(g) Absent an explicit agreement between operators to permit more closely spaced operations, U.S. authorized 17/24 GHz BSS space stations and U.S. authorized DBS space stations with co-frequency assignments may not be licensed to operate at locations separated by less than 0.2 degrees in orbital longitude.

(h) All operational 17/24 GHz BSS space stations must be maintained in geostationary orbits that:

(1) Do not exceed 0.075° of inclination.

(2) Operate with an apogee less than or equal to 35,806 km above the surface of the Earth, and with a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.*, an eccentricity of less than 4.7×10^{-4}).

(i) U.S. authorized DBS networks may claim protection from space path interference arising from the reverse-band operations of U.S. authorized 17/24 GHz BSS networks to the extent that the DBS space station operates within the bounds of inclination and eccentricity listed below. When the geostationary orbit of the DBS space station exceeds these bounds on inclination and eccentricity, it may not claim protection from any additional space path interference arising as a result of its inclined or eccentric operations and may only claim protection as if it were operating within the bounds listed below:

(1) The DBS space station's orbit does not exceed 0.075° of inclination, and

(2) The DBS space station's orbit maintains an apogee less than or equal to 35,806 km above the surface of the Earth, and a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.,* an eccentricity of less than 4.7×10^{-4}).

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA–2011–0146]

Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

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

ACTION: Notice of regulatory guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) sought public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles: first, the interpretation of interstate commerce as it applies to movement of farm products; second, whether farmers operating under share-cropping agreements are common or contract carriers; and third, whether FMCSA should issue new guidance on implements of husbandry. After considering comments from the public, FMCSA has determined that no further guidance is needed on interpreting interstate commerce and implements of husbandry. FMCSA is issuing guidance that farmers operating under share-cropping or similar arrangements are not common or contract carriers and, therefore, are eligible for the CDL exemption if a State elects to adopt the exemption.

DATES: August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 (74, 49 Stat. 543, August 9, 1935) (1935 Act) provides that the Secretary of Transportation may 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 (49 U.S.C. 31502(b)).

The Motor Carrier Safety Act of 1984 (98, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations that ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10), respectively).

The Commercial Motor Vehicle Safety Act of 1986 (99, Title XII, 100 Stat. 3207–170, October 27, 1986) (1986 Act) directs the Secretary of Transportation to prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The States must use those standards in issuing commercial driver's licenses (CDLs) (49 U.S.C. 31311, 31314).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(L), (g), and (e)(1) to carry out the functions vested in the Secretary of Transportation by the 1935 Act, the 1984 Act, and the 1986 Act, respectively.

Background

On May 31, 2011, FMCSA issued a notice seeking public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles (76 FR 31279). Recognizing that changes in regulatory guidance (if implemented by a State) could have an impact on an individual farmer, the Agency sought as much public involvement and comment as possible on these issues.

It is worth repeating that neither the May 31 notice nor today's notice propose or proposed any rule change or new safety requirements. Instead, the Agency sought feedback from farm organizations, farmers, and the public on the agency's long-standing interpretations of existing rules, so it could then determine whether any adjustments were needed to improve understanding of the current safety regulations.

First, the Agency sought comment on whether it needed to provide additional guidance or information to explain the distinction between intra- and interstate commerce in the agricultural industry. Second, the Agency asked whether it should distinguish between indirect and direct compensation in deciding whether a farm vehicle driver is eligible for the exception to the commercial driver's license (CDL) requirements in 49 CFR 383.3(d)(1). Third, the Agency asked for comments on how best to define implements of husbandry so that such equipment is exempted from safety regulations in a uniform, practical

manner. In response to requests, FMCSA extended the initial comment period from June 30, 2011, to August 1, 2011. FMCSA received about 1,700 comments on the notice, including more than 155 from farm organizations and 13 from State governments.

Interstate Versus Intrastate Commerce

The issue of what constitutes interstate commerce has been adjudicated many times over many decades, and FMCSA's interpretations are governed by the findings of the Federal courts. Although the various cases are heavily fact-specific, the general rule is set forth in the Agency's guidance to Q. 6 under 49 CFR 390.3, which is posted on our Web site:

> Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of the shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Comments

Many commenters misinterpreted FMCSA's request for input on whether it needed to provide additional guidance on interstate versus intrastate commerce. Commenters almost uniformly opposed any interpretation of interstate commerce that would consider movement of products from a farm to a grain elevator in the same state as interstate commerce. The commenters argued that the farmer who moves a crop to a local elevator and sells it has no control over its ultimate destination and no knowledge of that destination, which could change from sale to sale. The elevator mixes crops from multiple farmers and sells the mixed crops without the farmers' involvement. Some of the crop may move out of state, but in many cases, the crop is sold to local processors. In either case, the farmer has no way of knowing the destination. They also argued that the movement from farm to elevator is generally local—5 to 10 miles—on rural roads with little traffic. They stated that FMCSA has not identified any safety risk that would justify imposing interstate operating rules on these local, seasonal moves. The primary concern of commenters expressed by many farm organizations was that by designating these farm-to-elevator moves as interstate the farmers would have to obtain a CDL and comply with other operating rules. The commenters noted the cost of obtaining a CDL and a medical certificate as well as the issue that CDLs are only available to those 21 years old or older. Commenters stated that many farm vehicles are driven by younger family members.

