



2021

San Antonio,
TEXAS



**AFTC
SPRING
BOARD
MEETING**



**AGRICULTURAL AND FOOD
TRANSPORTERS CONFERENCE**

SUNDAY | MAY 16TH
8AM TO 9:15AM



CONFERENCE: AGRICULTURAL AND FOOD TRANSPORTERS

CHAIR Mike Miller, Miller Trucking, Ltd. La Crosse, KS 785-222-3170
VICE CHAIR Brian Hitchcock, MBH Trucking, LLC. Webberville, MI 517-521-2124
ATA STAFF Jon Samson, Executive Director 703-838-7955

AGENDA

Meeting Date: Sunday, May 16th
Time: 8:00 AM – 9:15 AM
Place: San Antonio, TX

1. Welcome & Self- Introductions
2. Antitrust Guideline Review
3. AFTC Business Meeting (Tab 1)
 - a) Approval of minutes from fall board meeting
 - b) Vote on nominee – Craig Dixson
 - c) Conferences reorganization
4. Issue Updates
 - a) Agency meet and greets
 - b) Outreach to new Hill offices
 - c) HOS (Tab 2)
 - i. Ag commodity definition
 - d) Food safety/waste (Tab 3)
 - i. Perishable food waste response to COVID-19
 - e) Ag container issues – port congestion (Tab 4)
 - f) Highway/Infrastructure bill (Tab 5)
 - i. Hill overview (Alex Rosen)
 - ii. Ag definition, planting & harvest designation elimination
 1. HAULS Act
 - iii. Drive Safe, Truck only VMT, Estate tax
5. New or Other Business

Adjourn Meeting

American Trucking Associations ANTITRUST GUIDELINES

All ATA meetings are held in strict compliance with federal and state antitrust laws and ATA's antitrust compliance policies, which prohibit exchanging information among competitors about purchase or sales prices, refusals to deal with customers or suppliers, dividing up markets or customers, tying the sale of one product to another, and other topics that might infringe upon antitrust regulations.

For the Diesel Fuel Strategies Workshop, June 19, 2008, the following specific additional guidelines apply:

- No discussion about fuel surcharges, including the need for them, possible methodologies to calculate them, or specific levels.
- No discussion about prices to be charged to shippers or other customers, relating to fuel or otherwise.
- No discussion about specific suppliers of fuel or operators of truck stops.
- No discussion of specific companies' plans for responding to higher fuel costs. General ideas about strategies may be discussed.
- No agreement or invitations to agree on any of these topics.

These rules apply not only in the general sessions, but also during informal discussions in hallways and at lunch or coffee breaks. ATA staff will monitor the meeting, but for the protection of all attendees it is vital that everyone keep these rules in mind throughout the workshop.

To minimize the possibility of antitrust problems, the following guidelines should be followed at all meetings of ATA boards and committees and all ATA-sponsored conventions, trade shows, training seminars, best-practices discussions, conferences, colloquiums, and task force and working group sessions.

Procedures for Meetings

1. Meetings should be held only when there are proper items of substance to be discussed which justify a meeting.
2. In advance of every meeting, a notice of meeting, along with an agenda, should be sent to each member of the group. The agenda should be specific and such broad topics as "marketing practices" should be avoided. An ATA Law Department attorney must review all agendas before they are sent to meeting participants.
3. Participants at the meeting should adhere strictly to the agenda. In general, subjects not included on the agenda should not be considered at the meeting.
4. If a member brings up a subject of doubtful legality for discussion at a meeting, he or she should be told immediately the subject is not a proper one for discussion. The ATA staff representative or any member present who is aware of the legal implications of a discussion of the subject should attempt to halt the discussion. If the subjects of prices, costs, or other competitive practices are raised by others at the meeting, you must disassociate yourself unequivocally from the discussion. If necessary, you must leave or halt the meeting.
5. Minutes of all meetings should be kept by ATA. An ATA Law Department attorney should review draft meeting minutes before they are distributed to meeting participants. Minutes should summarize accurately the actions taken at meetings, if any. Minutes should not contain comments made by particular meeting participants because of the potential for incompleteness or inaccuracy in attempting to report precise remarks.
6. An ATA attorney or other staff member should attend all meetings. During any discussion between meeting participants that occur outside the formal meeting, the guidelines contained in the next section – "Topics to Avoid at Meetings" – must be followed.

(over)

7. Members should not be coerced in any way into taking part in ATA activities.
8. It is essential that members cooperate with ATA counsel, particularly when counsel has ruled adversely about a particular activity or topic of discussion.

Topics to Avoid at Meetings

The following topics are some of the main ones that should not be discussed at meetings attended by ATA members or staff, including meetings or other gatherings sponsored by organizations independent of ATA:

1. Current or future prices of competitors.
2. Matters related to prices, such as discounts, credit terms, profit levels, or volume of production or service.
3. Wage and salary rates, equipment prices, or other actual costs of individual companies, since these costs are an element of price.
4. Dividing up, allocating, or rationalizing markets, bids, geographic areas, types of business, or customers among competitors.
5. Refusals to deal with suppliers, customers, or other competitors. For example, if a group of motor carriers were to agree to boycott a supplier of diesel fuel for the purpose of forcing that supplier to lower its prices, such an agreement could run afoul of the antitrust laws. Critiques of supplier products or customer practices can also raise the danger of being construed as an unlawful group boycott, and should be conducted only after consultation with counsel. Such discussions may be permissible where efficiencies will be achieved through the exchange of ideas and where precautions are taken to avoid the inference of an agreement to deal with suppliers or customers only on certain terms.

“Best Practices” Discussions

The following guidelines should be applied to any “best practices” discussion:

1. All industry practices discussed should involve an attempt to reduce costs or realize some other efficiency. Discussions should be limited to what is reasonably necessary to accomplish these legitimate goals.
2. As in other areas of ATA activity, price and other competitively sensitive terms of trade should not be discussed in the “best practices” context. Specific present or future competitive plans and strategies of individual companies should not be discussed. Nor should specific customer information or specific companies’ costs.
3. In discussing “best practices,” no agreement should be reached to use a particular practice, to deal with suppliers or customers on particular terms, or to exclude a member or other competitor for using a different practice.
4. To the extent possible, technical personnel of member companies, rather than marketing personnel, should be used to conduct “best practices” discussions.
5. Prior to a “best practices” discussion, an agenda should be prepared and reviewed by counsel. Minutes should be kept of all meetings at which “best practices” are discussed. Should questions arise about the propriety of a “best practices” discussion, the discussion should be discontinued until counsel can be consulted.

If you have questions, please call the ATA Law Department at (703) 838-1865.



REPORT OF THE AGRICULTURAL AND FOOD TRANSPORTERS CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS

CHAIRMAN: Mike Miller, Miller Trucking, Ltd. La Crosse, KS 785-222-3170
VICE CHAIRMAN: Brian Hitchcock, MBH Trucking, LLC. Webberville, MI 517-521-2124
ATA STAFF LIASON: Jon Samson, Executive Director 703-838-7955

The Board met virtually on October 19, 2020. Chairman Mike Miller presided over the meeting. The meeting was called to order and anti-trust guidelines were reviewed. Committee members, guests and ATA staff were informed an attendee list would be available after the meeting. A quorum having been established, the minutes from the previous committee meeting were approved. The committee proceeded with the remainder of its agenda.

The AFTC Board voted via email to approve three AFTC Board nominees; Steve Kubsch (Growmark), Casey Stump (Ag Trucking), and Keith Frantz (ADM). Each new board member provided a brief introduction to the Board.

HOS – FMCSA’s ANPRM on further defining the definition of an agricultural commodity is rumored to be moving to an interim final rule. This means the administration wants to fast track a few key regulations, the definition being one of them. AFTC anticipates seeing this interim rule in the next couple of weeks.

Updates were given on both the emergency declaration extension and the new HOS changes. The emergency declaration for both food and livestock was extended until December 31, and the new HOS changes went into effect on September 30.

Food Safety – Samson updated the group on work he has been doing to reduce food waste. AFTC continues to work with a group of organizations representing farm to fork and have been sharing information and ideas to combat the issue. Additionally, AFTC is a member of an advisory board that works to focus on the last mile of food transport for needy families.

Highway/Infrastructure Bill – Alex Rosen gave a brief Hill update on what ATA is focused on, including legislation from Senator Fischer and Congressman Joyce that would eliminate the planting and harvesting season designation and would adopt AFTC’s proposed agricultural commodity definition. We plan to continue garnering support for the HAULS Act and working to find an appropriate vehicle to move it forward.

Drive Safe – An update was given on the legislation as well as the proposed pilot through FMCSA. AFTC plans to provide comments supporting the under 21 pilot proposal, due November 9.

Lastly, Samson informed the Conference that ATA is trying to bolster the Conferences’ impact for ATA members and their respective Conference members. Conferences, moving forward, will serve as a more robust member resource to those involved.

Having exhausted the time available, the chairman entertained a motion to adjourn at 11:55 am.

Respectfully submitted,
Jon Samson
AFTC Executive Director

Craig Dixson Bio

Craig Dixson President of Midwest Express, CDL Logistics, and Midwest Transport Refrigerated Services (MTR) started Midwest Express back in November 1993 with one truck operating out of Grand Island, NE. Through the years he's been able to grow Midwest Express to 50 trucks and 150 refrigerated trailers, add CDL and MTR to provide additional value added services to compliment Midwest Express. His 2 largest customers through many of those years are beef processors. Midwest Express has received numerous awards for Safety and Carrier of the Year as well as Grand Champion of the Nebraska State Fleet Safety Contest in 2017 from the Nebraska Trucking Association.

In 2019, Craig and his wife, Lesa, partnered with America's Service Line to become part of the American Foods Group and Rosen's family of companies. American Foods Group (AFG) is the 5th largest beef processor in the country and the merger strengthened America's Service Line's ability to serve AFG and other beef / food customers. Craig will continue to lead Midwest Express as President of the company.

Craig grew up in Central NE and has been within and associated with production agriculture his entire life to include crop, beef, and swine production. After graduation, Craig joined the US Army as a petroleum supply specialist and truck driver. Upon completion of his service in the US Army, Craig came back to civilian life where he worked full time for Monfort Beef Packing (now JBS) in Grand Island, NE and attended Central Community College for his Associates in Business. Craig then bought his first truck in late 1991 and was an Independent Operator for two years before starting Midwest Express. Shortly after starting Midwest Express, Craig bought his second truck and three trailers, hired two drivers, continued to drive part time hauling beef and worked on his Bachelors Degree in Business at Bellevue University.

Craig and Lesa have been active members of the ATA and Nebraska Trucking Association for several years. In addition, Craig served as Vice President of his local Northwest High School FFA Chapter where he is a lifelong Alumni member, and serves regularly as an usher of his local church.

Craig and Lesa have been married for 29 years, have three beautiful daughters, a handsome son, and four awesome grandsons. Craig's hobbies include 4-H livestock shows with his grandsons, hunting, fishing, Husker Football and spending time with his family.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2018-0348]

RIN 2126-AC24

Hours of Service of Drivers; Definition of Agricultural Commodity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule with request for comment

SUMMARY: FMCSA clarifies the definition of the terms “any agricultural commodity,” “livestock,” and “non-processed food,” as the terms are used in the definition of “agricultural commodity” for the purposes of the Agency’s “Hours of Service (HOS) of Drivers” regulations. Under current regulations, drivers transporting agricultural commodities, including livestock, from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements. Furthermore, the HOS requirement for a 30-minute rest break does not apply to drivers transporting livestock in interstate commerce while the livestock are on the commercial motor vehicle. This interim final rule (IFR) clarifies the meaning of these existing definitional terms to ensure that the HOS exemptions are utilized as Congress intended.

DATES: This IFR is effective [Insert date 15 days after date of publication in the FEDERAL REGISTER]. You must submit comments on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Petitions for Reconsideration of this IFR must be submitted to the FMCSA Administrator no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number FMCSA-2018-0348 using any one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348>. Follow the online instructions for submitting comments.
- Fax: (202) 493-2251.
- Mail: Dockets Operations, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-4325, MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

This IFR is organized as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
- II. Executive Summary
- III. Legal Basis for the Rulemaking
- IV. Background
- V. Discussion of Interim Final Rule
- VI. Questions
- VII. International Impacts

- VIII. Section-by-Section Analysis
- IX. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations
 - B. E.O.13771 (Reducing Regulation and Controlling Regulatory Costs)
 - C. Congressional Review Act
 - D. Regulatory Flexibility Act (Small Entities)
 - E. Assistance for Small Entities
 - F. Unfunded Mandates Reform Act of 1995
 - G. Paperwork Reduction Act
 - H. E.O. 13132 (Federalism)
 - I. Privacy
 - J. E.O. 13175 (Indian Tribal Governments)
 - K. Environment

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this IFR (FMCSA-2018-0348), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to:

<http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348>, click on the “Comment Now!” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic

filing. If you submit comments by mail and would like to know that they have reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this IFR based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this IFR contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this IFR. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590. Any comments that FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0348> and choose the

document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL-14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

II. EXECUTIVE SUMMARY

Purpose of the Regulatory Action

Congress defined “agricultural commodity” as “any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in [7 U.S.C. 1471] and insects.)” The existing regulatory text in 49 CFR 395.2 adopts, without substantive change, the statutory definition of “agricultural commodity.” Currently, under Federal statute and regulation, commercial motor vehicle (CMV) drivers transporting agricultural commodities from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements (49 CFR 395.1(k)(1)). Furthermore, § 395.1(v) exempts drivers transporting livestock in interstate commerce from the 30-minute rest

break requirement while the livestock are on the CMV. The definition of “livestock” in § 395.2 restates the definition in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 (the 1988 Act), as amended in 7 U.S.C. 1471.

