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Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

MEMORANDUM

To: The Honorable Richard Proehl
Chair, Transportation Committee
Kansas House of Representatives
State Capitol, Room 581-W
Topeka, Kansas 66612

From: Mike Hoeme, Director of Transportation
Kansas Corporation Commission

Date: January 24, 2013

Re: Applicability of the Federal Motor Carrier Safety Regulations (FMCSRs),
Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations
and the Unified Carrier Registration (UCR) to Farm operations operating in both
intrastate and interstate commerce.

I have attached the current state and federal compliance regulations for your review. These regulations apply to farmers operating in both intrastate and interstate commerce. Over the past several years, the Transportation Division has partnered with Farm Bureau, Kansas State and others to promote the state's Commercial Motor Carrier Safety Education program to our Ag partners. Our education program is designed to inform the state's farmers and ranchers that operate commercial motor vehicles (CMV) in both intrastate and/or interstate commerce about the Federal Motor Carrier Safety Regulations (FMCSR) and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulations. Each part of the regulation required by the Transportation Division or the Federal Motor Carrier Safety Administration is discussed in more detail below.

Thank you.

Cc: Patti Petersen-Klein, Executive Director
Tom Day, Legislative Liaison
Jesse Borjon, Director Public Affairs

Part 367, "Standards for Registration with States"

Intrastate agriculture operations are exempt.

Farmers operating CMVs as defined in Part 390.5 in interstate commerce are required to pay the annual Unified Carrier Registration (UCR) fees based on the number of CMVs operated in interstate commerce.

The federal UCR agreement requires all for-hire motor carriers transporting property or passengers, and motor private carriers transporting property in interstate commerce, as well as brokers, freight forwarders, and leasing companies to register with the United States Department of Transportation and pay UCR fees.

Exempt Motor Carrier Operations Include:

1. Motor carriers that receive USDOT numbers under the PRISM program as "registrants" but have no interstate operating authority;
2. Purely intrastate carriers; and
3. Private motor carriers transporting only passengers are not subject to UCR fees.

The UCR fee schedule is as follows:

Fleet Size (Power Units)	From	To	Fee Per Company (\$)
	0	2	\$76.00
	3	5	\$227.00
	6	20	\$452.00
	21	100	\$1,576.00
	101	1,000	\$7,511.00
	More than 1,000		\$73,346.00

Part 382, “Substance and Alcohol Testing Requirements”

Farmers who operate commercial drivers license (CDL) class CMVs as defined in Part 383.5 beyond 150 miles from the farm or ranch in a state or any point across state lines in a state that does not have a reciprocity agreement to:

- Have a controlled substance (drug) and alcohol testing program for ALL drivers that drive CDL class motor vehicles;
- Pre-employment (completed and receipt of negative test documentation prior to operating a commercial motor vehicle);
- Tests are also required randomly, 50% controlled substances and 10% alcohol; reasonable suspicion; post accident; and return to duty; and
- Maintain semi-annual summaries of testing.

Post Accident Requirements

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

Part 382.303 (d)(1) Alcohol tests. If a test required by this section is not administered within **two hours** following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within **eight hours** following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(d)(2) Controlled substance tests. If a test required by this section is not administered within **32 hours** following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

Part 383, “Commercial Drivers License”

Farmers who operate a CDL class CMV's as defined in Part 383.5 beyond 150 miles from the farm or ranch in a state or any point across state line in a state that doesn't have a reciprocity agreement to possess a valid CDL and applicable endorsements. Within the 150 mile radius the driver's will be required to possess either a non-commercial Class A or B driver's license.

Part 383.5 Definition of CMV for CDL

CMV means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle

- (1) Has a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 26,001 pounds or more, whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

Endorsement Descriptions:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles;
- (4) Used to transport hazardous materials as defined in § 383.5; or
- (5) School buses.

CDL Driver Age Requirements:

Intrastate Private Motor Carriers must be at least 16 years old;
Interstate Private Motor Carriers operating within 150 mile radius of the farm must be at least 18 years old.
Interstate Private Motor Carriers operating beyond the 150 mile radius of the farm must be at least 21 years old.