FMCSA Response

The Agency has concluded that new regulatory guidance concerning the distinction between interstate and intrastate commerce is not necessary. FMCSA believes that previously published guidance, such as that referenced in the May 31, 2011, notice, is useful and that attempting to address more scenarios in new regulatory guidance would not be helpful to the agricultural industry or enforcement officials. To the extent that novel fact-specific questions arise, the Agency will work with the parties involved to provide a clarification for the specific scenario. FMCSA notes that the farm exemption from the CDL rules is not linked to intrastate or interstate commerce. A State may exempt farmers from the CDL requirements if they operate in interstate commerce provided that they meet the other requirements of the exemption.

Contract Carriage

Comments

Commenters opposed any interpretation of the rules that would make a tenant farmer a contract carrier. They stated that for those with share cropping agreements, which can be either formal or informal, the farmer compensates the landowner by paying a portion of the proceeds from the sale of the crop after the crop is delivered to the grain elevator. They argued that because the farmer owns the crop until it is delivered for sale, whether the farmer is compensated directly or indirectly for transporting the grain is irrelevant. The farmer should be considered in private transportation.

FMCSA Response

FMCSA appreciates the information that it received on this issue and agrees with commenters that tenants should not be considered contract carriers. Since 1935, the Federal government has been required to regulate the safety, but not the commercial affairs, of carriers whose principal business is not transportation. This is usually called the ''primary business'' test (*see* 49 U.S.C. 13505). Section 383.3(d)(1)(iii) was meant to deny the CDL exception to drivers of vehicles ''used in the operations of a common or contract motor carrier'' when transportation is the principal business of the carrier, a conclusion that follows from the use of terminology created by the Motor Carrier Act of 1935 to describe two branches of the for-hire truck and bus industry, i.e., common and contract carriage. The exclusion from the CDL exception of drivers for common and contract carriers was not meant to reach drivers working for a primary business other than transportation whose driving is within the scope of, and furthers, that primary non-transportation business. Trucking is a necessary adjunct of agricultural production, but it is by no means the purpose of farming. Section 383.3(d)(1)(iii) therefore denies the CDL exemption to drivers for commercial common or contract carriers, but not to drivers hauling both the farmer's and the landlord's crops under a crop share agreement, even if the sharecropper is specifically compensated for performing the transportation. In other words, the CDL exemption is equally available to (1) Farmers who own their land and haul their crops to market; (2) farmers who rent their land for cash and haul their crops to market; and (3) farmers who rent their land for a share of the crops and haul their own and the landlord's crops to market. These farmers continue to be eligible for the CDL exemption if a State elects to provide the exemption.

Implements of Husbandry

Comments

Many commenters misinterpreted FMCSA's notice on implements of husbandry. FMCSA was seeking comment on whether it needed to issue additional interpretative guidance to clarify that implements of husbandry, such as tractors, cultivators, reapers, etc., were not considered CMVs even if they are occasionally driven on public roads. Many commenters, however, assumed that FMCSA intended to define this equipment as CMVs, which would expose the vehicles to different State requirements (higher registration fees, higher insurance requirements, etc.) and might require a CDL for the driver. They opposed any such extension of the CMV definition. Those commenters that addressed FMCSA's proposed guidance generally supported it, but made a number of suggestions for defining implements of husbandry based on varying State definitions and recommended restrictions that could be placed on these vehicles (e.g., speed limits, warning signs, distance traveled, etc.).

FMCSA Response

As FMCSA stated in the notice, its goal was to ensure that implements of husbandry were not considered CMVs for its purposes. Based on the variety of

State definitions and the varying restrictions States impose (e.g., speed limits, signs, etc.), FMCSA has decided that uniform guidance would be difficult to draft and that further discussions of this issue are better left to case-by-case analysis.

Conclusion

The FMCSA is sensitive to the critical role agriculture plays in our economy and farmers in our communities and it greatly appreciates the public comments to its May 31, 2011, notice. These comments have helped us better understand the complexity of farm lease arrangements and today's use of farm equipment on public roads.

Issued on: August 10, 2011.

William A. Bronrott,

Deputy Administrator.

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