In July 2019, FMCSA published an Advance Notice of Proposed Rulemaking (ANPRM) requesting assistance from stakeholders in determining whether, and to what extent, the Agency should clarify key terms used in the definition of “agricultural commodity” in § 395.2 (84 FR 36559 (July 29, 2019)). The Agency, noted, for example, that broad terms such as “any agricultural commodity” are subject to multiple interpretations, and have led to inconsistent application of the HOS exemption in § 395.1(k)(1). Based on comments to the ANPRM, discussed further below, as well as ongoing inquiries from the State enforcement partners, FMCSA codifies its interpretation of the meaning of the following terms in § 395.2: “any agricultural commodity,” “non-processed food,” and “livestock.” The purpose of the definitional clarifications is to ensure that the HOS exemptions in §§ 395.1(k)(1) and 395.1(v) are consistently understood and enforced. The definitional clarifications may affect the extent to which the HOS exemptions apply to transporters of certain agricultural commodities, including livestock. For reasons identified below, FMCSA currently does not have sufficient information to estimate the quantitative impact of these clarifications on carriers or drivers who use the exemptions or on the vehicle miles traveled (VMT). As discussed further below, the Agency asks stakeholders to address these issues when commenting on the impact of the IFR on their operations.

Benefits and Costs

The ambiguity associated with the definitions of the exemptions in §§ 395.1(k)(1) and 395.1(v) currently may be hindering consistent enforcement practices, thereby impacting business-related decisions for the hauling of agricultural commodities and livestock, resulting in unnecessary costs and disbenefits. By clarifying the definitions of “agricultural commodity,” “non-processed food,” and “livestock,” the IFR will create a common understanding between FMCSA, motor carriers, drivers, and enforcement officials.

While this rule merely clarifies an ambiguous definition without changing any substantive requirements, some regulated entities and enforcement officials may change their behavior in response to this rule. In theory, there are two groups of CMV drivers whose behavior may be impacted by this IFR: (1) those to whom the definitions of “agricultural commodity,” “non-processed food,” and “livestock” apply but who currently do not use an exemption due to the existing definitional ambiguity, and (2) those who currently use an exemption in §§ 395.1(k)(1) or 395.1(v), and may no longer do so as a result of the clarifications. Drivers who use these exemptions as a result of the clarification provided in this interpretative rule may potentially realize cost savings, and those who no longer use an exemption as a result of this clarification may incur costs.

The Agency does not collect information on the number of drivers currently using the agricultural commodity or livestock exemptions, nor do we know the extent to which State-based enforcement practices vary due to definitional ambiguity. There is uncertainty surrounding the number of drivers who are currently not utilizing an exemption due to definitional ambiguity and may therefore realize the associated cost

savings as a result of this rule. The Agency does not, therefore, estimate quantitative impacts associated with this IFR, opting instead for a qualitative analysis. Specifically, FMCSA expects any increase in the number of exemptions used will be by transporters of perishable horticultural commodities, non-processed food, or livestock, including aquatic animals.

III. LEGAL BASIS FOR THE RULEMAKING

Section 204(a) of the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, 546, August 9, 1935), as codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (Secretary) to “prescribe requirements for — (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” This IFR pertains to the maximum HOS of drivers transporting agricultural commodities by CMV.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, CMVs, and vehicle equipment. Section 206(a) of the Act (98 Stat. 2834), codified at 49 U.S.C. 31136(a), grants the Secretary broad authority to issue regulations “on commercial motor vehicle safety.” The regulations must ensure that “(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely...; (4) the operation of commercial motor vehicles does not have a deleterious effect on the

physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.” (49 U.S.C. 31136(a)(1)-(5)).

This IFR primarily addresses the safety of the vehicle and driver (49 U.S.C. 31136(a)(1)-(2)), and secondarily, the health of the driver (section 31136(a)(4)). This IFR does not directly address medical standards for drivers (section 31136(a)(3)). FMCSA does not anticipate that drivers would be coerced as a result of the proposed clarifying changes (section 31136(a)(5)).

More specifically, this IFR is based on a statutory exemption from HOS requirements for CMV drivers transporting “agricultural commodities ... during planting and harvesting periods, as determined by each State.” The exemption was initially enacted as Sec. 345(a)(1) of the National Highway System (NHS) Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568, 613, November 28, 1995).

Section 4115 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144, 1726, August 10, 2005) retroactively amended the Motor Carrier Safety Improvement Act of 1999 (MCSIA, Pub. L. 106-159, 113 Stat. 1748, December 9, 1999) by transferring Sec. 345 to new Sec. 229 of MCSIA (113 Stat. 1773). Section 4130 of SAFETEA-LU then revised section 229, as transferred by section 4115, mainly by adding definitions of “agricultural commodity” and “farm supplies for agricultural purposes” (119 Stat. 1743), as discussed further below. These definitions are codified at 49 CFR 395.2. Section 32101(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L.

112-141, 126 Stat. 405, 778, July 6, 2012) revised section 229 again, mainly by expanding the 100 air-mile radius of the exemption to 150 air miles.

The IFR is also based on a statutory exemption from the HOS requirement for a 30-minute rest break for CMV drivers transporting livestock in interstate commerce, set forth in section 5206(b)(1)(C) of the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114-94, 129 Stat. 1312, 1537, December 4, 2015).

Before prescribing any regulations, FMCSA must also consider the "costs and benefits" of its proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

This IFR is consistent with DOT's regulations on rulemaking procedures set forth at 5 CFR part 5, subpart B. Specifically, the IFR embodies the regulatory policies that regulations should be straightforward and clear (49 CFR 5.5(d)) and that "[o]nce issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs they were designed to address and remain cost-effective and cost-justified" (49 CFR 5.5(h)). This IFR also complies with the requirements that final rules shall be written in plain and understandable English (49 CFR 5.13(k)(3)(i)) and based on a reasonable and well-founded interpretation of relevant statutory text (49 CFR 5.13(k)(3)(ii)).

The Administrator of FMCSA is delegated authority under 49 CFR 1.87(f) and (i) to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315, respectively, as they relate to CMV operators, programs, and safety.

Prior Notice and Comment Not Required for Interpretative Rule

The Administrative Procedure Act (APA) (Pub. L. 79-404, 60 Stat. 237), codified at 5 U.S.C. 553, provides that notice and public comment procedures are not applicable to

“interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (5 U.S.C. 553(b)(A)). Furthermore, DOT’s rulemaking procedures provide that prior notice and an opportunity for comment are not required for rules of interpretation (49 CFR 5.13(j)(1)(i)). The APA defines “rule” as “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, *interpret*, or prescribe law or policy” (5 U.S.C. 551(4)) (emphasis added). The Attorney General’s Manual on the Administrative Procedure Act further defines interpretative rules as “rules or statements issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.”¹ Because this IFR is an interpretative rule within the meaning of the APA, prior notice and public comment are not required.

In determining whether a rule is “legislative” (and thus generally subject to the APA’s notice and comment requirements) rather than “interpretative,” among the factors courts consider are whether, in the absence of a legislative rule, an agency has adequate basis for enforcement action; whether the rule leaves the agency with any discretion; and whether the rule repudiates or is irreconcilable with a prior legislative rule. Each of these factors is addressed briefly below.

As explained below in Section V. Discussion of Interim Final Rule, the IFR clarifies the terms “any agricultural commodity,” “non-processed food,” and “livestock,” currently included in the definition of “agricultural commodity” in 49 CFR 395.2. The IFR does not establish any new terms not already included in the existing statutory and regulatory definitions of “agricultural commodity,” and does not create any new rights or

¹ Attorney General’s Manual on the Administrative Procedure Act (1947), at 30, n.3.

impose new regulatory burdens.² Nor does the IFR expand the Agency’s existing authority to enforce the exemptions set forth in 49 CFR 395.1(k) and (v); as noted in the Legal Basis discussion above, FMCSA currently has delegated authority to determine and enforce compliance with the exemptions.³ FMCSA codifies these definitional clarifications to promote more consistent understanding of existing terms so the exemptions are utilized and applied consistently. Because this IFR amends the regulatory text in 49 CFR 395.2, the IFR has “binding effect” in the same sense that the existing definitions have binding effect. The Agency notes, however, the clarifications set forth in the IFR are inclusive rather than exclusive, and therefore permit the Agency continued discretion to determine whether the exemptions apply in specific circumstances⁴ as discussed further below in Section V. Lastly, the IFR does not contradict a prior legislative rule simply by clarifying the meaning of current definitional terms.⁵

This IFR includes a 30-day post-publication comment period, and the Agency seeks input on specified issues. FMCSA will consider and address submitted comments

² “An interpretative rule simply states what the administrative agency thinks the [underlying] statute means, and only “reminds’ affected parties of existing duties.” On the other hand, if by its action the agency intends to create new law, rights or duties, the rule is properly considered to be a legislative rule.” *General Motors Corp. v. Ruckelshaus*, 742 F. 2d 1561, 1565 (D.C. Cir. 1984) (final rule amending CFR by interpreting Clean Air Act provision authorizing recall of all members of a non-conforming class was an interpretative rule not subject to prior notice and comment), quoting *Citizens to Save Spencer County v. U.S. Environmental Protection Agency*, et al., 600 F. 2d 844, 876 n. 153 (D.C. Cir. 1979) (final rule by which EPA amended the CFR by incorporating and explaining the immediately effective “prevention of significant deterioration” requirements identified in the Clean Air Act was an interpretative not a legislative rule; notice and comment not required), quoting *Pesikoff v. Secretary of Labor*, 501 F. 2d 757, 763, n. 12 (D.C. Cir. 1974).

³ For example, on August 5, 2020 (85 FR 47565), FMCSA denied as moot the application of Turfgrass Producers International to extend the HOS exemption in 49 CFR 395.1(k) to CMV drivers transporting turfgrass sod. The Agency determined that, because sod falls within the current definition of “agricultural commodity” in 49 CFR 395.2, transporters of sod are already eligible for the exemption.

⁴ “[A]n action is not a [legislative] rule if it leaves the agency and its decision-makers free to exercise discretion.” *Patriot, Inc. v. U.S. Dept. of Housing and Urban Development*, 963 F. Supp. 1, 4 (D.D.C. 1997), citing *American Bus Association v. United States*, 627 F. 2d 525, 529 (D.C. Cir. 1980).

⁵ “A rule does not...become an amendment [to a prior legislative rule] merely because it supplies crisper and more detailed lines than the authority being interpreted.” *American Min. Congress v. Mine Safety & Health Admin.*, 995 F. 2d 1106, 1112 (D.C. Cir. 1993).

in the final rule that will follow this IFR and may make changes to the rule in response to comments received.

In accordance with 5 U.S.C. 553(d)(2), this IFR will become effective less than 30 days after publication. As noted above, the effective date is [Insert date 15 days after date of publication in the FEDERAL REGISTER].

IV. BACKGROUND

A. HOS Regulations

The HOS regulations, as set forth in 49 CFR part 395, limit property-carrying CMV drivers to 11 hours of driving time within a 14-hour period after coming on duty following 10 consecutive hours off duty. On June 1, 2020, the FMCSA published a final rule updating the HOS regulations for CMV drivers [85 FR 33396]. The rule, effective on September 29, 2020, revises the HOS requirements to provide greater flexibility for drivers without adversely affecting safety. The Agency expanded the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception.

Under the HOS regulations, drivers may not drive after accumulating 60 hours of on-duty time in any 7 consecutive days, or 70 hours in any 8 consecutive days. Generally, drivers of property-carrying CMVs may restart the 60- or 70-hour clock by taking 34 consecutive hours off duty. As discussed further below, the time spent transporting an agricultural commodity within the 150 air-mile radius from the source does not count against the limits on maximum driving. On-duty time does not apply during harvest and planting periods, as determined by each State, to drivers transporting agricultural commodities (and farm supplies for agricultural purposes) from the source of the

commodities to a location within a 150 air-mile radius of the source. In addition, the 30-minute rest break requirement does not apply, even outside of the 150-air-mile radius, to CMV drivers transporting livestock while the livestock are on the vehicle.

B. June 2018 Regulatory Guidance – Application of the 150 Air-Mile HOS

Exemption

On June 7, 2018, FMCSA issued regulatory guidance on the transportation of agricultural commodities as defined in § 395.2 (83 FR 26374). The guidance addressed various issues related to the statutory term “source of the commodities,” but it did not directly address the scope or meaning of the term “agricultural commodity.” Specifically, the June 2018 guidance addressed: drivers operating unladen CMVs en route to pick up an agricultural commodity or returning from a delivery point; drivers engaged in trips beyond the 150 air miles of the source of the commodity; determining the “source” of agricultural commodities for purposes of the exemption; and how the exemption applies when agricultural commodities are loaded at multiple sources during a trip.

