

(d) *Farmer*. The term “farmer” means any individual, partnership, corporation, or other business entity to the extent engaged in farming operations either as a producer of agricultural commodities or as a farm owner.

(e) *Interstate transportation*. The term “interstate transportation” means transportation by motor vehicle in interstate or foreign commerce subject to the FMCSA’s jurisdiction as set forth in 49 U.S.C. 13501.

(f) *Member transportation*. The term “member transportation” means transportation performed by a cooperative association or federation of cooperative associations for itself or for its members, but does not include transportation performed in furtherance of the nonfarm business of such members.

(g) *Nonmember transportation*. The term “nonmember transportation” means transportation performed by a cooperative association or federation of cooperative associations other than member transportation as defined in paragraph (f) of this section.

(h) *Fiscal year*. The term “fiscal year” means the annual accounting period adopted by the cooperative association or federation of cooperative associations for Federal income tax reporting purposes.

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980; 47 FR 13353, Mar. 30, 1982; 47 FR 15142, Apr. 8, 1982]

§ 372.109 Computation of tonnage allowable in nonfarm-non-member transportation.

Interstate transportation performed by a cooperative association or federation of cooperative associations for nonmembers who are not farmers, cooperative associations, or federations of associations or the United States Government for compensation, (except transportation otherwise exempt under subtitle IV, part B, chapter 135 of title 49 of the United States Code) shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance. It shall in no event exceed 25 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage. A cooperative association or federation of cooperative associations may transport

its own property, its members’ property, property of other farmers and the property of other cooperatives or federations in accordance with existing law, except where the provisions of § 372.111 may be applicable to the limit on member/nonmember transportation.

(a) The phrase “incidental to its primary transportation operation and necessary for its effective performance” means that the interstate transportation of the cooperative association or federation of cooperation association for nonmembers as described above is performed with the same trucks or tractors employed in a prior or subsequent trip in the primary transportation operation of the cooperative association or federation, that it is not economically feasible to operate the trucks or tractors empty on return trips (outbound trips in cases where the primary transportation operation is inbound to the association or federation), and that the additional income obtained from such transportation is necessary to make the primary transportation operation financially practicable. Transportation for nonmembers as described above performed by a cooperative or federation through the use of trucks or tractors trip-leased for one-way movements with the cooperative association or federation acting as leasee, is not incidental and necessary;

(b) The base tonnage to which the 25-percent limitation is applied is all tonnage of all kinds transported by the cooperative association or federation of cooperative associations in interstate or foreign commerce, whether for itself, its members or nonmembers, for or on behalf of the United States or any agency or instrumentality thereof, and that performed within the exemption provided by 49 U.S.C. 13506(a)(5).

[43 FR 2397, Jan. 17, 1978, as amended at 43 FR 21894, May 22, 1978; 45 FR 45524, July 3, 1980; 62 FR 49940, Sept. 24, 1997]

§ 372.111 Nonmember transportation limitation and record keeping.

(a) *Overall limitation of nonmember transportation*. No cooperative association or federation of cooperative associations may engage in nonmember interstate transportation for compensation in any fiscal year which, measured in terms of tonnage, exceeds

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its total interstate member transportation in such fiscal year.

(b) *Records of interstate transportation when nonmember transportation is performed.* Any cooperative association or federation of cooperative associations performing interstate transportation for nonmembers shall prepare and retain for a period of at least two years written records of all interstate transportation performed for members and nonmembers. These records shall contain:

- (1) The date of the shipment,
- (2) The names and addresses of the consignor and consignee,
- (3) The origin and destination of the shipment,
- (4) A description of the articles in the shipment,
- (5) The weight or volume of the shipment,
- (6) A description of the equipment used either by unit number or license number and, in the event this equipment is nonowned, the name and address of its owners and drivers,
- (7) The total charges collected,
- (8) A copy of all leases executed by the cooperative association or federation of cooperative associations to obtain equipment to perform transportation under 49 U.S.C. 13506(a)(5),
- (9) Whether the transportation performed is:
 - (i) Member transportation,
 - (ii) Nonmember transportation for nonmembers who are farmers, cooperative associations, or federations thereof,
 - (iii) Other nonmember transportation, and if of class (iii), how the transportation was incidental and necessary as defined in §372.109(a).

[43 FR 2397, Jan. 17, 1978, as amended at 45 FR 45524, July 3, 1980; 62 FR 38036, July 16, 1997; 62 FR 49940, Sept. 24, 1997]

§ 372.113 [Reserved]

§ 372.115 Commodities that are not exempt under 49 U.S.C. 13506(a)(6).

49 U.S.C. 13506(a)(6) provides an exemption from regulation for motor vehicles used in carrying ordinary livestock, fish, and unmanufactured agricultural commodities. Certain specific commodities have been statutorily determined to be non-exempt. Adminis-

trative Ruling No. 133, which is reproduced below, is a list of those commodities that are non-exempt by statute.

ADMINISTRATIVE RULING NO. 133

LIST OF COMMODITIES THAT ARE NOT EXEMPT BY STATUTE UNDER 49 U.S.C. 13506(A)(6)

- Animal fats*
- Butter*
- Canned fruits and vegetables*
- Carnauba wax as imported in slabs or chunks*
- Cattle, slaughtered*
- Charcoal*
- Cheese*
- Coal*
- Cocoa beans*
- Coffee, beans, roasted, or instant*
- Copra meal*
- Cotton yarn*
- Cottonseed cake or meal*
- Diatomaceous earth*
- Dinners, frozen*
- Feeds:*
 - Alfalfa meal
 - Alfalfa pellets
 - Beet pulp
 - Bran shorts
 - Copra meal
 - Corn gluten
 - Distilled corn grain residues, with or without solubles added
 - Fish meal
 - Hominy feed
 - Middlings
 - Pelletized ground refuse screenings
 - Wheat bran
 - Wheat shorts
- Fertilizer, commercial*
- Fish:*
 - Canned or salted as a treatment for preserving
 - Cooked or partially cooked fish or shrimp, frozen or unfrozen
 - Hermetically sealed in containers as a treatment for preserving
 - Oil from fishes
 - Preserved, or treated for preserving, such as smoked, salted, pickled, spiced, corned or kippered
- Flagstone*
- Flaxseed meal*
- Flour*
- Forest products:*
 - Resin products, such as turpentine
- Fruits and Berries:*
 - Bananas, fresh, dried, dehydrated, or frozen
 - Canned
 - Frozen
 - Hulls of oranges after juice extractions
 - Juice, fruit, plain or concentrated
 - Pies, frozen