

The Honorable Elaine Chao  
Secretary, U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

The Honorable Raymond Martinez  
Administrator, Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E., Suite 600  
Washington, D.C. 20590

Dear Secretary Chao and Administrator Martinez,

The live animal hauling community (including insects) appreciates the opportunity to comment on Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities (Docket No. FMCSA-2017-0360). While the industry continues to believe a delay of enforcement with respect to the electronic logging device (ELD) mandate is essential to prevent catastrophic outcomes for our stakeholders, the live animals we haul, and American consumers, we thank the Agency for continued focus on addressing underlying hours of service (HOS) concerns.

The 150-air mile agricultural commodity exemption described in 49 CFR 395.1(k)(1) can be a useful tool for haulers. Unfortunately, the exemption can only be used in many states during certain times of year. These times of year vary from state-to-state, making uniform application and use of the exemption impossible. Until recently, many of our livestock haulers and state law enforcement agencies were unaware of the application of the 150-air mile agricultural commodity exemption to livestock. With this new awareness comes additional need for clarity with respect to application in practice. This need for clarity is particularly more pressing when coupled with the unforgiving realities of using ELD technology. Thus, the undersigned organizations wish to provide the following feedback and comments:

1. We agree with the proposed guidance that time spent operating unladen vehicles traveling to or from the source of an agricultural commodity should be considered exempt time;
2. We agree with the proposed guidance that exiting the 150-air mile radius of an agricultural commodity source does not prevent the driver from applying the 150-air mile exemption to the first 150-air miles driven from the source of the agricultural commodity;
3. Livestock markets are a “source” of agricultural commodities;
4. Each farm, ranch, livestock market, or other location where live animals are loaded onto a trailer for shipment is a “source” of an agricultural commodity and the exemption contemplated by 49 CFR 395.1(k)(1) should apply as the statute indicates: to each source not limited to a single application per day or per trip.

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act or “MAP-21” amended the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. § 31136 note) to state regulations regarding maximum driving and on-duty time for drivers do not apply to “[d]rivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150-air-mile radius from the source.” (emphasis added). As a result, 49 CFR 395.1(k)(1) was

promulgated. Live animal haulers can utilize the flexibility contemplated by the regulation as their cargo is defined as an “agricultural commodity” under 49 CFR 395.2. An agricultural commodity is “any agricultural commodity, nonprocessed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S. C. 1471] and insects).”

## **A. Responses to Proposed Guidance**

### *Unladen vehicles*

We agree with the Agency’s interpretation that unladen vehicles traveling to and from a source of an agricultural commodity should be able to take advantage of the agricultural commodity exemption even though their commercial motor vehicle (CMV) is not actively hauling an agricultural commodity while unladen. Any interpretation to the contrary would be far narrower than necessary and would render the exemption less useful to drivers.

### *Loads beyond the 150-air mile radius:*

Although we agree with the spirit of the proposed guidance that agricultural commodity haulers benefit from the 150-air mile “source” exemption even if they exit the 150-air mile radius of that “source,” we disagree with the proposed guidance as written. The guidance indicates “[o]nce the hours of service rules have begin [*sic*] to apply on a given trip, they continue to apply for the duration of that trip, until the driver crosses back into the area within 150 air-miles of the original source of the commodities and is returning to that source.” The statute, as enumerated more fully below, clearly indicates that each farm, ranch, livestock market, or other location where live animals are loaded for transport is a “source” of an agricultural commodity and, as such, each act of “transporting agricultural commodities from the source” is entitled to the 150-air mile radius exemption described in 49 CFR 395.1(k)(1).

Thus, we request the Agency modify its guidance and response to Question 35 to simply state:

“The exception applies to transportation during the initial 150-air miles from the source of the commodity. Once a driver operates beyond the 150-air mile radius of the source, part 395 applies. Starting at zero from that point, the driver must then begin recording his or her duty time, and the limits under the 11-hour, 14-hour, and the 60-/70-hour rules apply.”