C. Statutory/Regulatory Definitions of “Agricultural Commodity” and “Livestock”

As noted above in Section III. Legal Basis for the Rulemaking, Congress initially adopted the HOS exemption for the transportation of agricultural commodities, during harvesting and planting seasons as defined by each State, in 1995 as part of the NHS Designation Act. Congress did not, however, define the term “agricultural commodities” at that time. The Agency added, verbatim, the statutory exemption to its HOS regulations (61 FR 14677, April 3, 1996). In 2005, as part of SAFETEA-LU, Congress adopted the current definition of agricultural commodity: “The term ‘*agricultural commodity*’ means any agricultural commodity, food, feed, fiber, or livestock (including livestock as defined

in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects), and any product thereof.”

The Agency subsequently added this statutory definition of “agricultural commodity,” verbatim, to § 395.2 (72 FR 36760, July 5, 2007). At that time, section 602 of the 1988 Act, cross-referenced in the SAFETEA-LU definition of “agricultural commodity,” defined “livestock” as “cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the 1988 Act, as amended.”

On July 22, 2016, the Agency amended § 395.2 by adding a free-standing definition for the term “livestock,” which restated, without substantive change, the definition of livestock set forth in the 1988 Act, referenced above (81 FR 47721). The addition of a separate definition of the term “livestock” to § 395.2 was part of FMCSA’s final rule implementing certain requirements of the FAST Act. Section 5206(b)(1)(C) of the FAST Act made permanent a regulatory exemption⁶ from the 30-minute rest break required under the HOS regulations (§ 395.3(a)(3)(ii)), for drivers transporting livestock. The 2016 final rule implemented this FAST Act requirement by adding new § 395.1(v).

In section 12104 of the Agricultural Improvement Act of 2018 (2018 farm bill, Pub. L. 115-334, 132 Stat. 4490, December 20, 2018), Congress amended the definition

⁶ On June 12, 2015, FMCSA renewed an exemption, granted to the Agricultural and Food Transporters Conference of the American Trucking Associations, from the 30-minute rest break provision of the HOS regulations for CMV drivers transporting livestock (80 FR 33584). The Agency granted and renewed the exemption to protect the health and safety of livestock during interstate transportation by CMV. The exemption applied only during the transportation of livestock, as defined in the 1988 Act, and did not cover the operation of the CMV after livestock are unloaded from the vehicle.

of “livestock” in the 1988 Act by removing the term “fish used for food” and adding “llamas, alpacas, live fish, crawfish, and other animals that” to the phrase “are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits [under the Act of 1988].” The 2018 farm bill also removed the Secretary of Agriculture’s discretion to designate animals as livestock in addition to those specifically listed in the statute. On September 30, 2019, FMCSA conformed the text of the definition of “livestock” in § 395.2 to the change made to the 1988 Act by the 2018 farm bill (84 FR 51427, 51430). The Agency’s conforming change added llamas, alpacas, live fish and crawfish, and deleted the term “fish used for food,” and removed the reference to the Secretary of Agriculture’s discretion to designate additional animals.

D. 2019 ANPRM Regarding Definitions of “Agricultural Commodity” and “Livestock”

As noted above, in July 2019, FMCSA issued an ANPRM requesting input from stakeholders in determining how the Agency could clarify the definitions of the terms “agricultural commodity” or “livestock” in the HOS regulations, while remaining consistent with the underlying statutory requirement for a limited exemption from the HOS requirements for CMV drivers transporting these commodities. The ANPRM posed questions specifically addressing the need for FMCSA to clarify the current definitions of the terms “agricultural commodity” or “livestock” in § 395.2, and the benefits and costs of clarifying or revising these definitions, including related impacts on highway safety. Additionally, FMCSA requested comment on the extent to which the current definitions (as understood or applied) conflict, or are otherwise inconsistent, with regulations

administered by the U.S. Department of Agriculture (USDA), such as the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 449a(1)).

The Agency received 140 comments in response to the ANPRM.⁷ Commenters represented the following industries/organizational types: 12 commenters represented State agricultural bureaus; six from State agricultural trade associations; eight represented haulers of sod; 10 represented private-sector agricultural trade associations; two were from trucking associations; one from a trade safety organization; another represented a private company; and 100 others responded as individual commenters.

In the ANPRM, FMCSA asked how specific commodities, such as sod or other types of horticulture, fit within the definition of the term “any agricultural commodity.”

Nearly half of the comments addressed Question 1, which asked whether specific products, such as sod or other types of horticulture, should be included in the definition of “agricultural commodity.” Commenters stated that various forms of horticulture, such as flowers, shrubs, sod, and Christmas trees, are agricultural commodities and that, due to the risk of perishability in transit, drivers transporting these products should be eligible for the HOS exemption in § 395.1(k)(1). Most commenters opposed including a finite list of types of agricultural commodities as part of the definition in § 395.2, though some favored cross-referencing the list of “perishable” commodities recognized by USDA under the PACA regulations.

The Agency received no information concerning the average and maximum length of trip for specific agricultural commodities, as requested in Question 5. Question 5 also asked whether the definition of “livestock” should include specific animals in

⁷ The comments may be accessed at <https://www.regulations.gov/docket?D=FMCSA-2018-0348>.

addition to those already identified in the 1988 Act (including those added by the 2018 farm bill). While some commenters supported the idea of including a finite list of animals in the definition of “livestock” (in addition to the species already identified in the 1988 Act, as amended), most who addressed this issue said that FMCSA should interpret the term comprehensively to include all living animals. The Agency received limited response to question 10, concerning a motor carrier’s exposure to financial liability resulting directly from a driver’s compliance with the HOS regulations.

Several commenters noted that confusion caused by the current definition of “agricultural commodity” impacts safety by undermining uniformity of enforcement and the underlying safety benefits of the HOS regulations. One commenter suggested that FMCSA adopt a more specific definition of the term, but not in a way that could adversely impact safety by increasing the number of drivers eligible for the HOS exemption in § 395.1(k)(1). FMCSA notes that additional comments to the ANPRM, addressing specific aspects of the terms the Agency clarifies, are discussed below.

V. DISCUSSION OF INTERIM FINAL RULE

Based on issues raised by commenters to the ANPRM, summarized above, as well as ongoing inquiries from FMCSA’s State partners who enforce State HOS requirements compatible with the Federal rules, the Agency concludes that the definitions of “agricultural commodity” and “livestock,” as used in § 395.2, are not uniformly understood among stakeholders. To facilitate more consistent understanding of these terms, and therefore more consistent enforcement of the HOS exemption in § 395.1(k)(1) and the 30-minute rest break exemption in § 395.1(v), FMCSA codifies its interpretation of their meaning. The Agency notes that the current regulatory definitions of “agricultural

commodity” and “livestock,” restate, without substantive change, the text of the underlying statutes identified above. The Agency’s interpretation of these terms does not fundamentally alter that statutory framework.

As noted above, Congress adopted the current definition of “agricultural commodity” in 2005, as currently restated in § 395.2: “*Agricultural commodity* means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).” The Agency notes that, in setting forth this statutory definition, Congress drew from existing references in Title 7 (Agriculture) of the United States Code (U.S.C.): (1) the Agricultural Trade Act of 1978 (7 U.S.C. 5602);⁸ and (2) the Act of 1988 (7 U.S.C. 1471(2)). In seeking to clarify the meaning of three key terms used in the definition of “agricultural commodity,” FMCSA also looks to Title 7 for guidance, as discussed below.

A. “*Any agricultural commodity*”

In § 395.2, “agricultural commodity” is defined, in part, as “any agricultural commodity.” As noted in the ANPRM, this definition is ambiguous. On one hand, the term “any agricultural commodity” is broad. On the other hand, the term must be understood and interpreted within the context of the HOS requirements, which are intended to prevent CMV-involved crashes caused by driver fatigue due to working long hours. The exemption in § 395.1(k)(1), which allows additional driving and working hours for drivers transporting agricultural commodities, is intended to facilitate timely

⁸ The Agricultural Trade Act of 1978 defines “agricultural commodity” as “any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in [the Act of 1988]) *and any product thereof*” (emphasis added). Congress, when adopting the definition of “agricultural commodity” in 2005 (119 Stat. 1743), to be used in applying the HOS exemption, inserted the phrase “non-processed” before “food,” and did not include the phrase “and any product thereof.”

delivery of agricultural commodities during State-defined harvest and planting seasons. Because the statute includes the term “any agricultural commodity,” in the definition of “agricultural commodity,” the most direct reading of the statute is that the definition also covers agricultural products *not* otherwise considered to be “non-processed food, feed, fiber, or livestock.”⁹ The IFR therefore clarifies the meaning of “any agricultural commodity” when determining whether a driver is eligible for the HOS exemption in § 395.1(k)(1).

In the ANPRM, FMCSA asked how specific commodities, such as sod or other types of horticulture, fit within the definition of the term “any agricultural commodity.” Most commenters addressing this question urged FMCSA to clarify that perishable horticultural products are included in the definition of “any agricultural commodity.” A number of commenters provided documentation that horticultural products not used for food or feed, and not sources of fiber, are nevertheless defined or considered as agricultural commodities in various statutes and programs administered by USDA, as well as by other Federal agencies (e.g., the Internal Revenue Service, the Environmental Protection Agency). The New Jersey Department of Agriculture stated, for example, that “sod is defined as an agricultural product by State Departments of Agriculture across the country, including the New Jersey Department of Agriculture.”

In addition, some commenters provided information, as requested in the ANPRM, addressing the perishability, or degradation in quality, of certain horticultural products during transport by CMV. They explained the impact of post-harvest transportation on factors that determine plant health, such as temperature, exposure to light, and humidity

⁹ A well-established canon of construction favors an interpretation that avoids rendering any statutory phrase or clause as “surplusage.” See *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 636 (2012).

levels. Industry groups noted that plant health largely dictates the commercial value of these products. According to the University of Georgia's College of Agriculture & Environmental Science, Department of Horticulture (the University), although certain horticultural products, such as ornamental plants, are typically transported in a refrigerated environment, reducing the temperature in the cargo container does not prevent damage to plant tissue caused by the release of ethylene, it merely slows that process. The University concluded that "[l]ive plants must be transported as quickly as possible from the producer to the consumer to mitigate damage." The Agency also heard from industry groups documenting the importance of transporting and laying sod within 24 hours of harvest to ensure "quality establishment."

The IFR clarifies that horticultural products subject to perishability or significant degradation in product quality during transport by CMV fall within the meaning of "any agricultural commodity," as the term is used in the definition of "agricultural commodity" in § 395.2. For example, the Agency considers plants, including sod, flowers, ornamentals, seedlings, shrubs, live trees, and Christmas trees, within the scope of the definition. The definition does not include those horticultural products which are not sensitive to temperature and climate and do not risk perishability while in transit, such as timber harvested for lumber, or wood pulp or related products. FMCSA invites comment on whether this clarification, i.e., "horticultural products subject to perishability or significant degradation in product quality during transport by CMV," sufficiently delineates which products fall within the definition of "any agricultural commodity" for purposes of the exemption in § 395.1(k)(1).

Additionally, the Agency requests assistance in determining the number of CMV drivers transporting perishable horticultural commodities who currently use the exemption in § 395.1(k); the extent to which that number would be higher or lower as a result of the clarification; and the average and maximum times CMV drivers travel when transporting specific perishable horticultural commodities, as described above.

B. “Non-processed food”

The ANPRM requested comment on how the term “non-processed” as used in the definition of “agricultural commodity” in § 395.2, is currently understood and applied. All commenters who addressed this issue stated or implied that, in their understanding, “non-processed” modifies only the term “food” and does not modify “feed, fiber, or livestock.” The Agency agrees with this interpretation, and with commenters who noted that, as a matter of grammatical construction, the placement of a comma after “non-processed food” separates it from the other items listed.

The ANPRM also asked commenters to address the distinction between “processed” and “non-processed,” and requested specific examples of “non-processed” products. In response, some commenters noted confusion and inconsistency among State enforcement personnel concerning the extent to which certain types of “processing” render a food commodity to be considered “processed” instead of “non-processed.” For example, in some areas fresh fruits or vegetables are considered “processed” if they are bagged or cut (e.g., cut and bagged lettuce) while in other locations, commodities subject to this type of minimal processing are deemed “non-processed” for the purpose of applying the HOS exemption.

In the ANPRM, FMCSA noted that USDA statutes and regulations define “agricultural commodity” in a variety of ways, depending on the underlying statutory framework. We asked whether transporters subject to both the HOS and USDA regulations, such as PACA,¹⁰ are impacted by not having consistent definitions of the term “agricultural commodity.” FMCSA also asked whether specific food commodities, such as fresh fruits and vegetables (in non-frozen form) individually identified in the PACA regulations, should be added to the definition of “agricultural commodity” in § 395.2. Most commenters who responded to these questions believed FMCSA should identify the categories of non-processed food included in the definition, rather than adopt, or incorporate by reference, a specific list of fruits and vegetables and other non-processed food commodities.

