



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 382, 383, 390, 391, 395, 396**

**[Docket No. FMCSA-2012-0378]**

**RIN 2126-AB58**

**Transportation of Agricultural Commodities**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA promulgates the regulatory exemptions for the “transportation of agricultural commodities and farm supplies” and for “covered farm vehicles” and their drivers enacted by sections 32101(d) and 32934, respectively, of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). Although prior statutory exemptions involving agriculture are unchanged, some of these exemptions overlap with MAP-21 provisions. In these cases, regulated entities will be able to choose the exemption, or set of exemptions, under which to operate. They must, however, comply fully with the terms of each exemption they claim.

**DATES:** Effective date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance dates: The Motor Carrier Safety Assistance Program (MCSAP) requires participating States to adopt regulations compatible with 49 CFR Parts 390-397 to remain eligible for MCSAP grants [49 CFR 350.201(a)]. Section 350.331(d) requires participating States to adopt compatible regulations as soon as practicable after the effective date of any newly adopted or amended FMCSA regulation, but no later than 3

years after that date. The amendments to Parts 390, 391, 395, and 396 made by this rule must therefore be adopted by March 14, 2016.

Although the Commercial Driver's License (CDL) program in 49 CFR Part 383 is not covered by the MCSAP regulations, the States are required by 49 U.S.C. 31314 (as implemented by 49 CFR Part 384) to comply with the requirements of Part 383 in order to avoid the withholding of certain Federal-aid highway funds. Consistent with FMCSA's previous practice, States must adopt the amendment made by this rule by March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Driver and Carrier Operations, (202) 366-4325 or [MCPSD@dot.gov](mailto:MCPSD@dot.gov), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

Executive Summary

Acronyms and Abbreviations

Legal Basis for the Rulemaking

Background

Current Rules and MAP-21 Exemptions: Comparison and Discussion

Section-by-Section Analysis of the Final Rule

Regulatory Analyses

**EXECUTIVE SUMMARY**

## **Purpose of the Rule and Summary of Major Provision**

This rule promulgates Congressionally-mandated exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) for certain agricultural operations.

Section 32101(d) of MAP-21, implemented as 49 CFR 395.1(k), expands an hours-of-service (HOS) exemption for farm-related operations during the planting and harvesting season (as defined by each State) that has been in effect since 1995. Under the new provision, drivers transporting agricultural commodities within a 150 (instead of 100) air-mile radius of the farm or source of the commodities are exempt from the HOS rules. Also exempt are retailers delivering farm supplies for agricultural purposes within a 150 (instead of 100) air-mile radius of their distribution point to a farm or other place where the supplies will be used, and wholesalers delivering farm supplies within the same radius to a retailer, farm, or place where they will be used.

Section 32934 of MAP-21 created a new set of exemptions for “covered farm vehicles” (CFVs) and their drivers. The definition of a CFV is discussed in the **Background** section below. Briefly, CFVs and their drivers are exempt from the commercial driver’s license (CDL) and drug and alcohol testing regulations; the medical qualification requirements; the hours of service limits; and vehicle inspection, repair and maintenance rules. Vehicles transporting placardable quantities of hazardous materials are not eligible for these exemptions. The States will have to adopt these exemptions into their own laws and regulations within 3 years in order to avoid the withholding of certain Federal grant funds.

## **Costs and Benefits**

The benefits of the rule will take the form of reduced expenditures in the

agricultural sector. Neither the benefits nor the costs of the exemptions can be estimated at this time. There will also be costs associated with re-training Federal and State enforcement personnel on the sometimes intricate details of the exemptions.

#### **ACRONYMS AND ABBREVIATIONS**

CDL	Commercial Driver's License
CFV	Commercial Farm Vehicle
CMV	Commercial Motor Vehicle
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
HM	Hazardous Materials
HOS	Hours of Service
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
MCSAP	Motor Carrier Safety Assistance Program
NHS	National Highway System

#### **LEGAL BASIS FOR THE RULEMAKING**

This rule is based on sections 32101(d) and 32934 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405, 778, 830, July 6, 2012).