The State of Kansas has signed CDL Reciprocity Agreements with the following states; Nebraska, Missouri and Oklahoma to permit farmers to operate CDL class farm vehicles across state lines without requiring commercial driver's licenses. Please review each agreement because they are unique to each state. The agreements are located at: <http://kcc.ks.gov/trans/index.htm>.

Part 390, “General Applicability and Definitions”

Intrastate agriculture operations are exempt. Farmers operating CMV’s as defined in Part 390.5 in interstate commerce are required to apply for a USDOT number and comply with the marking requirements.

Part 390.5 Definition of CMV for Safety Applicability

CMV means any self-propelled or towed motor vehicle used on a highway in intrastate and/or interstate commerce to transport passengers or property when the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Nature of marking: The marking must display the following information:

- (1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the motor carrier identification report (Form MCS-150) and submitted in accordance with §390.19.
 - (a) Before it begins operations; and
 - (b) Every 24 months, according to the following schedule:

Size, shape, location, and color of marking: The marking must:

- (1) Appear on both sides of the self-propelled CMV;
- (2) Be in letters that contrast sharply in color with the background on which the letters are placed;
- (3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and
- (4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section. (d) Construction and durability. The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

Part 391, “Qualification of Drivers”

Intrastate agriculture operations are exempt from Part 391 Qualification of Drivers. Also, interstate farm vehicle drivers operating straight trucks (no trailers) within 150 air-miles of the farm in interstate commerce are exempt. Farmers and Ranchers, operating a CMV’s as defined in Part 390.5 beyond 150 air-miles from the farm there are no exemptions to this rule.

Interstate agriculture operations operating within 150 air-miles of the farm or ranch are separated into two categories:

- Drivers of straight trucks are exempt from Part 391;
- Drivers of articulated motor vehicles must:
 - Be at least 18 years old;
 - Be able to communicate in English;
 - Be trained to operate the motor vehicle being operated;
 - Meet the USDOT physical requirements;
 - Maintain a valid driver’s license.

There are no exemptions for interstate farm vehicle drivers operating beyond 150 air-miles of the farm. They are required to maintain driver files that include:

1. Driver application for employment;
2. Motor Vehicle Record (MVR);
3. Inquiry to previous employers;
4. Copy of medical examiners certificate;
5. Drivers road test documentation;
6. Annual driver’s certification of violations and annual review of driving record;
7. Driver data sheet (new employee or intermittent driver);
8. Entry level driver training certificate.

Part 392, “Operating CMVs”

Intrastate agriculture operations are exempt.

Interstate farm vehicle drivers and CMVs as defined in Part 390.5 are required to comply with:

1. Sick or fatigued operator regulations;
2. Alcohol and controlled substance prohibition;
3. Seatbelt use;
4. Operating of CMV;
5. Emergency equipment;
6. Inspection of Cargo.

Part 393, “Parts and Accessories Necessary for Safe Operation”

Intrastate agriculture operations are exempt, Interstate drivers and CMVs are required to comply with:

1. Lighting devices, brakes and coupling devices;
2. Emergency equipment;
 - a. A mounted 5 B:C fire extinguisher or two 4 B:C fire extinguishers filled and accessible,
 - b. Motor vehicles used to transport Hazardous Materials need to have at least a 10 B:C fire extinguisher; and
 - c. Spare fuses if the vehicle doesn't have circuit breakers.
3. Protection against shifting and falling cargo;
4. Frames, wheels, steering and suspension.