When considering this issue, FMCSA relied on the relevant statutory limitations: to use the HOS exemption in § 395.1(k)(1), the CMV driver must be transporting *non-processed* food products; and the transportation must occur within planting and harvesting seasons, as defined by each State. Harvest denotes the time of year that a crop is ripe, ready, and needs to be gathered or reaped, to avoid losses in quality and commercial value; the exemption is thus intended to accommodate the transportation of “harvested” food commodities. In keeping with the statutory parameters noted above, the Agency clarifies that “non-processed food” means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life. For

¹⁰ The Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. §§ 499a-499t, was enacted in 1930 to regulate the marketing of fresh and frozen fruits and vegetables by establishing and enforcing a code of fair business practices and by helping companies resolve business disputes. The primary purposes of the PACA are to prevent unfair and fraudulent conduct in the marketing and selling of these commodities in interstate and foreign commerce. The PACA regulations, set forth in 7 CFR part 46, are administered by the Agricultural Marketing Service, an agency within USDA.

definitional purposes, it is difficult to determine precisely the point at which food commodities are no longer “non-processed” within the meaning of the exemption; indeed, that point may vary depending on the nature of the food product. Therefore, some degree of enforcement discretion must be expected in determining whether the exemption applies to CMV drivers transporting these products.

The guiding principle here is whether the product has been processed to the point that it loses its original post-harvest identity and becomes a different item. Accordingly, FMCSA clarifies that “non-processed food,” as the term is used in § 395.2, includes fruits, vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, shucking, chopping, bagging, or packaging to facilitate transport by CMV. Products subject to post-harvest changes, such as jarring, canning, drying, or freezing, are not “non-processed food.” This clarification is consistent with FMCSA’s regulatory guidance addressing application of the 150 air-mile exemption in § 395.1(k)(1), in which the Agency noted that a “source” of the commodity may be an intermediate storage or handling location away from the farm or field, “*provided the commodity retains its original form and is not significantly changed by any processing or packing.*”¹¹

The Agency’s interpretation of the term “non-processed food” is also generally consistent with the definition of fresh fruits and vegetables in the PACA regulations, except that frozen fruits and vegetables do not fall within the definition of “non-processed food”¹² described above. Accordingly, drivers transporting non-frozen fresh

¹¹ 83 FR 26374, 26376 (June 7, 2018) (emphasis added).

¹² The PACA regulations define fresh fruits and vegetables, in part, as “all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character.” (7 CFR 46.2(u).) As FMCSA noted in the ANPRM, “because frozen fruits and vegetables are processed and

fruits and vegetables subject to the PACA regulations in 7 CFR part 46 are eligible for the exemption in § 395.1(k)(1), as long as the fruits and vegetables are “non-processed food” within the meaning of § 395.2.

The Agency requests comment on whether the clarification will result in more consistent application of the HOS exemption for drivers transporting “non-processed food.” If not, how could the meaning of the term be further clarified? FMCSA also seeks qualitative and quantitative data to determine whether the clarification will affect the number of CMV drivers transporting “non-processed food” who would use the HOS exemption in § 395.1(k)(1), and the average and maximum travel times when transporting “non-processed food,” as described above.

C. “Livestock”

As previously discussed, the definition of “livestock” in § 395.2 restates, without substantive change the current definition of the term in Sec. 602 of the 1988 Act, as amended by the 2018 farm bill: “Livestock means cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), llamas, alpacas, live fish, crawfish, and other animals that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the Emergency Livestock Feed Assistance Act of 1988, as amended.”

In the ANPRM, FMCSA noted that the definition of the term “livestock,” as used in the statutory definition of “agricultural commodity” and restated in § 395.2, includes, but is not limited to, the animals identified in the 1988 Act. In other words, when

packaged, Congress did not intend to include frozen commodities within the scope of the definition [of ‘agricultural commodity’] as codified in § 395.2” (84 FR 36559, 36562, July 29, 2019).

Congress adopted the statutory definition of “agricultural commodity” in 2005, it set a definitional floor for the term “livestock” by including the animals identified in the 1988 Act but did not limit the term only to those animals. Accordingly, FMCSA asked whether other animals, including aquatic animals, should be included within the definition of “livestock” in § 395.2. Most commenters who responded to this question supported the inclusion of aquatic animals, and rather than recommending additional species, suggested that all living animals be included in the definition of “livestock.”

The Agency notes the HOS exemptions in § 395.1(k)(1) and the 30-minute rest break exemption in § 395.1(v) recognize that live animals being transported in a CMV are a unique form of cargo, subject to distinct health and safety risks while in transit. Considering the expansive list of animals included in the definition of “livestock” in the 1988 Act, and the inclusive use of the term “livestock” in the statutory definition of “agricultural commodity,” codified in § 395.2, the most direct reading of the statute is that the exemptions be broadly applied when livestock are being transported. The Agency therefore interprets the term to include all living animals cultivated, grown, or raised for commercial purposes, including aquatic animals, in addition to those animals already identified in the 1988 Act, and amends the definition “livestock” in § 395.2 accordingly. Because the current list of animals in the 1988 Act already includes most animals likely to be transported by CMV, FMCSA anticipates that the revised definition will only minimally increase the number of CMV drivers using the exemptions, if at all. The Agency requests comment on this issue, particularly regarding the number of drivers transporting aquatic animals, including live shellfish, and as previously noted “crawfish,” and their average and maximum travel times.

VI. QUESTIONS

When submitting comments, the Agency requests that commenters number their responses to correspond with the questions as stated below.

1. Will the clarifications of the terms “any agricultural commodity,” “non-processed food,” and “livestock” result in more consistent application of the HOS exemptions in §§ 395.1(k)(1) and 395.1(v)? Why or why not? Please address each term separately when answering this question.
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? Please provide data to support your answer.
3. Will any of the clarifications result in higher or lower costs for the transportation of agricultural commodities and livestock? Please provide data to support your answer.
4. Will any of the clarifications result in other benefits to stakeholders, including consumers and State enforcement personnel? Please explain your answer by providing specific examples.

VII. INTERNATIONAL IMPACTS

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations in which they operate. Canada- and Mexico-

domiciled drivers must ensure compliance with U.S. HOS requirements while they are driving in the U.S.

A driver domiciled in the United States may comply with the Canadian hours of service regulations while driving in Canada. Upon re-entering the United States, however, the driver is subject to all the requirements of Part 395, including the 11- and 14-hour rules, and the 60-or 70-hour rules applicable to the previous 7 or 8 consecutive days. In other words, a driver who takes full advantage of Canadian requirements may have to stop driving for a time immediately after returning to the U.S. to restore compliance with Part 395. Despite its possible effect on decisions a U.S. driver must make while in Canada, this interpretation does not involve an exercise of extraterritorial jurisdiction (62 FR 16379, 16424 (Apr. 4, 1997)).

Currently, under Federal statute and regulation, CMV drivers transporting agricultural commodities from the source of the commodities to a location within 150 air miles of the source, during harvest and planting seasons as defined by each State, are exempt from the HOS requirements (49 CFR 395.1(k)(1)). Furthermore, § 395.1(v) exempts drivers transporting livestock in interstate commerce from the required 30-minute rest break requirement while the livestock are on the CMV.

VIII. SECTION-BY-SECTION ANALYSIS

FMCSA amends 49 CFR part 395 by revising the definition of “agricultural commodity” in § 395.2 by: (1) deleting the parenthetical phrase after the word “livestock” and adding in its place the following: “as defined in this section.”; and (2) adding to the end of the definition of “agricultural commodity” the following: “As used in this definition, the term ‘any agricultural commodity’ means horticultural

products at risk of perishing, or degrading in quality, during transport by commercial motor vehicle, including plants, sod, flowers, shrubs, ornamentals, seedlings, live trees, and Christmas trees.”

FMCSA amends the definition of “livestock” in § 395.2 by deleting all text that appears after “livestock means” and adding in its place the following: “livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471], as amended, insects, and all other living animals cultivated, grown, or raised for commercial purposes, including aquatic animals.”

FMCSA adds the term “non-processed food” to § 395.2, to be defined as follows: “*Non-processed food* means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life, such as canning, jarring, freezing, or drying. The term ‘non-processed food’ includes fresh fruits and vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, chopping, shucking, bagging, or packaging to facilitate transport by commercial motor vehicle.”

IX. REGULATORY ANALYSES

A. Executive Order (E.O). 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

OIRA has determined this rulemaking is a significant regulatory action under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review. This IFR is also significant within the meaning of DOT regulations

(49 CFR 5.13(a)) because of the substantial Congressional and public interest concerning the transportation of agricultural commodities, including livestock.

Agriculture, food, and related industries contributed \$1.053 trillion to U.S. gross domestic product (GDP) in 2017, a 5.4 percent share. Output from farms contributed \$132.8 billion of this sum—about 1 percent of GDP. The overall contribution of the agriculture sector to GDP is larger than this because sectors related to agriculture—forestry, fishing, and related activities; food, beverages, textiles, and leather products; food and beverage stores; and food service—rely on agricultural inputs in order to contribute added value to the economy.¹³ Truck transportation is an integral component of the supply chain for agricultural commodities and livestock, constituting the sole mode of transportation for 66.2 percent (715.9 million tons) of the 1,080.7 million tons of agricultural commodities and livestock transported annually as of 2012.¹⁴

This IFR clarifies the definition of “agricultural commodity” to ensure carriers are aware that drivers transporting perishable horticultural commodities, non-processed food, or livestock, including aquatic animals, are eligible for the HOS exemptions in §§ 395.1(k)(1) and 395.1(v). The exemption in § 395.1(k)(1), which allows additional driving and working hours for drivers transporting agricultural commodities, is intended to facilitate timely delivery of such commodities during State-defined harvest and planting seasons. Section 395.1(v), which exempts drivers transporting livestock in

¹³ USDA Economic Research Service. “Ag and Food Statistics: Charting the Essentials, Ag and Food Sectors and the Economy.” <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/#:~:text=Agriculture%2C%20food%2C%20and%20related%20industries,about%201%20percent%20of%20GDP.> (accessed June 12, 2020).

¹⁴ Based on data from the 2012 Commodity Flow Survey (CFS), which is the most recent publication of the CFS for which data specific to mode of transportation by commodity are available. Available at: <https://www.census.gov/library/publications/2015/econ/ec12tcf-us.html> (accessed July 14, 2020).

interstate commerce from the 30-minute rest break requirement, is intended to protect the health and welfare of live animals.

This rule will help ensure that all affected entities understand how FMCSA interprets the terms “agricultural commodity” and “livestock,” and how the Agency applies the exemptions when these commodities are transported by CMV. The clarifications could provide additional flexibility to transporters of certain commodities.

Currently, during harvesting and planting seasons as determined by each State, drivers transporting agricultural commodities are exempt from the HOS requirements from the source of the commodities to a location within a 150 air-mile radius from the source. As noted above, the current definition in § 395.2 states that an “Agricultural commodity means any agricultural commodity, non-processed food, feed, fiber, or livestock....” Commenters to the ANPRM confirmed that broad terms such as “any agricultural commodity” are not consistently understood or applied. Differences in interpretation between regulated entities and enforcement officials may be hindering consistent enforcement practices, thereby impacting business-related decisions for the hauling of agricultural commodities and livestock. The IFR will create a common understanding between FMCSA, motor carriers, drivers, and enforcement officials.

In theory, there are two groups of CMV drivers whose behavior will be affected by this IFR: (1) those to whom the definitions of “agricultural commodity” and “livestock” apply, but who currently do not use an exemption due to the existing definitional ambiguity; and (2) those who currently use an exemption in §§ 395.1(k)(1) or 395.1(v), and may no longer do so as a result of the definitional clarifications. There is uncertainty surrounding the number of drivers who are, or are not, currently utilizing an

exemption due to the current definitional ambiguity, as FMCSA does not collect quantitative data on the use of these exemptions. The Agency does not, therefore, estimate quantitative impacts associated with this IFR, opting instead for a qualitative analysis. FMCSA relies on the Motor Carrier Management Information System (MCMIS) database to obtain information on commercial motor carriers subject to the FMCSRs. While MCMIS does contain data on certain cargo classifications, it does not track individual cargo carried or hours traveled, nor whether cargo is transported during State-defined planting and harvesting seasons. Consequently, the Agency knows neither the degree to which CMV drivers are currently using the exemptions, nor the magnitude of the population that will be affected by this IFR. However, as noted above, the IFR clarifies that transporters of non-perishable horticultural commodities are not eligible for the exemption in § 395.1(k)(1). FMCSA is aware that at least one State includes “wood chips” within its definition of agricultural commodity, and several States categorize timber as an agricultural product. If these States currently permit transporters of those products to use the HOS exemption, they will no longer be permitted to do so under the IFR.

The Agency assumes that drivers will elect to utilize an agricultural commodity exemption only if the cost impact to them is less than or equal to zero. Moreover, these changes will not require new forms of training for enforcement personnel, as the HOS exemptions for agricultural commodities and livestock currently exist. The Agency expects that the definitional clarifications set forth in this IFR will be communicated to FMCSA personnel and the Agency’s State-based enforcement partners through existing means, such as policy updates and ongoing training.

Though requested in the ANPRM, FMCSA did not receive relevant data related to average and maximum transportation times of specific commodities, nor did the Agency receive relevant information addressing financial liability resulting from HOS compliance. In Section VI. Questions, the Agency requests data on the number of drivers impacted by the clarifications.

The rule could conceivably impact the number of drivers utilizing the exemptions; however, as noted above, the Agency does not collect data regarding the use of these exemptions, nor can we predict whether the number of drivers using the exemption would increase or decrease as a result of the clarifications. FMCSA requests information on this issue in Section VI.

Congress, when enacting both exemptions, implicitly recognized the trade-off between the purpose of the HOS regulations—CMV safety—and other economic costs of transporting agricultural commodities and livestock by truck. On the one hand, the HOS requirements are intended to improve safety by preventing driver fatigue. On the other hand, there are certain circumstances, such as hauling live animals or transporting agricultural commodities during planting and harvesting seasons, where those requirements may pose significant additional costs. Congress determined that the exemptions, set forth in §§ 395.1(k)(1) and 395.1(v), are justified in these situations.