Section 32101(d) expanded both the scope and the geographical reach of an hours-of-service (HOS) exemption enacted by Sec. 345(a)(1) of the National Highway System (NHS) Designation Act of 1995 [Pub. L. 104-59, 109 Stat. 568, 613, Nov. 28, 1995] and redesignated as Sec. 229 of the Motor Carrier Safety Improvement Act of 1999

(MCSIA) [Pub. L. 106-159, 113 Stat. 1748, 1773, Dec. 9, 1999] by Sec. 4115 of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744, Aug. 10, 2005]. As so redesignated, section 229 of MCSIA was amended by sections 4130-4132 of SAFETEA-LU [119 Stat. 1743-1744].

Section 345(a)(1) of the NHS Designation Act created an exemption from the HOS regulations for drivers transporting agricultural commodities or farm supplies for agricultural purposes within a 100 air-mile radius of the source of the commodities or the distribution point for the farm supplies, provided the transportation occurred during the planting and harvesting seasons, as determined by each State. Pursuant to the legislative history of the provision, FMCSA interpreted Sec. 345(a)(1) as exempting only drivers transporting farm supplies from a farm retailer to the ultimate consumer, typically a farmer.

Section 32101(d) supersedes that interpretation by expanding the exemption to include drivers transporting farm supplies from a wholesale or retail distribution point to a farm or other location where the supplies are intended to be used, and from a wholesale distribution point to a retail distribution point. It also extended the geographical radius of the exemption from 100 to 150 air-miles.

Section 32934 of MAP-21 created a series of exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) for “covered farm vehicles” (CFVs), as defined therein and explained in the **Background** section below. Briefly, a CFV and its driver are exempt from any requirement relating to (1) commercial driver’s licenses (CDLs) or drug and alcohol testing established under 49 U.S.C. chapter 313; (2) medical certificates

established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 313; and (3) HOS and vehicle inspection, repair, and maintenance established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 315.

FMCSA must consider the “costs and benefits” of a rule before adopting it (49 U.S.C. 31136(c)(2)(A) and 31502(d)).

This rule simply adopts jurisdictional limitations enacted by Congress, and FMCSA therefore finds “good cause” under 5 U.S.C. 553 to promulgate this rule as a final rule because prior notice and comment would be “unnecessary” under the circumstances. The Agency also finds “good cause” to make the rule effective upon publication because it “relieves a restriction” [49 U.S.C. 553(d)(1)].

## **BACKGROUND**

FMCSA and its predecessor agencies exercised their discretion to adopt a number of exemptions related to agricultural operations. Congress has also enacted statutory exemptions concerning agricultural operations. To understand the impact of the amendments promulgated in this final rule, the exemptions already in effect – both discretionary and statutory – must first be described. We will then compare the MAP-21 provisions to the current exemptions.

To be eligible for MCSAP grants, participating States agree to adopt as State law motor carrier safety statutes and regulations that are “compatible” with FMCSA’s regulations. For State regulations applicable to interstate commerce, “compatible” means identical to or having the same effect as the Federal standards; for regulations applicable to intrastate commerce, “compatibility” includes limited variation from Federal standards (as specified in 49 CFR 350.341). To retain MCSAP funding, participating States are

required to adopt not only Federal regulatory requirements but also Federal exemptions, both discretionary and statutory. Similar rules apply to the CDL regulations, as explained in the **DATES** section above. States participating in MCSAP and the CDL program must adopt all of the exemptions promulgated today within 3 years of the effective date of this rule, or they will be ineligible to receive certain Federal funds.