Part 395, "Hours of Service (HOS)"

Intrastate agriculture operations are exempt from Part 395 HOS. Interstate agriculture operations are exempt from the HOS within 100 air-miles of the farm, pursuant to Part 395.1(k). Beyond 100 air-miles of the farm, farm vehicle drivers are required to:

1. Fill out a log book;
2. Maintain six months of records of duty status reports at principal place of business.

A motor carrier of property cannot allow or require any driver to drive:

- (1) More than 11 hours but it cannot be consecutive. No driving if more than 8 consecutive hours have passed since the last break of 30 minutes; or
- (2) After being on duty 14 hours with 30 minute rest break; or
- (3) After being on duty more than 60/70 hours in any 7/8 consecutive days

A motor carrier operating vehicles every day of the week cannot allow or require any driver to drive after being on duty more than 70 hours in any 8 consecutive days;

It is recommended that motor carriers and drivers keep a summary (recap) of drivers' hours worked and hours available. This will prevent hours of service violations;

Every motor carrier must require every driver to make a record of duty status (log), in duplicate, for each 24-hour period;

Motor carriers and drivers who do not complete and keep records of duty status (logs) or who make false records of duty status (logs) can be prosecuted;

The driver must give or send by mail the original of the driver's record of duty status (log) to his/her motor carrier within 13 days after completing the record. The motor carrier must then keep the record of duty status (log) for 6 months;

A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours-off-duty.

Part 396, "Inspection, Repair and Maintenance"

Intrastate agriculture operations are exempt. Interstate operations are required to comply with:

1. Lubrication;
2. Unsafe operation forbidden;
3. Inspection of vehicles in operation;
 - a. Roadside Inspections are performed by city, county, state or federal enforcement officers, certified by the Federal Motor Carrier Safety Administration (FMCSA). The inspections are unannounced or random and will occur at roadside or weigh stations. The inspections are performed to improve safety, collect data for monitoring and to ensure compliance with all applicable regulations.
 - b. The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.
4. Driver vehicle inspection reports;
 - a. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:
 - b. Service brakes including trailer brake connections, Parking brake, Steering mechanism, Lighting devices and reflectors, Tires, Horn, Windshield wipers, Rear vision mirrors, Coupling devices, Wheels and rims, and Emergency equipment.
5. Periodic inspection and Inspector qualifications.
 - a. Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in **appendix G of this subchapter**. The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

Part 397 and Parts 100 - 185 "Hazardous Materials (HM) Driving and Parking Rules"

The Federal Motor Carrier Safety Administration (FMCSA) has jurisdiction over both intrastate and interstate transportation of hazardous materials (HM). Farm vehicle drivers transporting placardable amounts of HM are subject to the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. Under certain circumstances, farmers may receive exemptions for the use of regulated Hazardous Materials. The following

Application of the rules in this part

- (a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with §177.823 of this title and to:
 - (1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and
 - (2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.
 - (b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.
- Intrastate and/or interstate agriculture operations transporting HM "between fields of the same farm" or "to or from the farm" are encouraged to contact the Transportation Division for specific guidance prior to transporting the HM.

K.S.A. 8-143. Farm Registered Motor Vehicles:

A vehicle licensed as a farm truck or truck tractor may be used by the owner thereof to transport, for charity and without compensation of any kind, commodities for religious or educational institutions. A truck which is licensed as a farm truck may also be used for the transportation of sand, gravel, slag stone, limestone, crushed stone, cinders, black top, dirt or fill material to a township road maintenance or construction site of the township in which the owner of such truck resides. Any applicant for registration of any farm truck or farm truck tractor used in combination with a trailer or semitrailer shall register the farm truck or farm truck tractor for a gross weight which shall include the empty weight of the truck or truck tractor or of the combination of any truck or truck tractor and any type of trailer or semitrailer, plus the maximum weight of cargo which will be transported on or with the same.

The applicant for registration of any farm truck or farm truck tractor used to transport a gross weight of more than 54,000 pounds shall durably letter on the side of the motor vehicle the words "farm vehicle not for hire." If an applicant for registration of any farm truck or farm truck tractor operates such vehicle for any use or purpose not authorized for a farm truck or farm truck tractor, such applicant shall pay an additional fee equal to the fee required for the registration of all trucks or truck tractors not registered as local, 6,000-mile or farm truck or farm truck tractor motor vehicles, less the amount of the fee paid at time of registration. Nothing in this or the preceding paragraph shall authorize a gross weight of a vehicle or combination of vehicles on the national system of interstate and defense highways greater than permitted by laws of the United States congress.

