



# National Milk Producers Federation

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Agri-Mark, Inc.  
Associated Milk Producers Inc.  
Bongards' Creameries  
Cooperative Milk Producers Association  
Cortland Bulk Milk Producers Cooperative  
Dairy Farmers of America, Inc.  
Ellsworth Cooperative Creamery  
FarmFirst Dairy Cooperative  
First District Assoc.  
Foremost Farms USA  
Land O'Lakes, Inc.  
Lone Star Milk Producers  
Maryland & Virginia Milk Producers Cooperative Association  
Michigan Milk Producers Association  
Mid-West Dairymen's Company  
Mount Joy Farmers Cooperative Association  
Northwest Dairy Assoc.  
Oneida-Madison Milk Producers Cooperative Association  
Prairie Farms Dairy, Inc.  
Premier Milk Inc.  
Scioto County Cooperative Milk Producers' Association  
Select Milk Producers, Inc.  
Southeast Milk, Inc.  
St. Albans Cooperative Creamery, Inc.  
Tillamook County Creamery Association  
United Dairymen of Arizona  
Upstate Niagara Cooperative, Inc.  
Zia Milk Producers, Inc.

February 20, 2018

*Via email & regulations.gov*

The Honorable Cathy F. Gautreaux  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

**RE: Hours of Service of Drivers of Commercial Motor Vehicles; Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities [Docket No. FMCSA-2017-0360]**

The National Milk Producers Federation (NMPF) thanks you for the opportunity to comment on the proposed guidance regarding the transportation of agricultural commodities that was published in the Federal Register on December 20, 2017 (see 82 Federal Register 60360).

NMPF, established in 1916 and based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

As you know, the agricultural exemption to the Hours of Service (HOS) rule has been in place since 1995 and was most recently updated in statute when Congress enacted MAP-21 in 2012 (P.L. 112-141). Just as the exemption has evolved over time, we appreciate your Agency's understanding that many shipping industries, including the dairy sector, have evolved as well. To that end, your proposed guidance clarifies two particular issues in questions 34 and 35, as included below.

**Question 34:** Does the agricultural commodity exception (395.1(k)(1)) apply to drivers while driving unloaded to the source where an agricultural commodity will be loaded, and to the unloaded return trip after delivering an agricultural commodity under the exception?

**Guidance:** Yes, provided that trip does not involve transporting other cargo and the sole purpose of the trip is to complete the delivery or pick up of agricultural commodities, as defined in part 395.2. In that case, driving and on-duty time are not limited, nor do other requirements of part 395 apply.

**Question 35:** Does the agricultural commodity exception apply if the destination for the commodity is beyond the 150 air-mile radius from the source?

Guidance: 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 rule apply. Once the hours of service 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 150 air-miles of the original source of the commodities and is returning to that source. If the driver is not returning to the original source, the HOS rules continue to apply, even if the driver reenters the 150-mile radius.

We support your answers to questions 34 and 35. These two issues have historically been interpreted as such and your proposed guidance reflects that.

We also appreciate the opportunity to comment on how your Agency defines the source of a commodity. We believe that a dairy terminal, or transfer station, should be considered a “source” of agricultural commodities under section 395.1(k)(1). Dairy terminals are used when a processing plant faces capacity challenges. To avoid bottleneck issues on the farm, raw milk can be transported to a dairy terminal and held until capacity is available at the processing facility. Additionally, for drivers to comply with HOS regulations, raw milk is often transported to a terminal by one driver and held there to be transported to the processing plant by another driver. Again, the raw milk is not being processed at the terminal, it is simply being held there.

Further, the dairy industry is particularly grateful to be able to comment on how to apply the HOS exemption for agricultural commodities when a hauler is loading a commodity at multiple sources during one trip. This issue is important to the U.S. dairy sector because milk haulers very often pick up milk from numerous farms on the trip to the processing plant or the terminal. Small and medium-sized dairy producers in major milk producing regions like the Northeast and Midwest do not individually produce enough milk to fill an entire milk tanker. Therefore, milk haulers must make several stops to fill their tanker before departing for the destination, whether that be a milk terminal or processing plant. Moreover, the process of loading milk into a tanker can take considerable time at each farm, and it is inefficient to transport only a partially-full tanker.

Therefore, we believe it is important that milk haulers be able to utilize the 150 air-mile agriculture exemption beginning at each pickup location. We do not believe that Congress intended for a narrower interpretation, since nowhere in the statute is there a reference to a trip.

It is also important to note that once picked up from the farm, raw milk is often hauled across state lines to be processed. Therefore, we ask that your Agency provide clear and consistent interpretation and enforcement guidelines to all states with respect to the application of the agricultural commodities exemption to milk. For instance, we have heard from producers and haulers in several dairy states that raw milk is not always considered to be a commodity by federal regulators. We believe raw milk is clearly included in the definition of an agricultural commodity pursuant to SAFETEA-LU (P.L. 109-59), which reads as follows:

‘(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).’

We look forward to working with you to resolve this issue. Our industry would also benefit from your Agency’s clarification of how the exemption applies to partially-processed dairy products that are transported from one plant to another for further processing, such as cream, skim milk, and condensed skim.

Finally, some milk haulers have raised questions about the applicability of the Adverse Driving Conditions exemption. Specifically, can haulers use the exemption if they departed on a trip when a weather event was already in the forecast, or can the exemption only be used in the event of an unexpected event?

Thank you for your consideration of our comments. Please contact Paul Bleiberg at [pbleiberg@nmpf.org](mailto:pbleiberg@nmpf.org) should you have any questions, comments, or concerns.

Sincerely,



Jim Mulhern  
President & CEO