### **Current Discretionary Exemptions.**

#### Part 383.

The regulations in 49 CFR Part 383 (Commercial Driver’s License Standards; Requirements and Penalties) include a number of exemptions. The applicability provisions in § 383.3 allow, but do not require, the States to exempt from the mandate to obtain a CDL, operators of a farm vehicle that would otherwise qualify as a “commercial motor vehicle” requiring a CDL, provided the farm vehicle is (1) controlled and operated by a farmer, including operation by employees or family members; (2) used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm; (3) not used in the operations of a common or contract motor carrier; and (4) used within 241 kilometers (150 miles) of the farmer’s farm [49 CFR 383.3(d)(1)]. Because the term “farmer” is not defined in part 383, the definition in 49 CFR 390.5 applies:<sup>1</sup> “Farmer” means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which (1) are owned by that person or (2) are under the direct control of that person. Similarly, because the term “operators of a farm vehicle” used in § 383.3(d)(1) is not defined in § 383.5, the nearest equivalent term – “farm vehicle

---

<sup>1</sup> Pursuant to the introductory clause of § 390.5, the definitions in that section apply “Unless specifically defined elsewhere in this subchapter” (i.e., subchapter B of chapter III of subtitle B of title 49, Code of Federal regulations, which covers 49 CFR Parts 350-399). Because “farmer” is not defined in Part 383, the definition of that term in § 390.5 is therefore applicable.

driver,” as defined in § 390.5 – is applicable. A “farm vehicle driver” is a person who drives only a commercial motor vehicle that is – (1) controlled and operated by a farmer as a private motor carrier of property; (2) being used to transport either (a) agricultural products or (b) farm machinery, farm supplies, or both, to or from a farm; (3) not being used in the operation of a for-hire motor carrier; (4) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with § 177.823 of title 49, Code of Federal Regulations, and (5) being used within 150 air-miles of the farmer’s farm [49 CFR 390.5].

It is important to note that, although the exemption authorized by § 383.3(d)(1) and the definition of a “farm vehicle driver” in § 390.5 are very similar, they are not identical. While § 383.3(d)(1) makes no mention of placardable quantities of hazardous materials (HM) – and thus appears to allow agricultural drivers transporting HM an exemption from the CDL requirement – the definition of a “farm vehicle driver” in § 390.5 excludes drivers who meet the other 4 elements of that definition if they are carrying placardable quantities of HM. In other words, “operators of a farm vehicle” under § 383.3(d)(1), whom FMCSA treats as equivalent to “farm vehicle drivers” under § 390.5, are not eligible for the CDL exemption if they transport placardable quantities of HM.

A driver who is not required to hold a CDL as a result of § 383.3(d)(1) is also exempt from the FMCSA drug and alcohol testing regulations [see 49 CFR 382.103(a)(1)].

Section 383.3(e) allows Alaska to issue restricted CDLs to applicants who do not comply with the test procedures in Subpart H of Part 383. This partial exemption is utilized by few, if any, drivers for agricultural operations.

Section 383.3(f) allows States, under certain conditions, to issue restricted CDLs to employees of 4 farm-related service industries, specifically (1) agri-chemical businesses; (2) custom harvesters; (3) farm retail outlets and suppliers; and (4) livestock feeders.

#### Part 391.

The driver qualification rules in 49 CFR part 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors) also include discretionary exemptions.

Section 391.2 sets forth 3 agriculture-related exemptions. (It should be noted, however, that drivers otherwise exempt under § 391.2 remain subject to the rules in § 391.15(e) dealing with disqualification for violating a prohibition on texting while driving a CMV.)

Section 391.2(a) exempts from the rules in Part 391 the driver of a CMV controlled and operated by a person engaged in custom harvesting, provided the CMV is used to transport (1) farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or (2) custom-harvested crops to storage or market.

Section 391.2(b) exempts from the rules in Part 391 the driver of a CMV controlled and operated by a beekeeper engaged in the seasonal transportation of bees. The exemption does not apply to a beekeeper's transportation of honey.