The rule may provide consumers with access to agricultural commodities of higher quality. For example, as discussed above in Section V. Discussion of Interim Final Rule, some commenters described perishability, or degradation in quality, of certain horticultural products during transport by CMV. The effects of post-harvest transportation such as exposure to changes in temperature, light, and humidity levels can

impact plant health. Plant health significantly affects the commercial value of these products, and reduced time in transit from the producer to the consumer helps to mitigate damage. The Agency sought input from the USDA regarding these potential benefits. USDA does not have a model with which to quantify these impacts, but, in informal discussions with FMCSA, USDA confirmed that incrementally shorter transit times generally improve the freshness, quality, nutrition, and safety of food, reduce weight loss for livestock, and enhance animal welfare. If producers choose to adjust their behavior based on reduced travel times resulting from this IFR, there may be benefits to consumers from having access to higher quality products on the market; there may also be disbenefits from additional usage of the exemption due to possible longer drive times or limited breaks.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This IFR is neither a regulatory nor deregulatory action under E.O. 13771.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), OIRA designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).¹⁵

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA) of 1980, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business

¹⁵ A “major rule” means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

Jobs Act of 2010 (Pub. L. 111-240, 124 Stat. 2504 September 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000. In addition, the DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in Section III. Legal Basis, this IFR is an interpretative rule not subject to prior notice and comment under section 553(b)(A) of the APA.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this IFR so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the IFR will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to

small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$168 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2019 levels) or more in any one year. Though this IFR will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This IFR does not call for any new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Part 395 of the Federal Motor Carrier Safety Regulations, “Hours of Service of Drivers,” requires drivers and motor carriers to collect, transmit and maintain information about driver daily activities. The part 395 ICR is assigned OMB Control Number 2126-0001. On July 31, 2019, OMB approved the Agency’s estimate of 99.5 million burden hours as the annual IC burden of part 395. As explained earlier, there are two groups of CMV drivers whose behavior may change as a result of this IFR: (1) those to whom the definitions of “agricultural commodity” and “livestock” apply, but who currently do not use an exemption due to the existing definitional ambiguity; and (2) those who currently use an exemption in §§ 395.1(k)(1) or

395.1(v), and may no longer do so as a result of the definitional clarifications. Those in the former group could see a reduction in their paperwork burden under this IFR, and those in the latter group could see an increase in their paperwork burden. As FMCSA does not have data on the number of drivers using the exemptions, or the extent to which their behavior will change as a result of this IFR, the Agency is not estimating any changes to the paperwork burden at this time. FMCSA will be in a better position to estimate the use of these exemptions when the currently approved collection is renewed in 2022.

H. E. O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this IFR does not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation; the HOS requirements do not have preemptive effect. As set forth in 49 U.S.C. 31102, States and other political jurisdictions are eligible to participate in the Motor Carrier Safety Assistance Program, by, among other things, adopting and enforcing State regulations, that are compatible with Federal regulations on CMV safety, including the HOS requirements in part 395, and the safe transportation of hazardous materials. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,¹⁶ requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002¹⁷ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment to evaluate the risks and effects the IFR might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal

¹⁶ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

¹⁷ Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. Environment

FMCSA analyzed this IFR consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004)), Appendix 2, paragraph (6)(b). The Categorical Exclusion (CE) in paragraph (6)(b) relates to regulations which are editorial or procedural, such as those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations. The requirements in this rule are covered by this CE, there are no extraordinary circumstances present, and this action does not have the potential to affect the quality of the environment significantly. The CE determination is available from the person listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

FMCSA proposes to amend 49 CFR chapter 3, part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

1. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as added and transferred by sec.

4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amending § 395.2 by:

- a. Revising the definitions of the terms “Agricultural commodity” and “Livestock” and
- b. Adding, in alphabetical order, a definition of the term “Non-processed food.”

The addition and revisions read as follows:

§ 395.2 Definitions.

* * * * *

Agricultural commodity means:

(1) Any agricultural commodity, non-processed food, feed, fiber, or livestock as defined in this section.

(2) As used in this definition, the term “any agricultural commodity” means horticultural products at risk of perishing, or degrading in quality, during transport by commercial motor vehicle, including plants, sod, flowers, shrubs, ornamentals, seedlings, live trees, and Christmas trees.

* * * * *

Livestock means livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471], as amended, insects, and all other living animals cultivated, grown, or raised for commercial purposes, including aquatic animals.

* * * * *

Non-processed food means food commodities in a raw or natural state and not subjected to significant post-harvest changes to enhance shelf life, such as canning,

jarring, freezing, or drying. The term “non-processed food” includes fresh fruits and vegetables, and cereal and oilseed crops which have been minimally processed by cleaning, cooling, trimming, cutting, chopping, shucking, bagging, or packaging to facilitate transport by commercial motor vehicle.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on:

Dated:

Handwritten signature of James W. Deck in blue ink.

James W. Deck,
Deputy Administrator.



December 18, 2020

The Honorable Wiley Deck
Acting 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 Acting Administrator Deck,

I write on behalf of the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA) to express sincere appreciation for the opportunity to comment on the Interim Final Rule (IFR) focused on the current definition of an agricultural commodity as it relates to the hours of service (HOS) rules.

First of all, we want to thank you and the staff at FMCSA for issuing the IFR on the agriculture commodity definition. We also thank you all for taking in the industry feedback and providing a near final product. Upon release of the IFR we believe clarity is needed in three specific areas:

- 1) **Feed Ingredients** - Animal feed continues to be included under the definition, but animal feed ingredients were not specifically mentioned. As is the case with farm supplies (fertilizer, seed, etc.) role in the growing of crops, the importance of feed ingredients in the manufacturing of rations has a similarly important relationship regarding its supply chain logistics. In order to ensure animals are fed, it is important that the feed ingredients are also readily available, availability that is supported by the exemption from the HOS rules. Presently, our understanding is that ag haulers for purposes of the agricultural exemption assume feed ingredients are considered feed, and since feed can be processed or non-processed, it is an outlier within the agricultural exemption. It is within reason to assume the interim rule's definition of non-processed commodities does not apply to feed. We would like clarification that feed includes feed ingredients and if it is best clarified in the rule or in supporting guidance. For the clarification, we recommend clarifying that animal feed means animal food and animal food ingredients to be consistent with other agricultural regulation terminology,

specifically the Food and Drug Administration's rules for animal food.

- 2) Non-Processed Animal Byproducts – I know we have historically considered milk, eggs, etc. as products which fall under the commodity definition, but it is not explicitly clear. Considering the goal of this language is to clarify the definition, is it necessary to make it clearer that the products listed above? Perhaps we can include language that only allows byproducts from animals if the animal continues to live after providing this commodity. I know there is also concern that rendered product may not be included, although it is an important byproduct in animal feed, including pet food.
- 3) Oceanic animals - Under the aquatic animals section there has been some concern that due to the language, certain commodities such as lobster would not be included. FMCSA's mention of all live animals leads me to believe that products that are "caught" would also be covered. Hence, we will submit that "caught" should be included in the harvest, cultivated, grown section of the livestock change.

On behalf of the AFTC, I would like to thank FMCSA for providing additional opportunity for comment on the agricultural commodity definition. 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 additional comments are reasonable and accurate. Again, thank you for taking into account our comments and we look forward to working with you as this process is finalized.

Best Regards,

Jon Samson
Executive Director
Agricultural and Food Transporters Conference of ATA



ITTS Freight of the Southeast 2021 Conference

Jon Samson
Executive Director

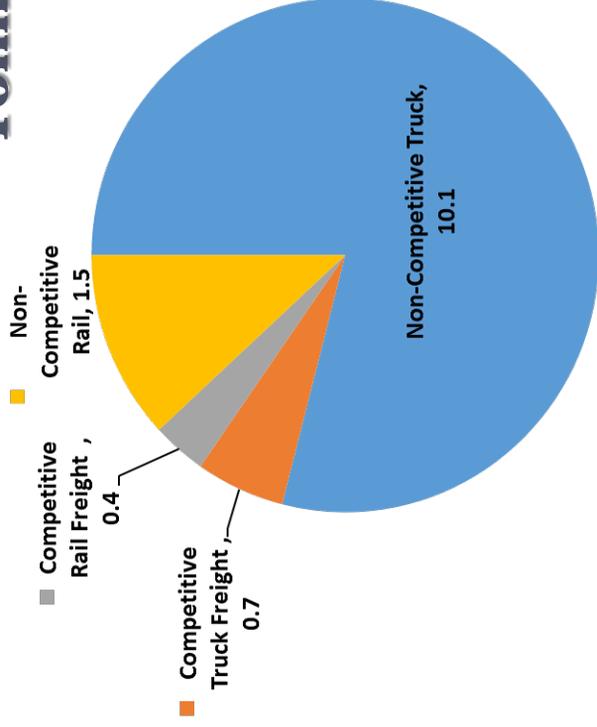
Agricultural and Food Transporters Conference
of the American Trucking Associations (ATA)

Overview

2

- USDA study highlighted industry issues
- Distribution of tonnage, Increase in supply & Driver shortage
- COVID response shed additional light
- What's being done?
 - Working to minimize drive shortage
 - Communication along the supply chain
- Highway bill – What to expect
 - Biggest hurdle - FUNDING

2017 Competitive Freight Among Truck and Rail Tonnage

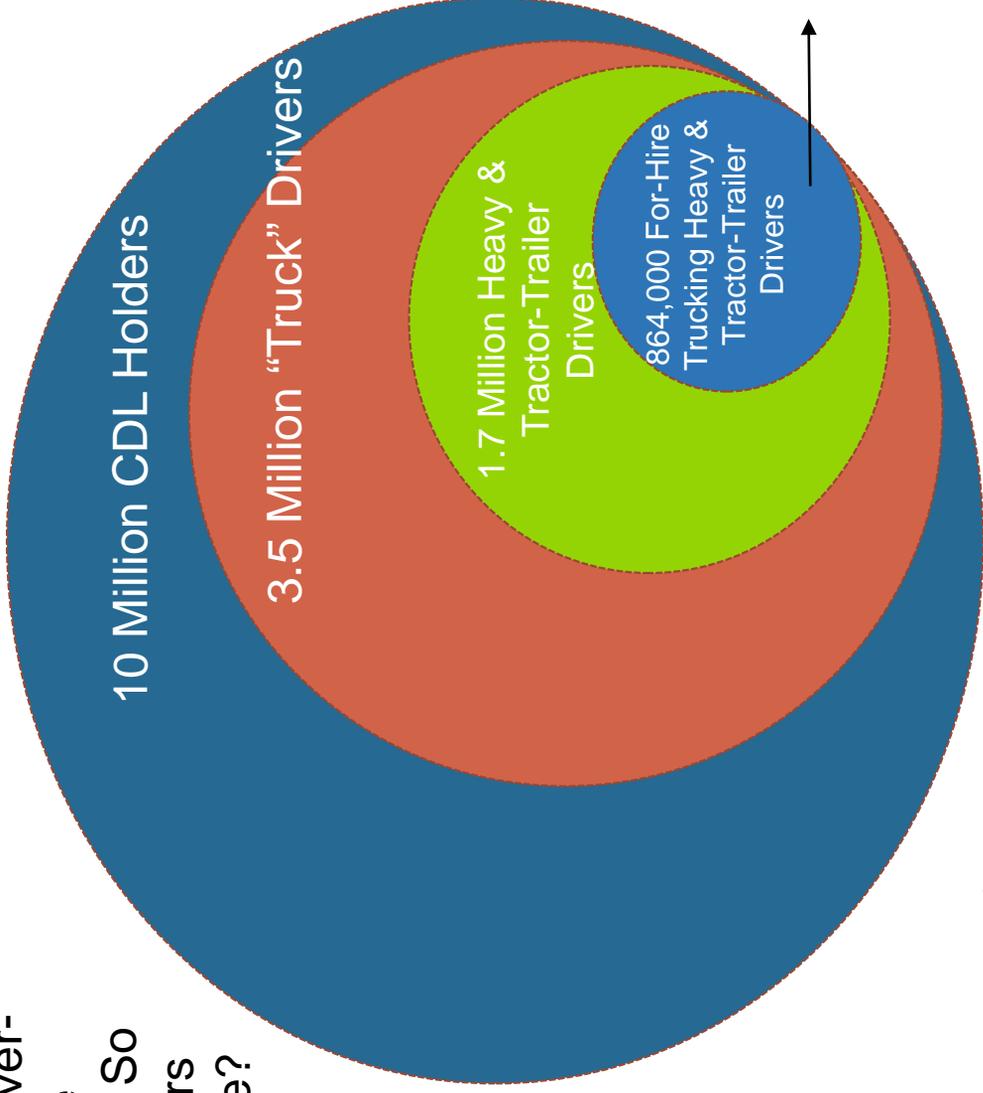


Billions of Tons

Note: **Maximum** competitive freight is 1.1 billion tons in a total market (truck and rail only) of 12.7 billion tons, or less than 10%. Competitive freight includes all freight traveling at least 500 miles, but excludes coal tonnage. **There is a significant amount of time definite freight in this category that really isn't competitive, but it is included.** So in reality, the competitive market is even smaller than suggested here.

