

The Honorable Elaine Chao  
U.S. Department of Transportation Secretary  
1200 New Jersey Ave. SE  
Washington, DC 20590

The Honorable Raymond Martinez  
Federal Motor Carrier Safety Administration Administrator  
1200 New Jersey Ave. SE, Suite 600  
Washington, DC 20590

*RE: Docket No. FMCSA-2017-0360*

Dear Secretary Chao and Administrator Martinez:

The North Dakota Stockmen's Association is an 88-year-old cattle producers' trade organization representing more than 3,000 ranch families in our state. Thank you for the opportunity to comment on the Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities. This is an especially important issue for our members, because of North Dakota's geographic location and the composition of its beef cattle industry, with many animals leaving the state for further feeding and/or harvesting.

Our cattle-ranching members contend that a delay of enforcement with respect to the electronic logging device (ELD) mandate is essential to prevent catastrophic outcomes for our stakeholders, the animals we haul and U.S. consumers. We do appreciate the Agency for continuing its focus on addressing the 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 difficult to 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 ELD technology. Thus, we 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 – and therefore should be considered – a “source” of agricultural commodities; and
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.” 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, non-processed 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).”

## **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. An interpretation to the contrary would be 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 begun [*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 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 ask the guidance and Question 35 response be modified to 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/her duty time, and the limits under the 11-hour, 14-hour and 60-/70-hour rules apply.”

## **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, common-sense indicates livestock markets are a “source.” Livestock auction markets are livestock-specific locations where animals are brought, sorted, sold and gathered 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 often 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 up the use of the exemption to additional confusion in situations where some livestock are unloaded and others are picked up and calls for subjective interpretation as to when a “trip” is started and concluded.

Additionally, 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.

### **Conclusion**

We appreciate the opportunity for continued discussion on this topic and respectfully ask the Agency to grant a waiver and limited exemption from the ELD mandate while appropriate and logical definitions are developed and the intricacies of live animal hauling are taken into consideration.

Sincerely,

Warren Zenker, President  
North Dakota Stockmen’s Association