

**ISSUE NUMBER**

21-028-DRV

**ISSUE NAME**

Agricultural Commodity Exemption

**STATUS**

Closed

Driver-Traffic Enforcement Committee

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**EMAIL**[George.Donahue@troopers.ny.gov](mailto:George.Donahue@troopers.ny.gov)**SUMMARY OF ISSUE**

Currently 395.1k states: Agricultural operations. The provisions of this part 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 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.

We have been finding more and more companies claiming their 1st 150 air-miles as off duty time even though their trip will be taking them well outside the 150 air-mile radius established by 395.1k. This is based solely on what is on the FMCSA web site for ELD Hours of Service (HOS) and Agriculture Exemptions examples on how to record their time spent within the 150 air-mile radius. This information on the FMCSA web site is a contradiction to what is in the regulations as well as what is in the Federal Register /Vol. 85, No. 227 dated Tuesday, November 24, 2020 /Rules and Regulations 74909 which also states that the exception is for when the commodity is being transported from a source to a point within 150 air-mile radius.

Other regulation also states for farmers that they must operate within 150 air miles of the farm to take advantage of the exemptions provided to them such as: Farm Vehicle Driver and Covered Farm Vehicle over 26,000lbs.

**JUSTIFICATION OR NEED**

Since FMCSA greatly expanded what the definition of an agricultural commodity and they failed to update / correct their guidance CVSA needs to petition FMCSA to amend their guidance to coincide with the regulations. With more and more for-hire carriers taking advantage the agricultural commodity exception under 395.1k and the guidance put out by FMCSA contradicts what is clearly stated in the regulations this will lead to difficulties in enforcing the regulations as written. It will also lead drivers to think it is ok to add an additional 150 - 300 air-miles to their trip which goes against every measure of safety that the regulations are meant to enforce.

**REQUEST FOR ACTION**

CVSA need to petition the FMCSA to correct their guidance on the web site to match what is in the regulations in order to clarify that the Agricultural Commodity Exception only applies when the carrier operates solely within the

150 air-mile radius of the commodity. The guidance should read as follows: If a carrier is hauling an Agricultural Commodity and the delivery location is more than 150 air-miles from the source, then the entire trip must be record as on-duty / on-duty driving.

#### **ACTION TAKEN BY COMMITTEE**

Committee discussion about conflicting guidance when compared to the regulation. FMCSA representative indicated that for 395.1K(1) a couple of things that come into play.

Regulations don't apply within 150 air miles. Hours of service do not apply within 150 air miles from source. Once you reach 150 air miles the driver must follow hours of service. Destination does not matter. Interpretation and guidance are correct.