Source: ATA Analysis based on Commodity Flow Survey (US Census Bureau) data and U.S. Freight Transportation Forecast to 2029

The driver shortage is primarily an over-the-road for-hire truckload issue. So how many drivers are in that space?

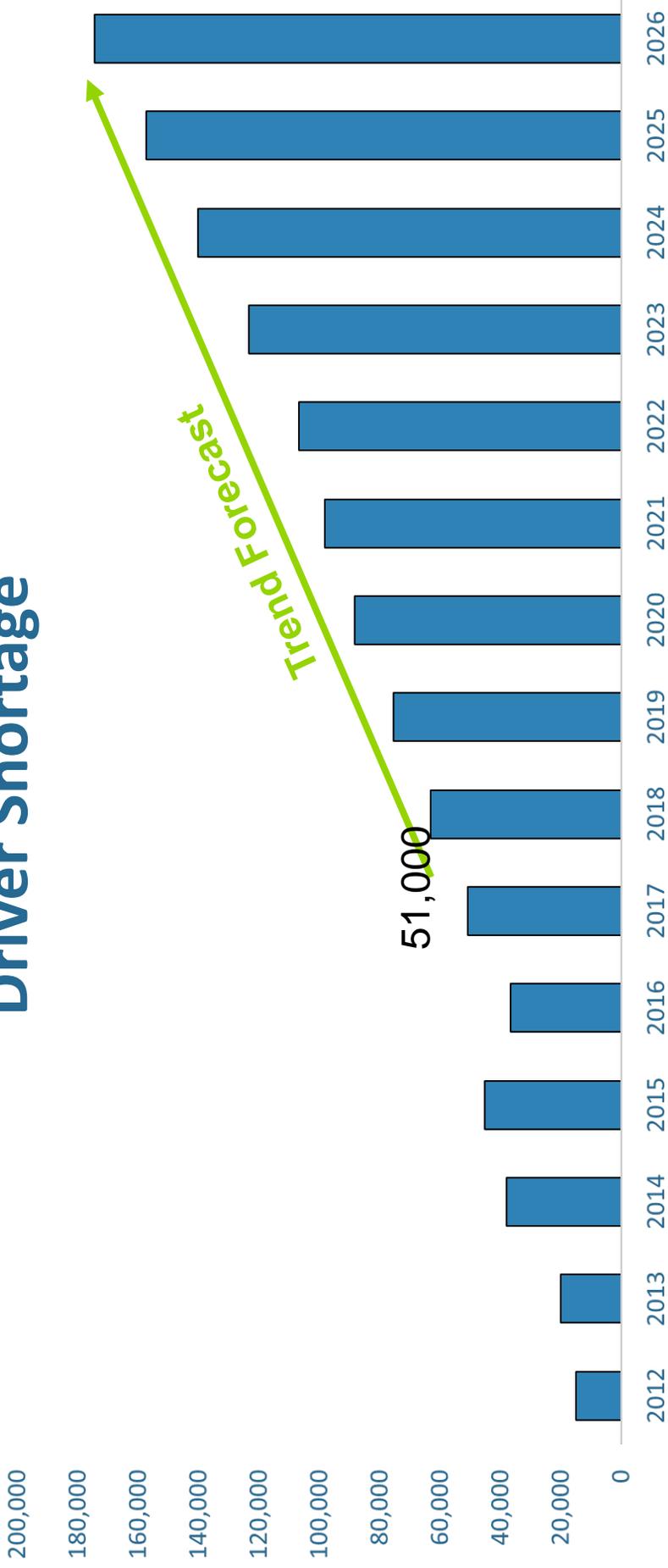


Based on government data, ATA estimates that there are roughly 500,000 OTR for-hire TL drivers.

Source: U.S. Department of Labor



Driver Shortage



Source: ATA's Truck Driver Shortage Analysis 2017

Driver Shortage



- **DRIVE Safe Act**
- **Military/women/urban drivers**
- **Incentives/training**

COVID Impact

7

- Minimize food waste (milk being dumped, chickens slaughtered and thrown away, beans being tilled back into the soil)
- Targeted problems – communication up and down the supply chain, lack of flexibility during a crisis situation, insufficient technology to reroute and find efficient direction

Highway Bill

8

- 2021 Highway bill
 - Funding, funding, funding
 - ✦ Gas tax, VMT, registration? What's politically feasible?
 - ✦ Proposals (ATA 20c/Chamber 25c), both indexed
 - Funding crucial in state and federal funding for maintenance and new construction

Communication/Cooperation

9

- Importance of working within supply chain
- Federal to state level
- Stakeholders working with federal and state officials

Contact Info

10

Jon Samson
American Trucking Associations
Agricultural and Food Transporters Conference
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jsamson@trucking.org

Food Supply Chain During a Crisis

Jon Samson

ATA's Agricultural & Food Transporters Conference

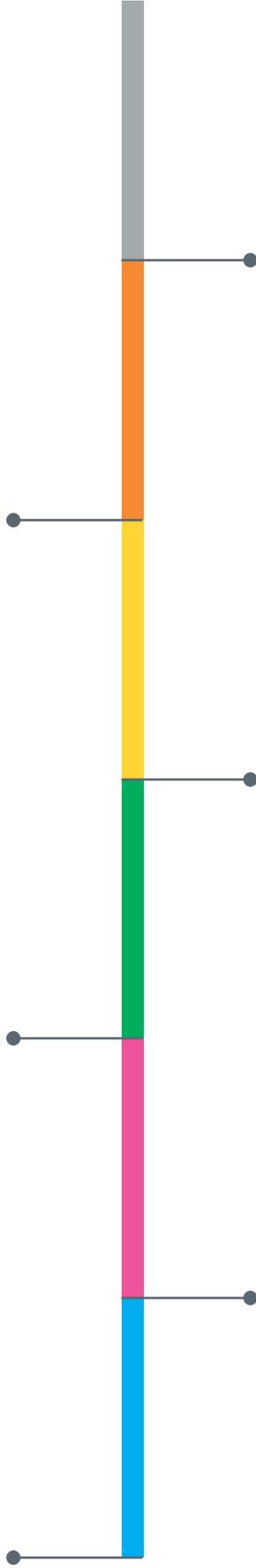
Timeline on response



*Research on initial
disruption to the
supply chain*

*Short-term goal —
minimize immediate
food waste*

*Spin off
coalitions*



*Coalition organized
to minimize food
waste*

*Long-term goal —
identify loopholes
within the supply chain*

Silver lining

Coalition

- Take initial pulse of several sectors along the supply chain.
- Establish a coalition of over 100 groups representing all factions of the supply chain to include government, trade organizations, charitable groups and industry.
- Share information among the food supply chain to find problems and then work toward fixing them.

Short-term goal

Minimize food waste
(milk being dumped,
chickens slaughtered
and thrown away,
beans being tilled back
into the soil)

Targeted problems —
communication up and
down the supply chain,
inability to repack
perishable products for
small market
consumption, lack of
flexibility during a
crisis situation

Worked within the
coalition to address the
aforementioned
problems

Long-term goal

Establish more flexibility along the supply chain

Increase focus on technology to assist with communication

Work with industry and academia to research supply chain efficiencies

Work with charitable and religious organizations to improve access to those in need

Food supply chain coalition

Speed, scale, simplification

VISION

Speed and scale food from source to food banks; take advantage of idle capacity; create jobs for SCM students



PRIORITIES

- Get food to those in need
- Provide regional/national supply chain process
- Match food sources and food banks
- Food quality and safety
- Understand pain points; simplify the network
- Utilize tools to speed connections FtF
- Packaging/repackaging to supply good bank

KEY DRIVERS

- Demand up at food banks
- Commercial food supply glut
- Food bank donations down
- Ranchers/farmers not paid
- Food waste/hungry people

CHALLENGES

- Connecting source to food banks with individual servings
- Many disconnected efforts
- Packaging/repackaging
- Food bank supply highly localized

SUCCESS METRICS

- Number of successful supplier/food bank connections
- Number of underserved people reached
- Sustainable supply/demand matching solution developed

Road map initiative

PROBLEM STATEMENT

National security is not possible without food security, and the U.S. Food and Agriculture industry supply chain has been significantly impacted by the COVID-19 pandemic — resulting in massive waste, substantial producer and small business hardships, and plummeting food access.

CALL TO ACTION

Establish a U.S. food supply chain (farm-to-family) roadmap document that will:

1. Identify and prioritize short-term tactical solutions, both technical and logistical, across the U.S. food supply chain ecosystem (three to nine months).
2. Identify the more strategic needs and gaps that require technology innovations to build a more resilient U.S. FASC industry while reducing overall food waste (nine months to three years).
3. Identify other critical food and agriculture industry weak points that need to be addressed next to ensure that the U.S. has a secure and sustainable food and agriculture industry.



Potential silver lining

PRE

- Consumer ignorance for both agriculture and food industries
 - Significant lack of understanding of where the food is produced and how it arrives at a store or restaurant
 - Government and industry push to limit food waste

CURRENT

- Bare shelves frightened consumers and the questions began as to why?
 - Consumers began to understand that food came from someplace and didn't magically appear
- Food waste
 - News stories about chickens, pigs, milk and produce
 - Ignorance arises again along the supply chain with pleas to stop the waste and feed the hungry
 - Significant work being done to minimize food waste

POST

- Continued education for consumers, opportunities to better the food supply chain, specifically with research and academia

Independence changes everything.



UNCOMMONLY INDEPENDENT

February 24, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden,

As is being widely reported, one of the great commercial challenges of the on-going pandemic has been actions of ocean container carriers, including declining to carry our export cargo, severely injuring US agriculture, food and forestry product exporters, preventing us from delivering affordably and dependably to international markets. This is a crisis: unless the Shipping Act and other tools available to our government are applied promptly, agriculture industries will continue to suffer great financial losses; these carrier practices will render US agriculture noncompetitive for years to come.

According to their own public reports, the ocean carriers are enjoying their most profitable period in decades by controlling capacity and charging unprecedented freight rates, imposing draconian fees on our exporters and importers, and frequently refusing to carry U.S. agricultural exports.

These refusals and charges by the ocean carriers dramatically increase costs to our exporters, making foreign sales inefficient and uneconomical, rendering farmers and processors (for the first time), unreliable suppliers to the global supply chain. The international ocean container carriers which carry over 99% of our foreign commerce, are headquartered overseas - perhaps unaware of the injury their actions are causing to the US economy, as they profit from the pandemic.

The situation is so egregious that the Federal Maritime Commission (FMC) last year issued a Rule setting forth guidelines as to what would be reasonable carrier practices – however, none have been implemented by the carriers, deepening the crisis. While the FMC is undertaking further efforts to gain compliance, the damage being done to our agriculture and forest products industries is severe, increasing, and with lost foreign markets, may be irreversible.

The Shipping Act provides the FMC with the authority to prohibit unreasonable, unjust practices, and “to promote the growth and development of US exports through competitive and efficient ocean transportation...”. Given the urgency of this situation in commerce, we ask that these tools and any others available to our government be immediately applied to stem the current ocean carrier practices that are so damaging our agriculture exports.

Sincerely,

1. Agriculture Transportation Coalition
2. African-American Farmers of California
3. Agricultural & Food Transporters Conference of ATA (American Trucking Association)
4. Almond Alliance of California
5. American Farm Bureau Federation
6. American Feed Industry Association
7. American Forest & Paper Association

8. American Potato Trade Alliance
9. American Pulse Association
10. American Seed Trade Association
11. California Cotton Ginners and Growers Association
12. California Farm Bureau Federation
13. California Fresh Fruit Association
14. California Prune Board
15. California Rice Commission
16. California Trucking Association
17. California Walnut Commission
18. Cascade Shippers Association
19. Colorado Corn Growers Association
20. Consumer Brands Association
21. Corn Refiners Association
22. DairyAmerica Inc.
23. Dairy Farmers of America
24. Darigold
25. Harbor Trucking Association
26. Hardwood Federation
27. Idaho Potato Commission
28. Intermodal Motor Carriers Conference of ATA
29. International Association of Refrigerated Warehouses
30. International Dairy Foods Association
31. Leather and Hide Council of America
32. Meat Import Council of America
33. National Association of Egg Farmers
34. National Chicken Council
35. National Cotton Council
36. National Council of Farmer Cooperatives
37. National Fisheries Institute
38. National Hay Association
39. National Milk Producers Federation
40. National Onion Association
41. National Pork Producers Council
42. National Turkey Federation
43. Nisei Farmers League
44. North American Meat Institute
45. North American Renderers Association
46. North Dakota Grain Growers Association
47. Oregon Potato Commission
48. Oregon Seed Association
49. Pacific Coast Council of Customs Brokers & Freight Forwarders Associations
50. Pacific Northwest Asia Shippers Association
51. Pet Food Institute
52. Potato Growers of Michigan, Inc.
53. Potato Growers of Washington, Inc.
54. Produce Marketing Association
55. Specialty Crop Trade Council
56. Specialty Soya & Grains Alliance
57. U.S. Apple Association

58. U.S. Dairy Export Council
59. U.S. Meat Export Federation
60. U.S. Pea and Lentil Trade Association
61. United Fresh Produce Association
62. United States Cattlemen's Association
63. US Forage Export Council
64. USA Dry Pea and Lentil Council
65. USA Poultry & Egg Export Council
66. USA Rice
67. Washington Farm Bureau
68. Washington State Hay Growers Association
69. Washington State Potato Commission
70. Western Agricultural Processors Association
71. Western Growers Association
72. Wine and Spirits Shippers Association
73. Wisconsin Potato & Vegetable Growers Association

CC: Secretary, U.S. Department of Agriculture, Tom Vilsack
Secretary, U.S. Department of Transportation, Peter Buttigieg
Chair, Council of Economic Advisors, Cecilia Rouse
Chair, Federal Maritime Commission Michael Khouri

United States Senate
WASHINGTON, DC 20510-4105

March 2, 2021

The Honorable Michael Khouri
Chairman
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Dear Chairman Khouri,

We write to express concern with the reported practices of certain vessel-operating common carriers (VOCCs) related to the denial of carriage for agricultural commodities. If the reports are true, such practices would be unreasonable and would hurt millions of producers across the nation by preventing them from competing in overseas markets. We support the Federal Maritime Commission's current efforts to investigate these reports, and call on the Commission to quickly resolve this critical issue.