Section 391.2(c) exempts from the rules in Part 391 a "farm vehicle driver," as defined in § 390.5, who drives a straight truck (but not an articulated vehicle). As

indicated above, a “farm vehicle driver” is a person who drives only a CMV that is – (1) controlled and operated by a farmer as a private motor carrier of property; (2) being used to transport either (a) agricultural products or (b) farm machinery, farm supplies, or both, to or from a farm; (3) not being used in the operation of a for-hire motor carrier; (4) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with § 177.823 of title 49, Code of Federal Regulations, and (5) being used within 150 air-miles of the farmer’s farm.

Although the broad exemption in § 391.2(c) for drivers of straight trucks is not applicable to drivers of articulated vehicles, § 391.2(c) cross-references § 391.67, which sets forth a shorter list of exemptions available to farm vehicle drivers of articulated CMVs. Section 391.67 exempts a “farm vehicle driver,” as defined in § 390.5, who is also at least 18 years of age and drives an articulated CMV, from certain general qualification standards in § 391.11, specifically § 391.11(b)(1), (6), and (8); this driver is also exempt from Subparts C, D, and F of Part 391.

#### Part 395.

The HOS regulations in 49 CFR Part 395 include a variety of exceptions that could apply to agricultural operations, though the provisions described below were not intended specifically for that purpose.

Section 395.1(e)(1) allows drivers operating within a 100 air-mile radius of their normal work-reporting location to dispense with normal records of duty status (RODS, often called logs), provided they meet certain other requirements.

Section 395.1(e)(2) allows drivers operating vehicles that do not require a CDL within a 150 air-mile radius of their normal work reporting location to drive within a

16 hour window after coming on duty (instead of the normal 14-hour driving window) 2 days per week, providing other limits and recordkeeping requirements are met.

Section 395.1(h) includes special HOS limits for drivers operating in Alaska.

Section 395.1(i) includes special HOS exemptions for drivers operating in Hawaii.

### **Current Statutory Exemptions.**

NHS Designation Act. Section 345(a)(1) of the NHS Designation Act provided that the regulations regarding maximum driving and on-duty time prescribed by the Department of Transportation under 49 U.S.C. 31136 and 31502 do not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius of the source of the commodities or the distribution point for the farm supplies and the transportation takes place during the planting and harvesting seasons within that State, as determined by the State. The terms “agricultural commodities” and “farm supplies for agricultural purposes” were defined by section 4130(c) of SAFETEA-LU and enacted as section 229(e) of MCSIA.

The agricultural exemption from the hours-of-service (HOS) regulations is codified in 49 CFR 395.1(k) and the statutory definitions of “agricultural commodities” and “farm supplies for agricultural purposes” are codified in § 395.2.

MAP-21. MAP-21 includes two different provisions applicable to agricultural operations. Section 32101(d) enacted amendments to the HOS exemption originally adopted in the NHS Designation Act, while Sec. 32934 promulgated a set of exemptions that covered many provisions of the FMCSRs.

Section 32101(d). Section 32101(d) amended the NHS Designation Act exemption in two ways. First, it extended the geographical reach of the exemption from 100 to 150 air-miles of the source of the agricultural commodities or the distribution point of farm supplies for agricultural purposes. Second, it extended the exemption to wholesalers of farm supplies. As amended, the 150 air-mile radius is now measured from a wholesale to a retail distribution point, or from a wholesale or retail distribution point to a farm or other place where the supplies are intended to be used.

Section 32934. The exemptions created by Sec. 32934 are available only to “covered farm vehicles” (CFVs) and their operators. The CFV definition is complex, and the resulting exemptions sometimes overlap or conflict with previous exemptions. The inconsistencies will be discussed below.

In order to make the implementing regulations more readable, FMCSA has rephrased them. The statutory definition of a “covered farm vehicle” is provided at Sec. 32934(c) of MAP-21.

