Dear Chairman Collins and Ranking Member Reed:

We write to ask for your inclusion of the following language to provide clarity on the agricultural commodity definition, associated with regulatory changes around the use of the Electronic Logging Device (ELD) Mandate, as stated in 49 C.F.R. § 395.2.

SEC 229 (e)(7) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note) is amended to read as follows:

“(7) AGRICULTURAL COMMODITY.—The term ‘agricultural commodity’ includes—
“(A) agricultural, aquacultural, horticultural, and floricultural commodities;
“(B) fruits;
“(C) vegetables;
“(D) any non-human living animal and the products thereof; and
“(E) other agriculture products that are—
“(i) sensitive to temperature or climate; and
“(ii) at risk of perishing in transit.”.

§ 395.2 defines “agricultural commodity” as “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).” The phrase in this definition “agricultural commodity means any agricultural commodity,” and Congress intended a broad scope to this provision.

Crops that have long been recognized as agricultural commodities —such as nursery & greenhouse production, as well as turfgrass — remain in limbo as Federal Motor Carrier Administration (FMCSA) insists they are not included despite facing the same challenges as other agricultural commodities: seasonality, perishability, and narrow market windows.

Last summer, the FMCSA admitted that the definition of “agricultural commodity” is vague and problematic, issuing an Advanced Notice of Proposed Rulemaking and asking for input on what should be considered an agricultural commodity. Despite this, many will endure another season of uncertainty as to whether they qualify for the much-needed agricultural exemption while hauling highly perishable commodities.

We strongly urge the Committee to include this language as part of FY 2021 appropriations to provide clarity for drivers, farmers, and enforcement officers alike. Thank you for your attention to this important matter.

Sincerely,

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David A. Perdue  Jeffrey A. Merkley
United States Senator  United States Senator