Summary of Agricultural Exemptions in Moving Ahead for Progress in the 21st Century (MAP-21)

Summary of the Statutory Provisions

- Section 32101(d) – “Transportation of Agricultural Commodities and Farm Supplies”
- Section 32934 – “Exemptions from Requirements for Covered Farm Vehicles”
- Both provisions are self-executing and take effect on October 1, 2012.

Section 32101(d)

The HOS requirements shall not apply during planting and harvest periods, as determined by the States to:

- Drivers transporting agricultural commodities within 150 air miles from the source;

Note: the previous National Highway System Designation Act of 1995 (NHS Act) agriculture exemption from the HOS rules only provided for 100 air miles.

Federal Motor Carrier Safety Administration

Section 32101(d) (Continued)

And, the HOS requirements shall not apply during planting and harvest periods, as determined by the States to:

- Drivers transporting farm supplies from a wholesale or retail distribution point to the location where the supplies are intended to be used, within a 150 air-mile radius from the distribution point.
- Drivers transporting farm supplies from a wholesale distribution point to a retail distribution point, within a 150 air-mile radius from the wholesale distribution point.

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Movement of Farm Supplies

Wholesale Distribution Point

- Retail Distribution Point
- Farm (or other location where the supplies are intended to be used)
- Within 150 air miles

Retail Distribution Point

- Farm (or other location where the supplies are intended to be used)
- Within 150 air miles

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Federal Motor Carrier Safety Administration

Section 32934

Section 32934, provides a statutory exemption from most of the FMCSRs for *covered farm vehicles*:

- 49 CFR Part 383: Commercial Driver's License Standards; Requirements and Penalties
- 49 CFR Part 382: Controlled Substances and Alcohol Use and Testing
- 49 CFR Part 391, Subpart E: Physical Qualifications and Examinations
- 49 CFR Part 395: Hours of Service
- 49 CFR Part 396: Inspection, Repair and Maintenance

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Covered Farm Vehicle

- Several criteria are listed in the statute, including identification/designation by the State in which the vehicle is registered.
- However, the statute explicitly excludes vehicles transporting hazardous materials in a quantity requiring placards.

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Covered Farm Vehicle Criteria

Must be equipped with a special license plate or other designation by the State in which it is register to allow for identification.

↓

Must be operated by a farm or ranch owner or operator (includes employees and family members).

↓

Used to transport agricultural commodities, livestock, or machinery or supplies to a farm or ranch.

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Covered Farm Vehicle: Operating Area

26,001 pounds or less

- Motor carriers may use the exemption anywhere they are operating in the U.S

Greater than 26,001 pounds

- Motor carriers may use the exemption anywhere within the State in which the vehicle is registered, or
- Motor carriers may use the exemption anywhere within a 150 air-mile radius of the farm or ranch.

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Impact of the MAP-21 Provisions on FMCSA Regulations

- FMCSA will issue a notice alerting the enforcement and industry communities about the MAP-21 provisions.
- The Agency will issue a final rule, at a later date to amend the FMCSRs
- FMCSA will also withdraw regulatory guidance that is inconsistent with the MAP-21 language.

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Are the States required to make changes to their safety regulations?

- Yes, but not until after FMCSA amends the FMCSRs.
- However, FMCSA requests that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by MAP-21.
- After FMCSA changes its regulations, the effective date of the rule would begin the 3-year period during which the States must adopt compatible regulations to remain eligible for MCSAP funding.

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Conclusion: Effective October 1, 2012

- Section 32101(d) – covers HOS relief for the movement of agricultural commodities and farm supplies within 150 air-mile radius of the source of the commodity, or wholesale and retail distribution points for the supplies.
- Section 32934 – covers relief from most of the FMCSRs for “covered farm vehicles.”

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