



February 20, 2018

Ray Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Docket No. FMCSA-2017-0360

RE: Hours of Service of Drivers of Commercial Motor Vehicles: Transportation of Agricultural Commodities

Dear Administrator Martinez:

We welcome the opportunity to provide comments to the Federal Motor Carrier Safety Administration (FMCSA) with respect to the hours of service of drivers of Commercial vehicles that was published in the Federal Register on December 20, 2017 (Federal Register Vol. 82, 60360). In these comments we will provide insight into the general rule as well as comment upon several specific questions that FMCSA have raised.

Western Growers Association is an agricultural trade association headquartered in Irvine, California. Western Growers members are small, medium and large-sized businesses that produce, pack and ship fruits, vegetables and tree nuts from our home states of California, Arizona, New Mexico and Colorado. Beyond our home states, Western Growers members produce in – and directly contribute to the economies of – more than 30 states as well as around 25 foreign countries. In total, Western Growers members account for roughly half of the annual fresh produce grown in the United States, providing American consumers with healthy, nutritious food. Indeed, Western Growers' has long had the slogan: "We grow the best medicine".

First, Western Growers would urge the Agency to permanently exempt a carrier when he or she is transporting an agricultural commodity as defined in 49 CFR 395.2. This permanent exemption would also apply if the carrier is unladen when returning to the original, or another source for the purpose of picking up another eligible agricultural commodity.

The agriculture exemption is required because for the fresh produce industry there can be more than 350 different types of commodities, and these commodities are highly perishable and are subject to unpredictable production timing due to weather and other variables outside a farmer's control. It is not uncommon that a scheduled pickup can be delayed because of weather, lack of labor or other variables outside the farmer's control.

Second we will comment upon questions asked by the FMCSA.

Questions 34. FMCSA seeks to clarify how the agricultural commodity exception applies to a driver operating an unladen commercial motor vehicle used in transportation either to a source to pick up an agricultural commodity or on a return trip following delivery of an agricultural commodity

Western Growers agrees that unladen commercial motor vehicles fall under the agricultural commodity exception and urges the Agency to adopt its present *Guidance* that the exception (§ 395.1(k)(1)) does apply providing the trip does not involve transporting other cargo.

Question 35. The Agency proposes to clarify that "location" means the outer limit of the exception distance. i.e., 150 air-miles from the source

Western Growers would urge the Agency to expand the exemption to beyond the 150 air-mile radius when multiple pick-ups are involved. A practical example of multiple pickups and the need to have the last pickup serve as the starting point for the 150 mile air radius is as follows:

A driver loads east of Los Angeles with packaged salad items and then drives 60 miles to Oxnard where he or she is to load fresh strawberries, and citrus and then drives north to Santa Maria 100 miles to complete the load with celery, broccoli and cauliflower. The now full load is then transiting to Chicago. We would request that the final loading in Santa Maria should be when the calculation of 150 air mile radius begins for purposes of the exemption.

The fresh produce industry is dominated by many Less Than Trailer load (LTL) shipments made up of several different shippers per trailer load and transporting in defined lanes where loads of mixed vegetables, fruits and nuts are delivered daily and the carrier returns empty (unladen). This efficient method of maximizing the full trailer for transport is both fuel efficient and a method that ensured shippers are minimizing their carbon footprint when shipping produce to consumers dinner tables.

Third, the Agency should refine what a "source" is under 49 C.F.R. § 395.1(k)(1). Western Growers requests that the Agency, for the purpose of horticultural commodities, adopt the definition of "farm" as defined by the Food and Drug Administration in 21 C.F.R. § 1.227¹. A similar definition could be established for non-horticultural commodities such as grains or live animals.

Refining the definition of "source" in this way is critical because fresh produce is not routinely loaded at the edge of the field and transported to buyers. Rather, activity on the farm is as diverse as there are the 350 plus commodities. Many times the raw harvested produce is part of a contiguous packing activity is moved from farm to a first point of final preparation in order to have that produce enter commercial commerce. Examples are valued added activity by placing the commodity in a bag or box for shipment. It is common for some commodities to be harvested and while placed in a master shipping carton in the field, must then be properly cooled to extend shelf life and also be done at what is known as a cooling facility and is then held in a refrigerated warehouse where the cold chain is maintained and also has a loading dock capability to accommodate long haul carriers.

