KNOWLEDGE EXCHANGE PARTNER

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THIS ISSUE:

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Trucking Compliance: Electronic Logging Devices Mandate and Agricultural Exceptions

Whether you own one truck or many, farming, fishing and forest product businesses need to be aware of, and comply with, a myriad of trucking regulations. In this article, Clay Eppard, Fleet Safety Services, provides information on trucking regulations, including Hours of Service (HOS) and Electronic Logging Devices (ELD).

While many only identify driver logs and HOS regulations with long-haul carriers, the regulations are more broadly applicable than that. The drivers' HOS rules, outlined in the Federal Motor Carrier Safety Regulations (49 CFR Part 395), are applicable to drivers of vehicles with a single or combined weight over 10,000 lbs. There are some specific exceptions to the both the ELD and the HOS rules, which are outlined below.

The ELD rule applies to most motor carriers and drivers who are currently required to maintain records of duty status (over-the-road truck type paper logs – this includes all interstate drivers over 10,000 lbs., in-state regulations vary by state); and who do not specifically qualify for one of the following three exceptions.

ELD Rule Exceptions

The following are not required to use ELDs, however, carriers may choose to use ELDs even if they are not required:

- Drivers who use "paper logs" no more than eight days during any 30-day period*****
- Driveaway-towaway drivers (the vehicle driven is the commodity) or the vehicle being transported is a motor home or a recreation vehicle trailer
- Drivers of vehicles manufactured before model year 2000

*****Drivers are exempt from preparing "paper logs" when meeting all the conditions of the 100 or 150 air-mile radius (172.6 statute miles) exceptions. Drivers operating CDL vehicles must operate within 100 miles of their work reporting location, be released from duty within 12 consecutive hours and maintain a proper daily time record, such as a log or time card of hours worked at their place of business. Operators of non-CDL vehicles must operate within with 150 air-miles, and prepare a proper daily time record.

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***Note**: Additional requirements of the exception may apply, so ensure to refer to 49 CFR Part 395.1(e) for the specific conditions of the exception.*

Agricultural Exemptions

Congress provided four statutory exemptions to the Federal Motor Carrier Safety HOS Regulations for agricultural operations:

- **"Covered farm vehicles"** (defined below) weighing 26,001 pounds or more, operated by a farmer or a farmer's employee, are exempt from HOS and CDL regulations if the vehicle is operated in the state of registration, or within a 150-air mile radius of the farmer's farm or ranch. Covered farm vehicles weighing 26,000 pounds or less are exempt throughout the country.
- During planting and harvesting periods, as determined by each state, the following are exempt from HOS regulations:
    - Drivers who transport agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius of the source
    - 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
    - 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
- Drivers who transport commercial bees in interstate commerce are exempt from the 30-minute break required by the HOS regulations if there are bees on board the vehicle.
- Drivers who transport livestock in interstate commerce are exempt from the 30-minute break required by the HOS regulations if there is livestock on board the vehicle.

***Note**: Logging and timber vehicles are not considered a CFV under the agricultural exemptions. The Federal Motor Carrier Safety Administration (FMCSA) recently published additional specific guidance, as it relates to the transportation of agricultural commodities, which is outlined in 49 CFR Part 395.1*

As defined in 49 CFR Part 390.5, a "**covered farm vehicle**" (CFV):

- Travel in all states, regardless of vehicle registration
- Is operated by an owner or operator of a farm or ranch, or by a family member or employee of the owner or operator
- Transports agricultural commodities, livestock, machinery or supplies to or from a farm or ranch
- Has a license plate or some other means specified by the state that identifies it as a farm vehicle
- Is not used in for-hire motor carrier operations (but for-hire operations do not include use of a vehicle owned and operated by a tenant farmer to transport the landlord's portion of the crops under a crop-share agreement)

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- Is not transporting hazardous materials that require placarding, and either of the following:
    - Has a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) (whichever is greater) of 26,001 pounds or less, in which case the CFV exemptions in § 390.39 apply anywhere in the United States
    - Has a GVW or GVWR (whichever is greater) of more than 26,001 pounds and travels within the state where it is registered or, if traveling out of the state where it is registered, stays within 150 air-miles of the owner or operator's farm or ranch

***Note**: Congress has prohibited FMCSA or its state partners from using Federal funds to enforce the requirement that commercial motor vehicle operators use ELDs to track their HOS while transporting either livestock, as defined under 7 U.S.C. § 1471, or insects through September 30, 2018.*

The FMCSA is currently reviewing a request from the Agricultural Retailers Association (ARA), on behalf of its members, to be exempt from the requirement that motor carriers and their drivers of commercial motor vehicles (CMVs) use an ELD to record the driver HOS. ARA states that the ELD requirement imposes undue economic and other burdens on its member retailers and distributors of farm-related products and services. It asserts that ELDs fail to properly record the complex HOS data, are not properly certified by the FMCSA, and do not provide appropriate cyber-security safeguards. ARA also asserts that ELDs will not function properly in many locations in rural America because of poor internet and cellular connectivity. ARA states that the operations of its members under exemption from the ELD requirements will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. To date, the FMCSA has not ruled on this request.