As you know, ports across the United States are experiencing unprecedented congestion and record container volumes, which alone pose significant challenges for agricultural exporters seeking to deliver their products affordably and dependably to foreign markets. In the midst of this challenge, reports that certain VOCCs are returning to their origin with empty containers rather than accepting U.S. agriculture and forestry exports not only greatly exacerbates the problem, but potentially violates the Shipping Act as an unjust and unreasonable practice.¹

We understand that the Commission in March 2020 initiated Fact Finding No. 29 – led by Commissioner Rebecca Dye – which was expanded in November 2020 to investigate reports of potentially unjust and unreasonable practices by certain VOCCs discussed above. We support this investigative effort, and – in the event that unjust or unreasonable practices by certain VOCCs are discovered – urge the Commission to take appropriate enforcement actions under the Shipping Act to put an end to such practices.

The need is urgent, especially with record container volumes at the nation's major ports. These volumes, and the resulting congestion, will only grow as the global economy recovers from the coronavirus pandemic. Producers rely on competitive access to foreign markets, and the reported actions by certain VOCCs to undermine this access pose significant ramifications for agricultural exporters and the industry at large.

We look forward to reviewing the findings of Fact Finding No. 29 and other related FMC proceedings, and to working with the Commission to address this growing problem.

¹ 46 USC § 41102(c)

The Honorable Michael Khouri

March 2, 2021

Page 2

Sincerely,



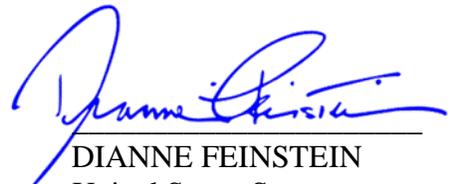
JOHN THUNE
United States Senator



AMY KLOBUCHAR
United States Senator



JAMES M. INHOFE
United States Senator



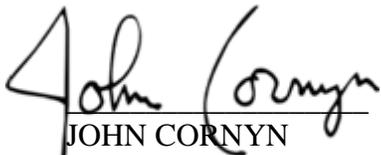
DIANNE FEINSTEIN
United States Senator



CHUCK GRASSLEY
United States Senator



PATTY MURRAY
United States Senator



JOHN CORNYN
United States Senator



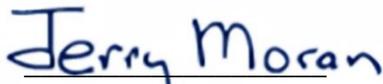
RON WYDEN
United States Senator



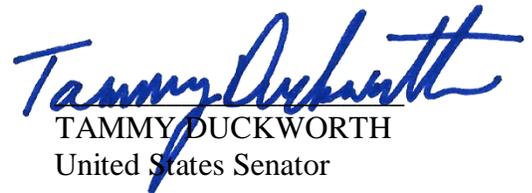
JOHN BARRASSO, M.D.
United States Senator



DEBBIE STABENOW
United States Senator



JERRY MORAN
United States Senator



TAMMY DUCKWORTH
United States Senator



JOHN HOEVEN
United States Senator



TINA SMITH
United States Senator



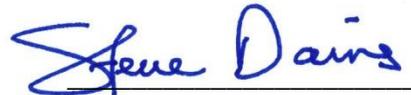
DEB FISCHER
United States Senator



RAPHAEL WARNOCK
United States Senator



TOM COTTON
United States Senator



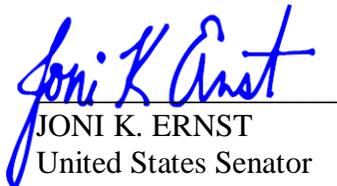
STEVE DAINES
United States Senator



M. MICHAEL ROUNDS
United States Senator



THOM TILLIS
United States Senator



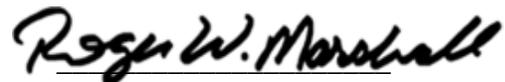
JONI K. ERNST
United States Senator



MARSHA BLACKBURN
United States Senator



CYNTHIA LUMMIS
United States Senator



ROGER MARSHALL, M.D.
United States Senator

cc: The Honorable Rebecca F. Dye, Commissioner, Federal Maritime Commission
The Honorable Daniel B. Maffei, Commissioner, Federal Maritime Commission
The Honorable Louis E. Sola, Commissioner, Federal Maritime Commission
The Honorable Carl W. Bentzel, Commissioner, Federal Maritime Commission



FOR IMMEDIATE RELEASE
Wednesday, March 17, 2021

MEDIA CONTACT
[Brianna Puccini](#) | (202) 224-6551
[Matthew Sussis](#) | (202) 224-6551

Senator Fischer Reintroduces HAULS Act Legislation Allows for Safe Transport of Ag and Livestock Products

WASHINGTON, D.C. – U.S. Senator Deb Fischer (R-Neb.), a member of the Senate Commerce Committee and Ranking Member of the Surface Transportation, Maritime, Freight, and Ports Subcommittee, released the following statement today after reintroducing the Haulers of Agriculture and Livestock Safety (HAULS) Act:

“Nebraska’s ag and livestock haulers provide a critical service transporting food and fuel across the nation. However, certain federal regulations fail to account for the unique circumstances involved in moving their products. The HAULS Act builds on my previous work to help our haulers transport their critical goods safely and efficiently.”

Senators Jon Tester (D-Mont.), Roger Wicker (R-Miss.), and Tina Smith (D-Minn.) joined Senator Fischer in introducing the HAULS Act. The legislation would:

1. Eliminate the requirement that ag and livestock hours-of-service (HOS) exemptions only apply during state designated planting and harvesting seasons
2. Amend and clarify the definition of “agricultural commodities” based on feedback provided by agriculture and livestock organizations
3. Authorize a 150 air-mile exemption from HOS requirements on the destination side of a haul for ag and livestock haulers

Full text of the legislation is available [here](#).

Support for the HAULS Act:

“Nebraska plays an integral role in the U.S. beef production chain as a leading state for commercial cattle slaughter, all cattle on feed, commercial red meat production, and livestock cash receipts. Unfortunately, current federal regulations fail to account for the intricacies involved with hauling live animals. The HAULS Act would help mitigate situations where a hauler is forced to choose between compliance with federal law or the health and welfare of the livestock on board. Nebraska Cattlemen sincerely thanks Senator Deb Fischer for her commitment to delivering needed regulatory flexibility for livestock

haulers by helping facilitate longer hauls that are inherent to cattle production in our state,” said William H. Rhea III, President of Nebraska Cattlemen.

“Farmers and ranchers must be able to get their crops and livestock to market efficiently and safely. The HAULS Act modernizes trucking regulations to meet the needs of our members. I applaud Senator Fischer for her leadership on this important issue and look forward to working with her to get the HAULS Act enacted into law,” said Zippy Duvall, President of the American Farm Bureau.

“We thank Sen. Fischer for reintroducing the HAULS Act to provide much needed regulatory relief to our nation’s farmers, ranchers, and agriculture haulers. The efficient transport of livestock is critical to the agriculture sector and to the welfare of our livestock animals. Sen. Fischer has been a long-time champion of common-sense approaches to transportation rules and regulations. The HAULS Act reflects this common-sense approach by updating oversight of livestock transport to provide flexibility and better reflect the unique challenges that exist in hauling live animals. We stand ready to work with Sen. Fischer to enact this important legislation,” said Mark McHargue, President of the Nebraska Farm Bureau.

“By expanding the agricultural exemption to trucking hours-of-service rules, Sen. Fischer’s HAULS Act of 2021 would greatly increase the rules’ usefulness for agricultural haulers across the country. Moreover, the bill’s addition of feed ingredients would clarify that agricultural products, such as soybean meal and distillers grains, are eligible for the agricultural exemption and create more certainty in the trucking rules. NGFA commends Sen. Fischer for her leadership, and urges that her bill be incorporated into a reauthorization of the FAST Act,” said Mike Seyfert, President and CEO of the National Grain and Feed Association.

“One year after COVID-19 began to disrupt daily life across the country, U.S. cattle producers continue to prove each day that they are committed to keeping grocery stores stocked with beef. Livestock haulers are a critical component of the beef supply chain and flexibility in livestock hauling regulations remains vital. NCBA strongly supports this effort, and thanks Sen. Fischer, Sen. Tester, Sen. Wicker, and Sen. Tina Smith for their bipartisan leadership on the issue. Congress must provide livestock haulers with the flexibility they need to maintain the highest level of safety on the roads, transport livestock humanely, and ensure beef remains available to consumers,” said Jerry Bohn, President of the National Cattlemen’s Beef Association.

“AFTC supports Senator Fischer in her reintroduction of the HAULS Act. The Senator’s tireless work on this important issue shows her deep understanding of the need for flexibility within the agriculture community. This legislation takes great strides in clarifying those covered under the exemption, while eliminating unnecessary restrictions

on seasonality. Since the inception of the exemption in 1995, agriculture has evolved and this exemption has continued to evolve with it. We are grateful that we have a champion that understands, so well, an industry that feeds and clothes those around the world,” said Jon Samson, Executive Director of the Agricultural and Food Transporters Conference.

“The LMA appreciates Sen. Fischer’s continued work on livestock transportation, which has been further advanced by the reintroduction of the HAULS Act. LMA member markets and the farmers and ranchers they serve need a long-term and meaningful solution to the lack of flexibility in this space. The HAULS Act goes a long way toward achieving that flexibility,” said Jara Settles, Livestock Marketing Association General Counsel and VP of Risk Mitigation.

“The Haulers of Agriculture and Livestock Safety (HAULS) Act of 2021 couldn’t be re-introduced at a more needed time. The bill provides clarity with the addition of feed ingredients, such as soybean meal and distillers grains, to the agricultural products definition. Clarity keeps the transport of agricultural products moving when there are unforeseen bottlenecks with from Mother Nature and ‘Acts of God’ such as Nebraska’s 2019 floods, the pandemic, and the most recent utterly cold temperatures experienced in the Midwest halting some animal feed manufacturing. A stable and consistent food supply is needed by all and this bill helps better meet that need. The Nebraska Grain and Feed Association supports these changes and thanks Senator Fischer’s leadership on this important food and transportation bill,” said Kristi Block, Executive Vice President of Nebraska Grain and Feed Association.

117TH CONGRESS
1ST SESSION

S. _____

To amend the Motor Carrier Safety Improvement Act of 1999 to modify certain agricultural exemptions for hours of service requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. FISCHER (for herself, Mr. TESTER, Mr. WICKER, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Motor Carrier Safety Improvement Act of 1999 to modify certain agricultural exemptions for hours of service requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Haulers of Agriculture
5 and Livestock Safety Act of 2021” or the “HAULS Act
6 of 2021”.

1 **SEC. 2. TRANSPORTATION OF AGRICULTURAL COMMOD-**
2 **ITIES AND FARM SUPPLIES.**

3 Section 229 of the Motor Carrier Safety Improve-
4 ment Act of 1999 (49 U.S.C. 31136 note; Public Law
5 106-159) is amended—

6 (1) in subsection (a)(1)—

7 (A) in the matter preceding subparagraph
8 (A), by striking “during planting and harvest
9 periods, as determined by each State,”; and

10 (B) by striking subparagraph (A) and in-
11 serting the following:

12 “(A) drivers transporting agricultural com-
13 modities within a 150 air-mile radius from—

14 “(i) the source of the agricultural
15 commodities; or

16 “(ii) the destination of the agricul-
17 tural commodities;” and

18 (2) in subsection (e)(8), by striking “during the
19 planting and harvesting seasons within each State,
20 as determined by the State, and livestock feed at
21 any time of the year” and inserting “and livestock
22 feed”.

23 **SEC. 3. DEFINITION OF AGRICULTURAL COMMODITY.**

24 (a) IN GENERAL.—Section 229(e) of the Motor Car-
25 rier Safety Improvement Act of 1999 (49 U.S.C. 31136

1 note; Public Law 106-159) is amended by striking para-
2 graph (7) and inserting the following:

3 “(7) AGRICULTURAL COMMODITY.—The term
4 ‘agricultural commodity’ has the meaning given the
5 term in section 395.2 of title 49, Code of Federal
6 Regulations (or a successor regulation).”.