Fourth, the Agency should provide some latitude in its definitions to all for multiple pick-ups of products. As has been noted in the examples above, products can be picked up at several farms before a load is filled and then taken to a collection point before being finally packed for shipment to wholesale or retail distribution. That change might involve making refinements to the definition of "source" or other refinements to other sections of 49 C.F.R. § 395.1(k). Such refinements would allow an agricultural carrier to complete all its pick-ups, transport for the 150 air mile radius prior to becoming subject to the Hours-of-Service regulations.

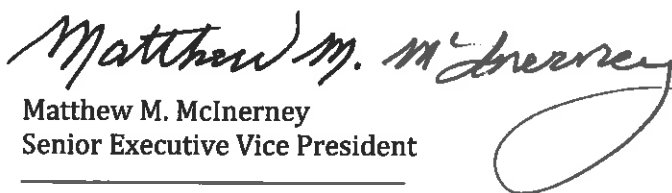
While agricultural carriers may not be subject to Hours-of-Service while operating under the current 150 air-miles radius, unless interpreted as the last pick up, those with multiple pick-ups may become subject to the Hours-of-Service before completing all its pick-ups. This is especially critical when transporting horticultural commodities, which are subject to harvest conditions impacting the ability to meet scheduled loading times. Because certain harvest conditions could limit the ability of the shipper to promptly load a carrier, the carrier, if subject to Hours-of-Service, could be prohibited from completing its pick-ups and commencing transit to its destination.

Finally, FMCSA should consider adopting some changes with respect to how hours of service handle delivers at the destination point when a carrier is transporting horticultural commodities. When a carrier, if beyond the 150 air-mile radius, reaches his destination point he/she is currently subject to the Hours-of-Service. The Agency needs to consider the unique situation involved in delivering and unloading horticultural commodities. Although delivery times may have been scheduled, horticultural commodities often times require inspection by the USDA as to condition and quality. See, PACA regulations at 7 C.F.R. § 46.18, 24 and 25. Inspections of this nature involve considerable time. For this reason Western Growers is asking the Agency to consider providing additional on-duty time to

enable a carrier to complete delivery and unloading prior to exceeding its Hours-of-Service. Providing some additional hours to compensate for unloading based on scheduling delays or USDA inspection activities, will allow for greater efficiencies in the transportation of horticultural commodities, and uninterrupted flow of fresh fruits, vegetables and nuts through the supply chain and ultimately to consumers plates.

Thank you for your consideration of this request. We would be happy to address any questions or concerns you may have.

Sincerely,


Matthew M. McInerney
Senior Executive Vice President

ⁱ 21 C.F.R. § 1.227 (Definitions) *Farm* means:

(1) Primary production farm. A primary production farm is an operation under one management in one general (but not necessarily contiguous) physical location devoted to the growing of crops, the harvesting of crops, the raising of animals (including seafood), or any combination of these activities. The term "farm" includes operations that, in addition to these activities:

(i) Pack or hold raw agricultural commodities;

(ii) Pack or hold processed food, provided that all processed food used in such activities is either consumed on that farm or another farm under the same management, or is processed food identified in paragraph (1)(iii)(B)(1) of this definition; and

(iii) Manufacture/process food, provided that:

(A) All food used in such activities is consumed on that farm or another farm under the same management; or

(B) Any manufacturing/processing of food that is not consumed on that farm or another farm under the same management consists only of:

(1) Drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), and packaging and labeling such commodities, without additional manufacturing/processing (an example of additional manufacturing/processing is slicing);

(2) Treatment to manipulate the ripening of raw agricultural commodities (such as by treating produce with ethylene gas), and packaging and labeling treated raw agricultural commodities, without additional manufacturing/processing; and

(3) Packaging and labeling raw agricultural commodities, when these activities do not involve additional manufacturing/processing (an example of additional manufacturing/processing is irradiation); or

(2) Secondary activities farm. A secondary activities farm is an operation, not located on a primary production farm, devoted to harvesting (such as hulling or shelling), packing, and/or holding of raw agricultural commodities, provided that the primary production farm(s) that grows, harvests, and/or raises the majority of the raw agricultural commodities harvested, packed, and/or held by the secondary activities farm owns, or jointly owns, a majority interest in the secondary activities farm. A secondary activities farm may also conduct those additional activities allowed on a primary production farm as described in paragraphs (1)(ii) and (iii) of this definition.