ABOUT THE AUTHOR: *Clay Eppard spent 13 years as a field investigator for the US Department of Transportation. Clay now works as a principal consultant at Fleet Safety Services, Inc., a transportation compliance assistance firm, where his extensive knowledge of the US DOT operating procedures and policies has been a valuable asset. He can be reached at CEppard@Fleet-Safety.com.*

USDA Releases First Details of Trade Aid Package

At the end of August, Secretary of Agriculture Sonny Perdue released detailed plans for the first distribution of aid to U.S. farmers and ranchers negatively affected by retaliatory trade actions imposed upon their products by foreign nations. This comes after weeks of speculation from the farm community after the Trump administration stated that they would provide a short term relief plan to help U.S. farmers and ranchers as the administration works to renegotiate existing trade agreements.

Detailed in the plan that was released are the three programs that will be used; Market Facilitation Program (MFP), Food Purchase and Distribution Program and Agricultural Trade Promotion Program (ATP). These will be administered by the Farm Services Agency (FSA), Agricultural Marketing Service (AMS) and Foreign Agricultural Service (FAS), respectively. Of the $12 billion in aid originally proposed, roughly $6.3 billion is being disbursed to producers, food programs and market access programs in this first round of funding. Approximately $4.7 billion will be disbursed in direct aid to farmers, with most of it going to soybean growers.

Support for specialty crops will largely be in the form of purchases for nutrition assistance programs. $1.2 billion will be used to purchase food for nutrition programs and $200 million will be used for the Foreign Agricultural Service's Agricultural Trade Promotion Program. The rest of the funds will be distributed, if warranted, as determined by USDA.

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A majority of producers will be eligible under the Market Facilitation Program (MFP). Under the MFP, commodities like cash crops, fluid milk and hogs are covered. After harvest, producers can request up to 100 percent of their 2018 production, beginning on September 4, 2018. Payments will be based on 50 percent of the production volume submitted.

One general eligibility standard to note is that producers must have an average adjusted gross income (AGI) for 2014, 2015 and 2016 of less than $900,000. The first payment period will begin on September 4, 2018. Total payments are capped at $125,000 per person or legal entity, like LLC's or C-Corps, with special provisions for dairy and hog operations.

Market Facilitation Program Payment Rates and Estimated Round One Payments

Commodity	Initial Payment Rate	Est. Initial Payment (in $1,000s)
Cotton	$0.06/lb.	$276,900
Corn	$0.01/bu.	$96,000
Dairy (Milk)	$0.12/cwt.	$127,400
Pork (Hogs)	$8.00/head	$290,300
Soybeans	$1.65/bu.	$3,629,700
Sorghum	$0.86/bu.	$156,800
Wheat	$0.14/bu.	$119,200
Total		$4,696,300

Figure 1: USDA, Farmers.gov

For dairy operations, production history is based on their historical production as reported through the Margin Protection Program (MPP) during the years of 2011, 2012 and 2013 using the highest annual milk production figure. Hog production is based on number of live animals as of August 1, 2018. For the remaining producers, their initial payment is calculated by multiplying 50 percent of the producer's total 2018 actual production by the applicable MFP rate, still capped at the $125,000 per person or entity.

Many argue that what farmers and ranchers need is not short-term aid, but access to markets and longer-term certainty. Even with the recent announcement by the administration that they have reached a trade deal with Mexico, the package still has the potential of falling through if either party disagrees on any of the key provisions. In addition, a great deal of uncertainty surrounds U.S. trade relationships with other major partners such as Canada and China.

For more information about the Trade Retaliation Mitigation, click here.

Information includes eligibility, application links and additional program details, or stop by your local FSA office.

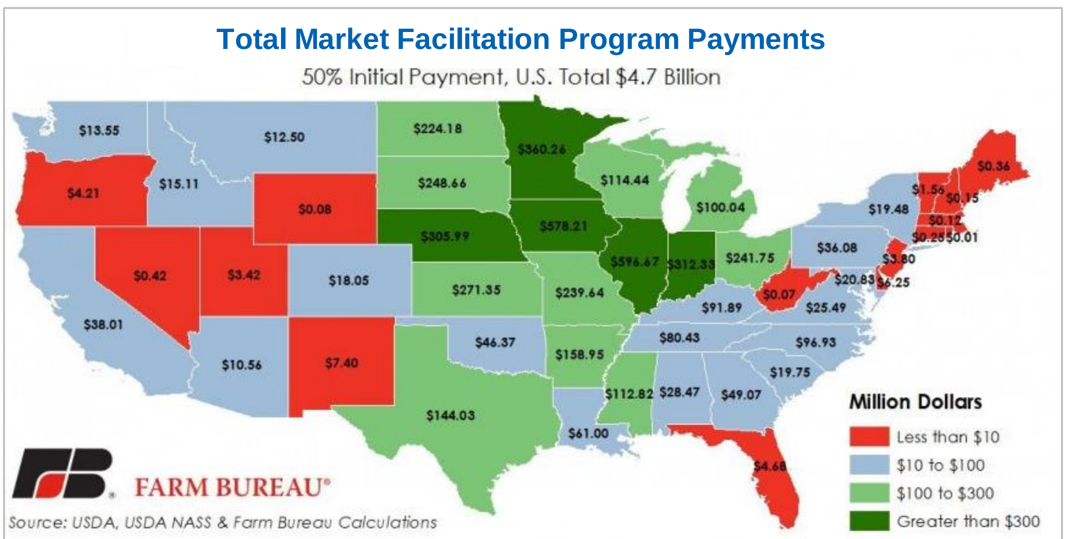

Figure 2: *Trade Aid Round One: A State Perspective*, FB.org/market-intel

CONTACT INFORMATION

We look forward to your questions about Knowledge Exchange Partner and your feedback:

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