7 (b) RULEMAKING.—Not later than 180 days after the
8 date of enactment of this Act, the Secretary of Transpor-
9 tation shall revise the definition of the term “agricultural
10 commodity” in section 395.2 of title 49, Code of Federal
11 Regulations, to include—

12 (1) any nonprocessed product planted or har-
13 vested for food, feed, fuel, or fiber;

14 (2)(A) any nonhuman living animal, includ-
15 ing—

16 (i) fish;

17 (ii) insects; and

18 (iii) livestock (as defined in section 602 of
19 the Emergency Livestock Feed Assistance Act
20 of 1988 (7 U.S.C. 1471)); and

21 (B) the nonprocessed products of any
22 nonhuman living animal, including—

23 (i) milk;

24 (ii) eggs; and

25 (iii) honey;

1 (3) nonprocessed forestry, aquacultural, horti-
2 cultural, and floricultural commodities;

3 (4) fresh or minimally processed fruits and
4 vegetables, including fruits and vegetables that are
5 rinsed, cooled, cut, ripened, or otherwise minimally
6 processed, as determined by the Secretary; and

7 (5) animal feed, including the ingredients of
8 animal feed.

March 16, 2021

The Honorable John Thune
U.S. Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sanford Bishop
U.S. House of Representatives
2407 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jason Smith
U.S. House of Representatives
2418 Rayburn House Office Building
Washington, D.C. 20515

Dear Senator Thune, Representative Bishop, and Representative Smith:

On behalf of our nation's farmers, ranchers, and family-owned agricultural operations we come together now to support your legislation H.R. 1712 or S. 617, the Death Tax Repeal Act, which would permanently repeal the estate tax. In addition, we ask your help to make sure that the benefits of repeal are not eroded by the elimination of or restrictions to the use of the stepped-up basis.

Family farmers and ranchers are not only the caretakers of our nation's rural lands, but they are also small businesses. The estate tax is especially damaging to agriculture because we are a land-based, capital-intensive industry with few options for paying estate taxes when they come due. Unfortunately, all too often at the time of death, farming and ranching families are forced to sell off land, farm equipment, parts of the operation or take out loans to pay off tax liabilities and attorney's fees.

As you know, the Tax Cuts and Jobs Act (TCJA) temporarily doubled the estate tax exemption level to \$10 million per person/\$20 million per couple indexed for inflation and maintained stepped up basis. While we are grateful for the relief provided by the TCJA, its lack of permanency on key individual tax provisions combined with the current state of our economy, tremendous volatility across agricultural sectors and the uncertain nature of our business has left many agricultural producers guessing about their ability to plan for estate tax liabilities and unable to make prudent business decisions. Until the estate tax is fully repealed it will continue to threaten the economic viability of family farms and ranches, as well as the rural communities and businesses that agriculture supports.

In addition to full, permanent repeal of the estate tax, we believe it is equally as important for Congress to preserve policies which help keep farm, ranch and other agricultural businesses intact and families in agriculture. As such, it is imperative to maintain the stepped-up basis, which

limits the amount of property value appreciation that is subject to capital gains taxes if the inherited assets are sold. Because agricultural land and other production assets are typically held by one owner for several decades, setting the basis on the value of those assets on the date of the owner's death under stepped-up basis is an important tax provision for surviving family members.

U.S. agricultural producers understand and appreciate the role of taxes in maintaining and improving our nation; however, the most effective tax code is a fair one. For this reason, we support permanent repeal of estate taxes and the continuation of unlimited stepped-up basis. By taking these actions, Congress will strengthen the business climate for farm and ranch families while ensuring agricultural businesses can be passed on to future generations.

Thank you for your continued efforts in support of our nation's agricultural producers. We look forward to working with you on this very important issue.

Sincerely,

Agricultural & Food Transporters
Conference of ATA
Agricultural Retailers Association
American Association of Crop Insurers
American Farm Bureau Federation
American Horse Council
American Sheep Industry Association
American Soybean Association
American Sugar Alliance
AmericanHort
Crop Insurance Professionals Association
Livestock Marketing Association
National Association of State Departments
of Agriculture
National Association of Wheat Growers
National Cattlemen's Beef Association
National Cotton Council
National Council of Farmer Cooperatives
National Grange

National Milk Producers Federation
National Onion Association
National Peach Council
National Pork Producers Council
National Potato Council
National Sorghum Producers
National Sunflower Association
National Turkey Federation
North American Renderers Association
Panhandle Peanut Growers Association
Public Lands Council
Southwest Council of Agribusiness
U.S. Apple Association
United Egg Producers
US Rice Producers Association
US Sweet Potato Council
USA Rice
Western Growers
Western Peanut Growers Association

March 29, 2021

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
Washington, D.C. 20510

Dear Chairman Wyden and Ranking Member Crapo:

The undersigned agricultural organizations support the inclusion of broad-based funding mechanisms in any funding title associated with a surface transportation reauthorization bill. Large volumes of commodities and agricultural products are transported from mostly rural areas to numerous origin-destination pairs before these goods reach domestic consumers and export customers. Because of this, a well-maintained, efficient and safe freight transportation system is vitally important to U.S. agriculture.

As you work to advance a surface transportation reauthorization bill, our organizations urge you to create a legislative package that includes funding supported by all road users. We caution against the use of funding, such as a truck-only vehicle miles tax, that would place a disproportionate share of the burden on freight transportation. For our respective agricultural organizations, a truck-only vehicle miles tax would increase truck transportation costs, leading to lower farmgate prices and reduced market share for U.S. agriculture versus our foreign competitors.

We urge you to include broad-based funding mechanisms to ensure all who benefit from the transportation system contribute fairly to upgrading and maintaining America's roads and bridges.

Thank you for your efforts on funding a surface transportation reauthorization bill and we look forward to working with you as the legislation is crafted and moves toward enactment.

Sincerely,

National Associations

Agricultural and Food Transporters Conference
Agricultural Retailers Association
Agriculture Transportation Coalition
American Bakers Association
American Farm Bureau Federation
American Feed Industry Association
American Honey Producers Association
American Seed Trade Association
Americans for Modern Transportation
Corn Refiners Association
International Dairy Foods Association
Meat Import Council of America, Inc.
National Aquaculture Association
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Corn Growers Association

National Council of Farmer Cooperatives
National Grain and Feed Association
National Industrial Transportation League
National Milk Producers Federation
National Oilseed Processors Association
National Pasta Association
National Potato Council
National Propane Gas Association
National Sorghum Producers
National Watermelon Association
North American Millers' Association
North American Renderers Association
Pet Food Institute
Produce Marketing Association
The Fertilizer Institute
Transportation Intermediaries Association
United Fresh Produce Association
United Potato Growers of America
United States Cattlemen's Association
USA Rice
Western Growers

State/Regional Associations

Agribusiness Association of Iowa
Agribusiness Council of Indiana
Arizona Farm and Ranch Group
Arizona Farm Bureau Federation
Association of Virginia Potato and Vegetable Growers
California Apple Commission
California Blueberry Association
California Blueberry Commission
California Fresh Fruit Association
California Grain and Feed Association
Empire State Potato Growers
Florida Fertilizer & Agrichemical Association
Grain and Feed Association of Illinois
Idaho Grower Shippers Association
Illinois Fertilizer & Chemical Association
Iowa Farm Bureau
Iowa Institute for Cooperatives
Iowa Seed Association
Kansas Agribusiness Retailers Association
Kansas Grain and Feed Association
Maine Potato Board
Michigan Agri-Business Association
Michigan Potato Growers, Inc.
Minnesota Crop Production Retailers
Minnesota Grain and Feed Association

Missouri Agribusiness Association
Montana Agricultural Business Association
Montana Grain Elevator Association
Nebraska Cattlemen
Nebraska Farm Bureau
Nebraska Grain and Feed Association
Nevada Farm Bureau
North Carolina Potato Association
North Dakota Grain Dealers Association
Northeast Agribusiness and Feed Alliance
Ohio AgriBusiness Association
Oklahoma Grain and Feed Association
Olive Growers Council of California
Oregon Association of Nurseries
Oregon Dairy Farmers Association
Oregon Farm Bureau Federation
Oregon Seed Association
Oregon Women for Agriculture
Pacific Northwest Grain & Feed Association
PA Co-operative Potato Growers
Palmetto Agribusiness Council
Renew Kansas
Rocky Mountain Agribusiness Association
SC Timber Producers Association
South Dakota Agri-Business Association
South Dakota Grain & Feed Association
Texas Ag Industries Association
Texas Citrus Mutual
Texas Grain and Feed Association
Texas International Produce Association
Washington State Potato Commission
Wisconsin Agri-Business Association
Wisconsin Potato & Vegetable Growers Association
Wyoming Farm Bureau

CC: Members of the Senate Finance Committee
Members of the Senate Committee on Environment and Public Works
Members of the Senate Committee on Commerce, Science, and Transportation
Members of the House Committee on Ways and Means
Members of the House Committee on Transportation and Infrastructure

Submitted Electronically

November 9, 2020

Docket Operations
Federal Motor Carrier Administration
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave., SE
Washington, D.C., 20590-0001

RE: Docket No. FMCSA-2018-0346

Dear Acting Administrator Deck:

The undersigned organizations commend the Federal Motor Carrier Safety Administration (FMCSA) for proposing a pilot program to allow drivers 18, 19 and 20 years old to operate commercial motor vehicles (CMVs) in interstate commerce, and strongly support the agency implementing such a pilot at its earliest opportunity.

The farmers, ranchers, food and beverage manufacturers, processors, package suppliers, farm supply dealers and agricultural product marketers that make up our memberships believe the pilot program has the potential to remove a significant impediment to driver eligibility and the efficient movement of goods in interstate commerce – the inconsistent minimum age rules for the operation of CMVs for drivers operating in interstate versus intrastate commerce. Currently, in 49 states, the minimum age for intrastate CMV operation is 18 (or under), while the federal minimum is 21 for interstate CMV operation.

As you know, the proposed pilot program closely resembles the DRIVE Safe Act (H.R.1374/S.569) legislation that enjoys large bipartisan support in both the House and Senate. This legislation has been driven in part by the driver shortage confronting our nation. It is estimated that the commercial trucking sector currently has an estimated shortage of 60,000 drivers, a number that is expected to increase to 1.1 million drivers over the next decade. This shortage is attributable to growing demand for trucking service and an aging workforce, issues that the agricultural sector is facing as well. This shortage inevitably will lead to higher transportation costs, resulting in increased prices for consumers of agricultural and food products domestically, while making U.S. agricultural exports less competitive.

While 49 states already allow Commercial Driver's License (CDL) holders 18, 19 and 20 years old to operate CMVs in intrastate commerce, we strongly support the opportunity to further demonstrate that training and driver development are more critical than merely making eligibility determinations based upon a driver's age. It is important to note that the current federal age threshold raises a significant barrier to entry for those interested in operating CMVs. It is often the case that many individuals already have chosen a profession or career path prior to turning 21. This understandably limits the potential driver pool, exacerbating an already significant

driver shortage that has become more acutely evident and problematic during the Covid-19 pandemic. This pilot program is crucial in demonstrating that a driver can just as safely operate a CMV for an interstate movement from Oakland, CA, to Reno, NV as they can from San Diego to Sacramento, CA.

In addition, our organizations are pleased that FMCSA is considering undertaking a pilot program with broad driver eligibility to ensure a statistically significant sample is collected that we believe will demonstrate that CMV drivers aged 18, 19 and 20 can operate CMVs safely in interstate commerce. While we support the previous pilot program – the Under 21 Military CDL Pilot Program – we believe the newly proposed pilot with its broader driver eligibility will provide a more robust sample size that will enable FMCSA to draw conclusions about the safety data gathered.

In conclusion, we concur with FMCSA's proposed minimum pilot program requirements for drivers aged 18-20, such as the apprenticeship program and driver education. And we agree that FMCSA should permit 19- and 20-year-old commercial drivers who have operated CMVs in intrastate commerce for a minimum of one year and driven 25,000 miles to participate in the younger driver CDL pilot program, given their requisite experience to operate safely.

Thank you for your consideration of our comments. The proposed pilot program has the potential to foster a well-trained pool of safe younger drivers to help our industries and others contribute to serve domestic and global consumers. We would be pleased to respond to any questions you may have.

Sincerely,

Agribusiness Council of Indiana
Agricultural and Food Transporters Conference
Agricultural Retailers Association
Agriculture Teachers Association of Texas
American Bakers Association
American Beverage Association
American Cotton Producers
American Farm Bureau Federation
American Forest and Paper Association
American Frozen Food Institute
American Honey Producers Association
Catfish Farmers of Arkansas
Corn Refiners Association
Florida Aquaculture Association
Florida Tropical Fish Farms Association
Grain and Feed Association of Illinois
Hardwood Federation
Institute of Shortening and Edible Oils
Kansas Agribusiness Retailers Association
Kansas Grain and Feed Association

Montana Agricultural Business Association
Montana Grain Elevator Association
National Aquaculture Association
National Cotton Council
National Cotton Ginner's Association
National Council of Farmer Cooperatives
National Grain and Feed Association
National Grange
National Milk Producers Federation
Nebraska Grain and Feed Association
North American Millers' Association
North American Renderers Association
North Dakota Grain Dealers Association
Ohio AgriBusiness Association
Renew Kansas Biofuels Association
South Dakota Grain and Feed Association
Specialty Soya & Grains Alliance
Texas Agricultural Cooperative Council
Texas Forestry Association
Texas Grain and Feed Association
Texas Logging Council
The Fertilizer Institute
The Texas Cotton Association
United Fresh Produce Association
Wisconsin Agri-Business Association
Wisconsin Paper Council