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## DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0133]

#### Commercial Driver's License (CDL): Application for Exemption; U.S. Custom Harvesters, Inc. (USCHI)

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the U.S. Custom Harvesters, Inc. (USCHI) has requested an exemption from the "K" intrastate restriction on commercial driver's licenses (CDLs) held by custom harvester drivers operating in interstate commerce. The Federal Motor Carrier Safety Regulations (FMCSRs) exempt drivers of commercial motor vehicles (CMVs) controlled and operated by a person engaged in interstate custom harvesting, including the requirement that drivers be at least 21 years old. However, many younger custom harvester drivers hold CDLs with an intrastate-only (or "K") restriction. This has caused drivers of USCHI member companies to be cited during roadside inspections in a different State, as some officers interpret the "K" restriction to mean that the license is invalid outside the State of issuance,, even when the younger driver is operating under the custom harvester exemption. This is an issue not only for individual drivers, but also for the custom harvester employing those drivers, whose safety record is adversely affected. FMCSA requests public comment on USCHI's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0133 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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](http://www.regulations.gov), as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

**Submitting Comments**

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0133), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2017-0133” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in 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 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 grant or not grant this application based on your comments.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

Custom harvesters are businesses that supply the equipment and labor to assist farmers with harvesting during their busiest seasons. Typically, there are two different classes of operations, grain harvesting and forage harvesting. A grain harvester uses combines to harvest wheat, corn, barley, canola, sunflowers, soybeans, and grain sorghum, among others. These crop products are transported to an elevator or on-farm storage, where the crop is stored and later transported elsewhere to be processed into products for public use. A forage harvester uses a chopper to harvest whole-plant crops such as corn, sorghum, milo, triticale, and alfalfa. These crops are used for silage to feed livestock in dairies and feedlots. Some operators harvest crops such as cotton that require other specialized equipment. Custom harvesters travel from State to State and can spend from a few days to several months cutting crops for one farmer.

USCHI states that custom harvesters are experiencing a problem with the exemption they have utilized since the early 1970s (49 CFR 391.2(a)). Under this provision, drivers of CMVs controlled and operated by a person engaged in custom harvesting are exempt from all of part 391, including the requirement to be at least 21 years of age to operate a CMV in interstate commerce. USCHI members frequently employ drivers 18-21 years of age, who are issued CDLs with a “K” restriction that makes the license valid only for operations within the issuing State (49 CFR 383.153(a)(10)(vii)). The problem arises when law enforcement officers interpret the “K” restriction to mean that the license is invalid outside the issuing State, even though

section 391.2(a) exempts younger custom harvester drivers from the 21-year-old age requirement when operating in interstate commerce. This has caused drivers employed by some of USCHI's members to be cited for CDL violations during inspections. This is an issue not only for the individual driver, but also for the custom harvester employer, whose safety record is adversely affected.

Therefore, USCHI asks that the Agency grant an exemption under the following terms and conditions:

- 1) Drivers for custom harvesters operating in interstate commerce shall be exempt from any intrastate-only "K" restriction on their CDLs (49 CFR 383.153(a)(10)(vii));
- 2) Drivers to be included in this exemption are identified in 49 CFR 391.2 as those operating a CMV to:
  - 1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or
  - 2) Transport custom-harvested crops to storage or market.

In its application, USCHI cites regulatory guidance to 49 CFR 383.155, entitled "Special topics—State Reciprocity," which reads as follows: "Question 1: May a State place an 'intrastate only' or similar restriction on the CDL of a driver who certifies that he or she is not subject to part 391?; Guidance: Yes; however, this restriction would not apply to drivers in interstate commerce who are excepted or exempted from part 391 under the provisions of parts 390 or 391." USCHI believes that this guidance clearly indicates that the "intrastate only" restriction should not be applied to custom harvester

drivers; however, USCHI states that this guidance does not seem to have been widely circulated among State law enforcement personnel or is not followed consistently.

To ensure that the driver is authentically operating as a custom harvester, USCHI specifies that he/she should be able to provide at least three of the following methods of verification:

- The driver shall have on hand a valid custom harvesting document such as a current date agricultural commodity scale sheet, a current date custom harvesting load sheet, an official company document stating the company purpose, etc.;
- The CMV may have license plates specific to custom harvesting, or the verbiage “Harvesting” may be part of the business signage on the vehicle;
- The CMV must be designed to haul a harvested agricultural commodity or equipment for harvesting, or be a support vehicle for custom-harvesting operations such as a service truck;
- The CMV may be hauling a harvested agricultural commodity or equipment for the purpose of custom harvesting;
- The CMV may have newly harvested commodity or remnants on board;
- The driver will provide a verifiable location of current harvesting operation or delivery location for a harvested commodity.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

One requirement of any exemption issued under 49 CFR part 381 is that it be likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. In this case interstate operations by custom harvester

drivers is already authorized by 49 CFR 391.2(a), but could be construed as prohibited by the conflicting requirements of 49 CFR 383.153(a)(10)(vii). By clarifying the nature of permitted transportation, USCHI believes this exemption would not have any impact on safe operation of CMVs and is therefore likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 391.2(a)).

USCHI requests the exemption for the maximum available period of five years. A copy of USCHI's application for exemption is available for review in the docket for this notice.

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Larry W. Minor  
Associate Administrator for Policy  
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