Ag Exemption from Hours of Service

Several members have asked for a clarification of when the ag exemption from the DOT hours of service regulations may apply. Unfortunately, there is no current printed guidance that explains the exemption in plain English. The ag exemption is subject to regulatory interpretation.

We have read the regulations and discussed them with enforcement specialists to come up with the following:

The ag exemption is in the federal hours of service regulations at 395.1(k) which says:

(k) Agriculture operations. The provisions of this part shall not apply during planting and harvesting periods, as determined by each State, to drivers transporting

(1) Agriculture commodities from the source of the agriculture 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.

The definition of agricultural commodity and farm supplies for agricultural purposes are found at 395.2, they say:

Agricultural commodity means any agricultural commodity, nonprocessed 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).

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.

Minnesota has not adopted this federal regulation but has a statute (221.0314 Subd 9a (1)) that says:

Hours of service exemption. (1) agricultural commodities or farm supplies for agriculture purposes in Minnesota during the planting and harvesting seasons from March 15 to December 15 of each year

From this it seems clear that propane for corn drying and diesel for farm equipment are farm supplies for agricultural purposes.

It also seems clear that the hours hauling these products from a terminal (wholesale distribution point) to a bulk plant (retail distribution point) or to a farm within 150 miles of the terminal or bulk plant are not counted within the regulated number of hours of service. (This part shall not apply) both daily and weekly, if the entire load is for agricultural purposes.

What is subject to interpretation is which hours are exempt. The enforcement specialists have told us that the federal DOT considers only the hours the truck is hauling the farm supplies to be exempt. For example: in a 5 hour trip where it is 1 hour to the terminal, 3 hours in line and 1 hour back to the bulk plant, the feds say only the one hour back to the bulk plant is exempt, if the entire load is for agricultural purposes.

Also, the current verbal interpretation for using the ag exemption when operating under the 100 air mile exemption from logging is that if you don’t meet the logging criteria for the exemption, you should log the non-exempt hours. (Return to your work reporting location within 12 consecutive hours followed by 10 consecutive hours off (395.1 (e) short haul operation).

The bottom line is that propane and diesel fuel for agricultural purposes are farm supplies. The hours hauling these products during planting and harvesting time (March 15 to December 15) are exempt from being counted in the regulatory prescribed number of hours of service.

If you are going to use this exemption make sure the transport and/or bulk truck driver clearly delineates and explains (“ag exemption 395.1(k)” the ag exempt hours so as to be defensible in an audit.