A “covered farm vehicle” (CFV), as defined in Sec. 32934, is a straight truck or articulated vehicle (e.g., a large pickup, a truck pulling a trailer, sometimes a standard tractor semitrailer combination) registered in a State that is used by the owner or operator of a farm or ranch (or an employee or family member of a farm or ranch owner or operator) to transport agricultural commodities, livestock, machinery or supplies, provided the truck has a license plate or other designation issued by the State of registration that allows law enforcement personnel to identify it as a farm vehicle. Although a CFV may not be used in for-hire motor carrier operations, a share-cropper’s use of a vehicle to transport the landlord’s share of the crops may not be treated as a for-

hire operation. If the CFV has a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR), whichever is greater, of 26,001 pounds or less, it may take advantage of the CFV exemption described below while operating anywhere in the United States. A CFV with a GVW or GVWR, whichever is greater, above 26,001 pounds, may travel anywhere in the State of registration or across State borders within 150 air miles of the home farm or ranch – but the vehicle would lose its status as a CFV and the corresponding exemptions if it exceeded these geographical limits. In large States like Texas or California, the operator of a CFV with a GVW or GVWR above 26,001 pounds will be able to travel much more than 150 air-miles within the State. However, if the CFV crosses a State line, its exempt operations under this MAP-21 provision are limited to a 150 air-mile radius from the home farm or ranch.

While Sec. 32934 identifies the Federal rules from which CFVs and their drivers are exempt, it does so in statutory terms that would be unfamiliar to most drivers and motor carriers, and difficult to use for compliance or enforcement. FMCSA has therefore chosen to promulgate the regulatory equivalents of the statutory terms.

## **CURRENT RULES AND MAP-21 EXEMPTIONS: COMPARISON AND DISCUSSION**

### **Part 383.**

The option granted the States in 49 CFR 383.3(d)(1) to exempt certain operators of a farm vehicle from the CDL and drug and alcohol testing regulations is very similar, but not identical, to the CDL exemption created by MAP-21. While the exemption in § 383.3(d)(1) is available to the operator of a farm vehicle controlled and operated by a farmer, the CFV definition includes a ranch owner. Similarly, § 383.3(d)(1) is limited to

farmers transporting agricultural products, farm machinery or farm supplies, while the CFV definition also includes livestock. The exemption allowed by § 383.3(d)(1), although narrower than the MAP-21 exemption, is currently in effect in most (if not all) States and immediately available to designated farmers. Removing that exemption and requiring States to adopt the new exemption would include a 3 year implementation period during which there may be periods that farmers are not, in State statutes, provided any exemption. FMCSA is therefore retaining § 383.3(d)(1) at this time.

The restricted CDLs allowed in Alaska [§ 383.3(e)] and for certain farm-related service industries [§ 383.3(f)] have been partially overtaken by MAP-21. Drivers of CFVs in Alaska and livestock feeders anywhere who meet the conditions set forth in the definition of a CFV in 49 CFR 390.5 would be completely exempt from the CDL requirement – and thus from drug and alcohol testing, which is otherwise applicable to these limited exemptions in Part 383. However, drivers for agri-chemical businesses, custom harvesters, and farm retail outlets and suppliers would not qualify for the CFV exemptions because drivers of CFVs, by definition, must be farm owners or operators, or their employees or family members. Sections 383.3(e) and (f) are being retained because they remain available to drivers of vehicles that do not qualify as CFVs.

#### Part 391.

Section 391.2(a), which provides an exception from Part 391 for custom harvesters, is also being retained because those operations do not meet the MAP-21 definition of a CFV, particularly the requirement that the vehicle be operated by the owner or operator of a farm or ranch. Custom harvesters move from one farm to another to harvest grain but are not the owner or operator of a particular farm. In any case,

§ 391.2(a) is broader than Sec. 32934, which provides an exemption only from Subpart E (Physical Qualifications and Examinations) of Part 391, not from all of Part 391.

