

Ag Exemption

The Ag Exemption for motor carriers like Western Co-op Transport has been shut down. This *interpretation* of the law or *guidance* from the DOT is the law of the land and is being enforced throughout the Upper Midwest.

Transporters are not able to use the Ag Exemption for loads to the local retailer. The exemption is now only good for loads going direct to the farmer – the load bypasses the retailer's storage supply system.

DOT interpretation of the law conflicts with past practice within the states. If you believe the DOT interpretation is contrary to Congressional intentions and needs to be changed, it will require a political solution.

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1. The Federal law (SAFETEA-LU)
 2. The States laws
 3. The DOT/FMCSA interpretation

Back in 1995 and again in 2005, Congress passed a law that allows for individual states to have an Ag Exemption regarding maximum driving and on-duty time for drivers (Hours of Service).

This is the law from 2005 (SAFETEA-LU).

SEC. 4130. OPERATORS OF VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES.

(a) **AGRICULTURAL EXEMPTION.**—Section 229(a)(1) of the Federal Motor Carrier Safety Improvement Act of 1999 (as added by section 4115 of this Act), is amended to read as follows:

“(1) **TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.**—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 harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.”.

(b) **REVIEW BY THE SECRETARY.**—Section 229(c) of such Act is amended by striking “paragraph (2)” and inserting “paragraph (1), (2), or (4)”.

(c) **DEFINITIONS.**—Section 229(e) of such Act is amended by adding at the end the following:

“(7) **AGRICULTURAL COMMODITY.**—The term ‘agricultural commodity’ means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

“(8) **FARM SUPPLIES FOR AGRICULTURAL PURPOSES.**—The term ‘farm supplies for agricultural purposes’ means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.”.

States adopted the DOT/FMCSA rules and Regulations. States set Ag Exemption periods for Planting and Harvesting as allowed for in the SAFETEA-LU law.

Illinois

Year Round

Iowa

March 15-June 30 & Oct 4-Dec 14

Minnesota

March 15 thru December 15

North Dakota

February 15 thru December 15

South Dakota

March 1 thru December 31

Wisconsin

March 15 thru December 15

This is how the DOT/FMCSA is interpreting the Ag Exemption and enforcing it with motor carriers:

Part 395: Hours of Service of Drivers

(k) *Agricultural operations.* The provisions of this part shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(k)(1) Is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and

(k)(2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

Question 33: How is "point of origin" defined for the purpose of § 395.1(k)?

Guidance: The term "point of origin" is not used in the NHS Designation Act; the statutory term is "source of the [agricultural] commodities." The exemption created by the Act applies to two types of transportation. The first type is transportation from the source of the agricultural commodity - where the product is grown or raised - to a location within a 100 air-mile radius of the source. The second type is transportation from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used) within a 100 air-mile radius of the retail distribution point.

The legislative history of the agricultural exemption indicates it was intended to only apply to retail store deliveries. Thus, it is clear Congress intended to limit this exemption to retail distributors of farm supplies.

Second-stage movements, such as grain hauled from an elevator (or sugar beets from a cold storage facility) to a processing plant, are more likely to fall outside the exempt radius. Similarly, the exemption does not apply to a wholesaler's transportation of an agricultural chemical to a local cooperative because this is not a retail delivery to an ultimate consumer, even if it is within the 100 air-mile radius.

Specific Questions:

1. Does a transport delivery of either propane or anhydrous ammonia picked up at a wholesale terminal, then delivered to a retail location meet the criteria of agricultural operations set out in 395.1(k).
2. Does a transport delivery of either propane or anhydrous ammonia picked up at a wholesale terminal, then delivered directly to a farm location meet the criteria of agricultural operations set out in 395.1(k).

NO

YES