## **B. Responses to Request for Comments**

### *Livestock markets are sources of agricultural commodities*

Although the statute and related regulation do not explicitly define what a “source” of an agricultural commodity might be, logic and commonsense indicate livestock markets are a “source.” Livestock auction markets, or sale barns, are livestock-specific locations where animals are brought, sorted, sold, and gathered up for resale or personal use on the ranch.

The challenges Congress sought to address by giving agricultural commodity haulers some flexibility are all relevant to livestock markets. Animals are unpredictable at livestock markets just like at a ranch, they can balk at the loading chute, be uncooperative, and need to be loaded carefully in accordance with appropriate animal husbandry techniques. All of this coupled with oftentimes long post-sale load-out lines makes applying the flexibility afforded to a “source” of livestock to livestock markets a logical conclusion. Had Congress wanted to narrowly define the “source” of an agricultural commodity to exclude livestock markets it would have done so. Thus, the Agency should interpret livestock markets to be a “source” of agricultural commodities.

*Each farm, ranch, and livestock market is a source of an agricultural commodity*

Although informal guidance has indicated the Agency’s belief that a driver may only use the 150-air mile exemption once per trip, the plain language of the statute indicates a broader interpretation is appropriate. Nowhere in the statute or the relevant regulation is the concept of such a “trip” contemplated or defined. As such, applying the exemption only to the first “source” of any given “trip” is a narrower interpretation than the statute calls for. Such an interpretation also opens the use of the exemption to additional confusion in situations where some livestock are unloaded and others are picked up and calls for further subjective interpretation as to when a “trip” is started and concluded.

Further, the issues associated with loading and waiting at the source of an agricultural commodity do not dissipate after the first loading occurs at a “source.” Live animals are just as challenging to load and handle at the second stop on a “trip” as they are on the first.

As such, the Agency should apply the agricultural commodity exemption to each “source” from which agricultural commodities are gathered as contemplated by 49 U.S.C. § 31136. The Agency should not create a new and confusing interpretation that would limit agricultural commodity haulers to only using the exemption at the first “source” of their “trip” as Congress did not contemplate the concept of a “trip” and clearly intended each farm, ranch, and livestock market be a “source” of an agricultural commodity.

### **C. Conclusion**

The live animal hauling industry and the undersigned organizations appreciate the opportunity for continued dialog and clarity. We again urge the Agency to grant a waiver and limited exemption from the ELD mandate while definitions such as the “source” of agricultural commodities are solidified. This delay will enable FMCSA and the live animal hauling industry to undertake necessary training and outreach to fully understand and apply existing flexibilities and how they function with the new ELD devices.

Sincerely,

Alabama Cattlemen’s Association  
Alabama Department of Agriculture & Industries  
American Beekeeping Federation  
American Farm Bureau Federation

American Honey Producers Association  
American Horse Council  
American Quarter Horse Association  
American Sheep Industry Association  
Americas Tilapia Alliance  
Arizona Pork Council  
Arkansas Pork Producers Association  
California Cattlemen's Association  
California Pork Producers Association  
Colorado Pork Producers Council  
Florida Cattlemen's Association  
Georgia Pork Producers Association  
Idaho Pork Producers Association  
Indiana Pork Advocacy Coalition  
Iowa Cattlemen's Association  
Iowa Pork Producers Association  
Kansas Livestock Association  
Kansas Pork Association  
Livestock Marketing Association  
Minnesota Pork Producers Association  
Montana Pork Producers Council  
Montana Stockgrowers Association  
National Aquaculture Association  
National Cattlemen's Beef Association  
National Pork Producers Council  
Nebraska Cattlemen Association  
North American Meat Institute  
North Carolina Pork Council  
Ohio Pork Council  
South Dakota Cattlemen's Association  
Southwest Meat Association  
Texas Cattle Feeders Association  
United Dairymen of Arizona  
United States Cattlemen's Association  
Wisconsin Pork Association  
Wyoming Stock Growers Association