the aforementioned list is referenced in several other sections under FMCSA's regulating authority. It is our request that the list of outdated commodities, from a commission which no longer exists, be replaced by the newly proposed definition.

As FMCSA is acutely aware, components of the agriculture industry work very closely with one another on a wide range of issues with transportation being one of those. We know and understand transportation's importance to agriculture and its significance to the entire supply chain. That being said, our respective industries have worked diligently over the past 60 days on a definition that would fully encompass the products and processes that span agriculture in its entirety. We are confident that the following definition would accomplish that goal:

Agricultural commodity and livestock are defined as:

- Any products planted or harvested for food, feed, fuel or fiber;
- Any non-human living animals (including fish, insects, and livestock as defined in Sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471]) and the products thereof, to include, but not limited to milk, eggs, honey, etc.;
- Agricultural, raw forestry, aquacultural, horticultural and floricultural commodities; fruits, vegetables; and other agricultural products that are sensitive to temperature and climate and at the risk of perishing in transit;
- Animal feed (including ingredients);
- Products of preservation – products used during harvest or packing in final preparation for processing, including but not limited to bin, boxes, jars, cans, etc.;

We believe this definition sufficiently covers agricultural commodities, animals and products along those supply chains that support the movement of the products to ensure they are efficiently and safely transported. Below are further comments to questions posed in the ANPRM.

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<sup>1</sup> Composite Commodity List. Federal Motor Carrier Safety Administration. Source: [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Administrative\\_Ruling\\_119.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Administrative_Ruling_119.pdf)

*Question 2. Should FMCSA define or otherwise clarify the term “non-processed,” as applied in the definition of “agricultural commodity?” If so, given the context of harvesting and planting seasons referenced in the applicable statute, how should that term be defined? Please provide examples of “non-processed” agricultural commodities that should be included and discuss the distinction between “processed” and “non-processed.”*

Current changes in the interpretation of what constitutes the “source” of a commodity under the current HOS agricultural exemption show us the positive direction the Agency is moving in interpreting a non-processed agricultural commodity.<sup>2</sup> It is important to note that products “prepped” for further transport should be classified as non-processed or raw commodities. For example, melons harvested from a field and transported to a chilled warehouse to be cooled prior to further transportation are, and should continue to be, defined as non-processed. Dairy milk that is harvested and then moved to a terminal site prior to further transfer to a processing facility is, and should be, considered non-processed. These examples simply highlight the fact that raw commodities should be considered non-processed even if they have been handled, as long as their composition has not been altered.

Regarding the planting and harvesting season designation, there are only 17 states<sup>3</sup> that don’t have a year round (Jan 1 – Dec 31) designation. We believe, for uniformity and to limit confusion, the planting and harvesting dates be made year round for all 50 states. In many northern US states, the designation has been set to omit the harshest of the winter months, a period of time when the strong majority of products covered under the exemption are not impacted. However, products such as live animals, and products from those animals (milk, eggs, etc.) continue to be moved as they are year round industries and become unnecessarily captured under “planting or harvesting”. There is current legislation<sup>4</sup> that would fix this issue, but we believe FMCSA has the authority to make such a change and would be fully supported by industry.

*Question 3. Would clarification or definition of other terms used in the definition of “agricultural commodity,” such as “food,” “feed,” or “fiber,” be helpful? Please provide recommendations and data to support your suggested definition.*

We believe the terms listed would be helpful in crafting a more complete definition. These terms encompass a great deal of general and special commodities that are grown and harvested. However, there are other products that should be included but won’t fall within these terms. Our proposed definition would consist of these terms in addition to the inclusion of additional products and processes that should be included.

