

# ***OPPOSE ADDITIONAL AGRICULTURAL COMMODITY EXEMPTIONS TO KEY SAFETY RULES***

Transporters of agricultural commodities and farm supplies for agricultural purpose **ALREADY** enjoy exceptions to the Hours of Service and Electronic Logging Devices rules that Congress granted to them in multi-year transportation reauthorization bills and that the FMCSA further expanded via regulatory guidance. Enough is enough; lawmakers must prioritize safety and oppose further expanding the exemption.

## **Background:**

Prior to the enactment of MAP-21, drivers transporting “agricultural commodities” and “farm supplies for agricultural purposes” within a 100 air-mile radius (~115 miles) were exempt from the Hours of Service (HOS) regulations; the quoted terms are defined in 49 CFR 395.2.

The exemption to HOS rules for drivers transporting agricultural commodities and farm supplies for agricultural purposes was most recently amended in MAP-21, Pub. L. 112-141, § 32101(d), 126 Stat. 778 (July 6, 2012).

*Following enactment of MAP-21, the regulatory exception now reads:*

49 CFR 395.1(k) *Agricultural operation.* The provisions of this part [regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers] shall not apply during planting and harvesting periods, as determined by each State, to drivers transporting

- (1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius (172.5) from the source;
- (2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or
- (3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

## Regulatory Guidance:

On May 31, 2018, the FMCSA released regulatory guidance, effective immediately, applicable to all transporters of agricultural commodities, 49 CFR 395.1(k)(1), but does not address “farm supplies for agricultural purposes” under 49 CFR 395.1(k)(2) or (3). The guidance answered these four questions:

Questions	Guidance
Does the agricultural commodity exception apply to drivers while driving unloaded within the 150 air-miles of the place where such commodity will be loaded, and to that portion of an unloaded return trip which occurs within a 150 air-mile radius of the place where the “agricultural commodity” was loaded?	Yes, if the trip does not involve transporting any non-agricultural commodity, and sole purpose of trip is to transport such commodities.
Does the agricultural commodity exception apply if the destination for the commodity is beyond the 150 air-mile radius from the source?	Yes, but once a driver operates beyond the 150 air-mile radius of the source, 49 CFR 395 applies. Once the HOS rules begin to apply on a given trip, they continue to apply for the duration of the trip, until the driver crosses back into the area within the 150 air-miles from the source.
How is the “source” of an agricultural commodities in 395.1(k)(1) determined?	Source may not only be a farm or ranch, but may include intermediate and storage facilities.
How is the “source of the agricultural commodities” determined if the driver makes multiple pick-ups of the commodity en route to a final destination?	The first place where the commodity was loaded is the measuring point for the 150 air-mile radius.

**Exemptions to HOS Regulations Weaken Safety** – Exemptions to Federal motor carrier safety regulations compromise safety, erode uniformity, and weaken enforcement efforts.

**Regulatory Changes Cannot Occur Through Issuance of Guidance** – The FMCSA’s does not have the legal authority to enact such a regulatory change through a guidance. The statute and ensuing regulation denote that the exception for transporters of agricultural commodities is for drivers engaged in trips within the 150 air-mile radius, not beyond it. Moreover, the guidance creates a legal definition of source without legislation or a rulemaking.

**The Regulatory Guidance is Unstudied and Unsafe** – Permitting drivers to operate within a 172 mile radius of a source, which includes not only farms and ranches but also intermediate storage and loading facilities, during planting and harvesting periods, which are year round in some states, will not reduce truck driver fatigue.

**The Truck Safety Coalition OPPOSES the FMCSA’s Regulatory Guidance Exempting Transporters of Agricultural Commodities from Hours of Service and Electronic Logging Device Mandates.**

**Reject All Bills in Congress Attempting to Expand the Exception from HOS and ELD Mandates for Transporting Agricultural Commodities and/or Farm Supplies for Agricultural Purposes, Including:**

<b>Bill Number</b>	<b>Short Title</b>	<b>How Legislation Affects Existing Exception for Transporters of Agricultural Commodities</b>
S. 1255   H.R. 487	Transporting Livestock Across America Safely Act of 2019	Would double the current air-mile radius from the source from 150 to 300 air-miles, while also creating a 150 air-mile radius from the destination.
S. 600   H.R. 2460	Modernizing Agricultural Transportation Act of 2019	Would suspend the enforcement of the ELD rule until the U.S. Secretary of Transportation formally proposes reforms, developed by a working group, to improve the transportation of agricultural commodities.
H.R. 1673	Agricultural Trucking Relief Act of 2019	Would expand the definition of “agricultural commodity” to include: agricultural, aquacultural, horticultural, and floricultural commodities; fruits; vegetables; any non-human living animal and the products thereof; and other agriculture products that are— sensitive to temperature or climate, and at risk of perishing in transit.”
H.R. 1697	Small Carrier Electronic Logging Device Exemption Act of 2019	Would exempt motor carriers that own or operate 10 or fewer commercial vehicles from the electronic logging device mandates
H.R. 1698	Agricultural Business Electronic Logging Device Exemption Act of 2019	Would exempt certain motor carriers engaged in agricultural business from the electronic logging device requirements

**At a time when truck crashes, injuries, and deaths continue to rise, we urge lawmaker to reject policies that will likely worsen truck driver fatigue and diminish truck safety overall.**