



**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 final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant the U.S. Custom Harvesters, Inc. (USCHI) 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 the "K" restriction means that the license is invalid outside the State of issuance, even when the younger driver is operating under the custom harvester exemption. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**DATES:** The exemption is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE FIVE YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas 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).

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from 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 the 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions 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)).

### **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. Custom harvesters travel from State to State and can spend from a few days to several months cutting crops for one farmer.

USCHI stated that custom harvesters are experiencing a problem with the exemption in 49 CFR 391.2(a). It was adopted by the Federal Highway Administration on December 22, 1971 [34 FR 24218] and has been widely used by custom harvesters since then. Under this provision, drivers of commercial motor vehicles (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 member companies frequently employ drivers 18-21 years of age, who are issued commercial driver's licenses (CDLs) with a "K" restriction that makes the license valid only for operations within the issuing State (49 CFR 383.23(a)(2) and 383.153(a)(10)(vii)). The problem arises because the CDL regulations, adopted long

after 1971, were not drafted to include an exemption corresponding to section 391.2(a). As a result, the “K” restriction means 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. Section 391.2(a) does not preempt State CDL regulations, like requirement in section 383.23(a)(2) to “possess a CDL which meets the standards contained in subpart J of this part,” including any “K” restriction imposed under section 383.153(a)(10)(vii) of subpart J. This has caused drivers employed by USCHI’s members to be cited for CDL violations during inspections, which is an issue not only for the individual driver, but also for the custom harvester employer, whose safety record is adversely affected.

### **Public Comments**

On May 1, 2017, FMCSA published notice of the USCHI application for exemption and requested public comment (82 FR 20415). The Agency received a total of thirteen sets of comments. Ten comments -- all submitted by custom harvesters -- supported the exemption. Two commenters – the Oregon Department of Transportation (ODOT) and the American Association of Motor Vehicle Administrators (AAMVA) expressed various concerns with the request. One other commenter did not take a position on the exemption.

Those filing in support of the request stated that a large percentage of their employees have been under the age of 21. They rely on the rule allowing 18-year-olds to obtain a CDL for intrastate (“K” restricted) operations [49 CFR 383.25(a)(4) and 383.71(a)(2)(i)] to have enough employees to effectively run their businesses. This provision has allowed workers under the age of 21 to obtain experience with truck

driving. The commenters said that many of these individuals have gone on to be professional, full-time truck drivers, and that all of them would cite the harvest work as pivotal to their training as a CDL driver. They argued that the exemption from the “K” restriction is incredibly important to their businesses, as well as to the development of quality, responsible truck drivers for America’s highways.

Others commenting in favor of the exemption said that the way the current law is interpreted causes much difficulty. Custom harvesters can hire and train entry-level drivers, but it is difficult to find employees who are willing to work seasonal jobs. In many cases, the individuals most likely to work in these entry-level positions are 18- to 20-year-olds. Many custom harvesters feel that 49 CFR 391.2(a) is very clear; however, some States have different interpretations of the exemption.

The Oregon Department of Transportation (ODOT) was concerned that the remedy sought by USCHI will have unintended consequences on interstate commerce, is cumbersome for State driver licensing agencies (SDLAs) responsible for issuing the CDL, and addresses only a symptom of the identified problem while ignoring the root cause. ODOT states that this exemption would create a burden for SDLAs in the licensing process. Accommodating this exemption would require time consuming and costly programming work with no nexus to highway safety.

The American Association of Motor Vehicle Administrators (AAMVA) also expressed concern with the USCHI exemption request. AAMVA commented that retaining State discretion on age limitations for intrastate drivers should remain within the purview of the States. Further, utilizing the “K” restriction on a restricted CDL ensures underage operators of CMVs do not fully participate, unrestricted, in interstate

commerce. At issue is the removal of an intrastate restriction that could allow an untested, younger driver, access to the full interstate system without restriction.

### **FMCSA Decision**

FMCSA has evaluated USCHI's application for exemption and the public comments and decided to grant the exemption. 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 below the age of 21 is already authorized by 49 CFR 391.2(a), and has been since 1971. However, it conflicts with, but does not preempt, the subsequently adopted requirements of 49 CFR 383.23(a)(2) and 383.153(a)(10)(vii). FMCSA believes this exemption, by removing the obstacle posed by sections 383.23(a)(2) and 383.153(a)(10)(vii), would not have any impact on the 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)).

It should be noted that this exemption does not require any special action or processing by the State driver licensing agencies. They will continue to place the "K" restriction when called for, but enforcement officers will disregard it in situations involving drivers who can demonstrate eligibility for the custom harvester exemption.

### **Stakeholders**

The information below is provided to clarify what impact or meaning this exemption will have on the following stakeholders.

#### *Custom Harvester Drivers*

Custom harvester drivers will be able to display this exemption notice to help explain that when operating in that capacity, they are permitted to operate outside the State issuing their CDL even though the license has a “K” (intrastate only) restriction.

#### *Enforcement Officers*

This exemption notice will explain to law enforcement officers that 49 CFR 391.2(a) authorizes custom harvester drivers to operate in interstate commerce even though under 21 years of age. The notice will explain that a “K” restriction on these drivers’ CDLs does not limit them from driving outside the license-issuing State when they are operating as custom harvesters in accordance with 49 CFR 391.2(a).

#### *State Driver Licensing Agencies*

This exemption requires no action or inaction on the part of State driver-licensing agencies. They will continue to issue CDLs with a “K” restriction to drivers under the age of 21.

#### **Terms and Conditions of the Exemption**

- (1) Drivers for custom harvesters operating in interstate commerce shall be exempt from any intrastate-only “K” restriction on their CDLs when operating under the provisions of this exemption.
- (2) Drivers must have a copy of this notice in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- (3) Drivers to be included in this exemption are identified in 49 CFR 391.2 as those operating a CMV to transport farm machinery, supplies, or both, to or from a

farm for custom-harvesting operations on a farm; or transport custom-harvested crops to storage or market.

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

(a) The driver may 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.;

(b) The CMV may have license plates specific to custom harvesting, or the verbiage “Harvesting” may be part of the business signage on the vehicle;

(c) The CMV may 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;

(d) The CMV may be hauling a harvested agricultural commodity or equipment for the purpose of custom harvesting;

(e) The CMV may have newly harvested commodity or remnants on board;

(f) The driver will be able to provide a verifiable location of the current harvesting operation or delivery location for a harvested commodity.

#### Period of the Exemption

This exemption from the requirements of 49 CFR 383.23(a)(2) and 383.153(a)(10)(vii) is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE FIVE YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

### Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

### Notification to FMCSA

Under this exemption, the custom harvester employer must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's drivers operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of Exemption: "USCHI"
- (b) Date of the accident,
- (c) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (d) Driver's name and license number,
- (e) Co-driver's name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor

carrier safety regulations, and

(k) The total driving time and total on-duty time period prior to the accident.

Accident notifications shall be e-mailed to [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### Termination

FMCSA believes that the drivers of custom harvesting vehicles will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

**Issued on:** September 26, 2018.

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Raymond P. Martinez,  
Administrator.

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