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<sup>2</sup> Agriculture Exemption Diagrams. (2019). Federal Motor Carrier Safety Administration. Source: <https://www.fmcsa.dot.gov/hours-service/elds/agriculture-exemption-diagrams>

<sup>3</sup> Manager’s Guide to Safe Trucking During Agricultural Planting and Harvest Season. (2009). American Trucking Associations. Source:

<https://www.trucking.org/ATA%20Docs/About/Organization/AFTC/Safe%20Trucking%20Guide.pdf>

<sup>4</sup> Hours Act, H.R. 6178, 115<sup>th</sup> Congress (2018). <https://www.congress.gov/bill/115th-congress/house-bill/6178/text>

*Question 4. Should the definition of “livestock” be revised to include aquatic animals in addition to live fish and crawfish? Please provide data to support your answer, such as how far aquatic animals are typically transported and why you believe the HOS exemption would be appropriate for the transportation of specific aquatic animals.*

Live fish for human consumption were appropriately included in the initial livestock definition<sup>5</sup>, and the inclusion of all live fish is an appropriate addition. Live animals, including fish, are subject to the elements regardless of whether they are immediately destined for human consumption or are en route for another purpose. We believe it is important, and clearly stated in our definition, that all live animals are covered under the definition, and any subsequent definitions.

We are confident that questions 5, 6 and 7 were covered in the above answers. The definition of livestock should be modified to accommodate all live animals, and the listing of specific commodities/animals/products have been down a road that does not need to be traveled again. The inability to accurately list, track and enforce each commodity as it evolves over time is not only impossible, but terribly inefficient.<sup>6</sup>

Another inefficiency is the lack of uniformity between not only certain regulations, but their regulating agencies. We believe, that unless special circumstances warrant it, a definition of an agricultural product should be the same across industry, the federal government and the enforcement community. As referenced above, our respective groups work very closely together to ensure harmony in many rulemakings. We also work closely with our main regulating body, the US Department of Agriculture (USDA). Understanding that there are certain circumstances that specific products need be defined, we think it is important that our collective groups have a general definition to coalesce around. We are confident that we have put forward this definition, encompassing agriculture and minimizing confusion for all interest parties.

*Question 11. Do you believe ambiguities in the current definition of the terms “agricultural commodity” or livestock,” as applied to the HOS exemption in § 395.1(k)(1), impact highway safety? If so, how?*

The HOS agricultural exemption was adopted in 1995. Since its adoption, there have been several modifications made to accommodate the evolution of the industry. We have included farm supplies as an important part of the supply chain movement of product, understanding that there is more that goes into planting a seed than just putting it into the ground. We made alterations after the adoption of the Chemical Facility Anti-

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<sup>5</sup> Emergency Livestock Feed Assistance Act of 1988, Pub. L. No. 115-334, 132 Stat. 4942 (2018). <https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter35A/subchapter5&edition=prelim>

<sup>6</sup> Composite Commodity List. Federal Motor Carrier Safety Administration. Source: [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Administrative\\_Ruling\\_119.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Administrative_Ruling_119.pdf)

Terrorism Standards (CFATS)<sup>7</sup> following the attacks on September 11, 2001. As agriculture continues to grow, machinery gets larger and the need for product increases. It was important that we had flexibility within the supply chain to allow certain fertilizers a path to the retail facility, and ultimately the farm for its intended application. Most recently we were successful in extending the exempted air mileage radius from 100 to 150 air miles<sup>8</sup> to ensure that the industry continues to enjoy the needed flexibility necessary to survive as it grows and consolidates.

We are nearing our 25<sup>th</sup> year under the exemption, and even with our continued evolution and growth, we are able to provide a safety record that we are very proud of. The clarification of the definition for agricultural commodities will not only sustain our exemplary safety record, but it will provide additional clarity for the industry, the Agency and the enforcement officials on the applicability of the exemption.

On behalf of the undersigned organizations, we would like to thank FMCSA for providing the opportunity to comment on the agricultural commodity definition. Over the last decade, FMCSA has done a great job of reaching out to and consulting with our respective industries, and for that we are thankful. As a sector we transport the most sensitive, perishable and diverse products in the world, and being able to have the understanding and first hand dialogue of the overseeing agency is essential. This is a very important topic and we believe it revolves around the definition itself. We are confident that our proposal is reasonable and accurate. Again, thank you for taking into account our comments and we look forward to working with you as this process continues forward.

