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.

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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 The evolution of the industry mentioned above would deem the list outdated the moment it was printed.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 1958.¹ 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.

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. It is important to note that products “prep” 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 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 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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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, 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.

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-
Terrorism Standards (CFATS)\textsuperscript{7} 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\textsuperscript{8} to ensure that the industry continues to enjoy the needed flexibility necessary to survive as it grows and consolidates.

We are nearing our 25\textsuperscript{th} 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


\textsuperscript{8} 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