



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

April 30, 2018

The Honorable M. Michael Rounds  
United States Senate  
Washington, DC 20510

Dear Senator Rounds:

Thank you for your letter requesting clarification of the hours-of-service (HOS) agricultural commodities exception in 49 C.F.R. § 395.1(k)(1). The exception implements certain statutory language amended most recently by section 32101(d) of the Moving Ahead for Progress in the 21st Century Act.

On December 20, 2017, the Federal Motor Carrier Safety Administration (FMCSA) published a notice in the Federal Register providing preliminary additional guidance to its State partners and to industry on the scope of the agricultural commodity exception to the HOS regulations (see 82 Fed. Reg. 60360). This information will assist motor carriers transporting agricultural commodities in obtaining the maximum permissible benefits under the exception. Please note that the focus is on "agricultural commodities" and does not extend to "farm supplies for agricultural purposes." The notice requested public comment for 30 days, through January 19, 2018, which the Agency extended until February 20, 2018. The Agency is reviewing the feedback it received and plans to issue final guidance on this subject.

Concurrently, FMCSA published a notice announcing a limited 90-day waiver from the HOS regulations pertaining to electronic logging devices (ELD) for the transportation of agricultural commodities as defined in the Federal Motor Carrier Safety Regulations (FMCSR) (see 82 Fed. Reg. 60323). The Agency took this action in response to a waiver request from the National Pork Producers Council (NPPC) on behalf of eight organizations representing transporters of livestock and other agricultural commodities, as defined in the FMCSRs. That waiver expired on March 18, 2018, and a follow-on waiver was published on March 23, 2018, effective until June 18, 2018 (see 83 Fed. Reg. 12685). This will allow FMCSA to consider the merits of the NPPC's and other exemption applications from segments of the agricultural industry concerning the use of ELDs to document drivers' hours of service and the applicability of requirements to certain carriers who began using ELDs on December 18, 2017.

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The FMCSA will decide the outcome of each of these exemption applications during the time remaining on the waiver. Additionally, FMCSA has engaged in outreach to help the industry to better understand the available statutory and regulatory exceptions to the HOS rule.

The Department's responses to the specific requests in your letter are enclosed. A similar response has been sent to each cosigner of your letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elaine L. Chao". The signature is fluid and cursive, with the first name "Elaine" and last name "Chao" clearly distinguishable.

Elaine L. Chao

Enclosure

## **The Department's Responses to Specific Requests**

- *Provide a detailed definition of the source of the agricultural commodities.*

The definition of the source of agricultural commodities will be addressed in response to comments submitted to the proposed additional guidance published on December 18, 2017 (see 82 Fed. Reg. 60360). The notice requested public comment for 30 days, through January 19, 2018, which the Agency extended until February 20, 2018. The Agency is reviewing the feedback it received and will issue final guidance on this subject soon.

In the proposed guidance, the Agency requests comment on possible sources other than where crops are grown or livestock are raised, such as grain elevators and livestock sale barns. Questions are also asked regarding commodity pick-up from multiple sources on the same trip.

- *Provide a detailed explanation of the parameters of the 150 air-mile radius exemption.*

The 150 air-mile radius is measured from the source of the commodities being transported, as described above. While operating within that radius, all activity related to the transportation of the agricultural commodity is exempt from HOS regulations, including provisions requiring the use of electronic logging devices.

The proposed guidance would exempt the operator for the first 150 air-miles, even if the destination is beyond that limit. It proposes further to exempt the operator of an unladen vehicle that is en route to pick up a load or return from delivering a load. If the destination was outside the 150 air-mile limit and the operator was returning to the original source, the operator would again be exempt when returning within the original 150 air-mile limit.

- *Provide a detailed explanation of how the exemption relates to the planting and harvesting periods, as determined by each State.*

The transportation of agricultural commodities is exempt only during the planting and harvesting seasons as determined by each State. This includes livestock.<sup>1</sup> For example, an operator transporting agricultural commodities in February would not be eligible for the exemption if the State has determined the planting and harvesting period to be March to December. Many States, however, define the planting and harvesting period as year-round.

- *Clarify how the exception within the 150 air-mile radius from the source interacts with interstate travel.*

In transporting agricultural commodities across State lines, the driver would qualify for the exception if the trip occurred within the 150 air-mile radius and during the planting and harvesting periods designated by both States. In most cases, these periods overlap partially or even completely.

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<sup>1</sup> The seasonal restrictions were written into the original exception enacted as part of the National Highway System Designation Act of 1995. The definition of "agricultural commodity" was added by Sec. 4130(c) of SAFETEA-LU in 2005, and explicitly included livestock. Sec. 4130(c) also defined "farm supplies for agricultural purposes," including "livestock feed at any time of the year." Sec. 4130(a) amended the basic exemption provision, yet it reenacted the condition that allowed the exemption only "during planting and harvesting periods, as determined by each State," resulting in the applicability of the exemption for planting and harvesting seasons to livestock.