Best Regards,



Jon Samson  
Executive Director, AFTC

On Behalf of:

Agricultural Retailers Association  
Agriculture Transportation Coalition

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<sup>7</sup> Chemical Facility Anti-Terrorism Standards. (2019). Department of Homeland Security. Source: <https://www.dhs.gov/cisa/chemical-facility-anti-terrorism-standards>

<sup>8</sup> How can the MAP-21 "Transportation of Agricultural Commodities" exemptions be summarized?. (2014). Federal Motor Carrier Safety Administration. Source: <https://www.fmcsa.dot.gov/faq/how-can-map-21-%E2%80%9Ctransportation-agricultural-commodities%E2%80%9D-exemptions-be-summarized>

Agribusiness Association of Iowa  
Alabama Cattlemen's Association  
American Beekeeping Federation  
American Farm Bureau Federation  
American Honey Producers Association  
American Soybean Association  
California Cattlemen's Association  
California Trucking Association  
Chicken and Egg Association of Minnesota  
Colorado Cattlemen's Association  
Corn Refiners Association  
Exotic Wildlife Association  
Florida Cattlemen's Association  
Florida Trucking Association  
Forest Resources Association  
Georgia Cattlemen's Association  
Georgia Poultry Federation  
Grain and Feed Association of Illinois  
Growth Energy  
Hawaii Cattlemen's Council  
Illinois Beef Association  
Illinois Trucking Association  
Indiana Motor Truck Association  
Institute of Shortening and Edible Oils  
International Milk Haulers Association  
Iowa Poultry Association  
Kansas Agribusiness Retailers Association  
Kansas Grain and Feed Association  
Kansas Motor Carriers Association  
Kentucky Cattlemen's Association  
Livestock Marketing Association  
Maine Motor Transport Association  
Maryland Cattlemen's Association  
Michigan Agri-Businesses Association  
Michigan Bean Shippers  
Minnesota Turkey Growers Association  
Mississippi Cattlemen's Association  
Mississippi Poultry Association  
National Barley Growers Association  
National Cattlemen's Beef Association

National Chicken Council  
National Council of Farmer Cooperatives  
National Farmers Union  
National Grain and Feed Association  
National Grange  
National Milk Producers Federation  
National Oilseed Processors Association  
National Pork Producers Council  
National Sunflower Association  
National Turkey Federation  
Nebraska Cattlemen's Association  
Nebraska Grain and Feed Association  
Nebraska Trucking Association  
Nevada Trucking Association  
New Mexico Cattle Growers' Association  
New Mexico Wool Growers Inc.  
Northeast Agribusiness and Feed Alliance  
North American Meat Institute  
North American Millers' Association  
North American Renderers Association  
North Carolina Cattlemen's Association  
North Carolina Egg Association  
North Dakota Grain Dealers Association  
Ohio Agribusiness Association  
Ohio Cattlemen's Association  
Oklahoma Cattlemen's Association  
Pennsylvania Cattlemen's Association  
Plant California Alliance  
Renew Kansas Biofuels Association  
Rocky Mountain Agribusiness Association  
South Carolina Trucking Association  
South Dakota Agri-Business Association  
South Dakota Association of Cooperatives  
South Dakota Grain & Feed Association  
South Texas Cotton & Grain Association  
Texas Agricultural Cooperative Council  
Texas Allied Poultry Association  
Texas Broiler Council  
Texas Cattle Feeders Association  
Texas Cotton Association

Texas Egg Council  
Texas Grain and Feed Association  
Texas H.O.R.S.E.  
Texas Independent Ginners Association  
Texas Nursery & Landscape Association  
Texas Poultry Federation  
Texas Poultry Improvement Association  
Texas Trucking Association  
Texas Turkey Federation  
The Fertilizer Institute  
The Poultry Federation  
United Dairymen of Arizona  
U.S. Canola Association  
U.S. Poultry & Egg Association  
Virginia Cattlemen's Association  
Vocational Agriculture Teachers Association of Texas  
Washington Cattlemen's Association  
Wisconsin Agri-Business Association