Section 391.2(b), which provides an exception from Part 391 for a beekeeper using a CMV for the seasonal transportation of bees, is also retained. Like custom harvesters, beekeepers do not meet the definition of a CFV because they rarely operate a farm or ranch; they typically place beehives on marginal farm or ranch land owned or operated by someone else. Section 391.2(b) also provides an exception, not just from Subpart E of Part 391, but from the entire Part.

Section 391.2(c) provides an exception from all of Part 391, apart from the rules on texting, for a “farm vehicle driver” (as defined in § 390.5) of a straight truck. On the other hand, Sec. 32934(a)(3) of MAP-21 exempts CFV drivers only from “any requirement relating to medical certificates,” which corresponds to Subpart E of Part 391. Section 391.2(c) is substantially broader than Sec. 32934 and is therefore being retained. Many “farm vehicle drivers” of straight trucks could qualify as CFV drivers, and vice versa, but the two provisions are not identical. For example, drivers of articulated CFVs or CFVs operating beyond a radius of 150 air-miles from the home farm or ranch would not qualify for the exemption in § 391.2(c) because only straight trucks are eligible and then only when used within 150 air-miles of the farmer’s farm.

Section 391.2(c) also refers to § 391.67, which provides a more limited, but still extensive, set of exceptions for “farm vehicle drivers” of articulated vehicles. Under § 391.67, a “farm vehicle driver” who is at least 18 years old and drives an articulated CMV is not subject to Subparts C, D, and F of Part 391. Subpart C covers employment applications (§ 391.21), investigations of drivers’ safety performance history for the prior

3 years (§ 391.23), the annual review of a driver’s record with the state driver licensing agency (§ 391.25), and the requirement for drivers to submit annually, and for carriers to review, a list of all traffic convictions during the preceding year (§ 391.27). Subpart D requires motor carriers to subject newly-hired drivers to road tests (§ 391.31), though certain equivalents are also acceptable (§ 391.33). Subpart F requires motor carriers to maintain a qualification file on each driver it employs (§ 391.51) as well as the records relating to its safety performance history investigations undertaken pursuant to § 391.23 (§ 391.53). Any motor carrier that uses an instructor to train longer combination vehicle (LCV) drivers must maintain a qualification file on each instructor (§ 391.55). Finally, § 391.67 excepts covered farm vehicle drivers from § 391.11(b)(1), requiring them to be at least 21 years old (§ 391.67(a)). While MAP-21 exempts the driver of a CFV from “any requirement relating to medical certificates” [Sec. 32934(a)(3)], which corresponds to Subpart E of Part 391, § 391.67 excepts farm vehicle drivers of articulated vehicles from many requirements *except* those relating to medical qualifications. Section 391.67 is thus quite different from the CFV exemption. Determining the applicability of these exceptions and exemptions will require a careful factual evaluation of the operations in question.

#### Part 395.

Sections 395.1(e)(1) and (2) are currently available to many kinds of commercial motor vehicle drivers. Some of them may be farm or ranch operators – one of the elements in the definition of a CFV – but many are drivers for general trucking operations that are not eligible for the CFV exemption.

Drivers in Alaska and Hawaii who are currently operating under § 395.1(h) and (i) may continue to do so, but some of them may now be eligible for the MAP-21 exemptions.

#### **SECTION-BY-SECTION DESCRIPTION OF FINAL RULE**

Part 382 is amended by adding “covered farm vehicle” drivers to the list of exceptions from the drug and alcohol testing requirements in § 382.103(d). This amendment has preemptive effect pursuant to 49 U.S.C. 31306(g), which provides that “[a] State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with the regulations prescribed under this section. Although States must comply with this rule, the change to Part 382 is self-executing in the sense that a person exempt from the requirement to obtain a CDL, as provided by this rule, is also exempt from drug and alcohol testing, since testing is required only for CDL holders.

Part 383 is amended by adding paragraph (h) to § 383.3 explaining that the CDL requirements do not apply to a CFV driver.

Part 390 is amended by adding the definition of a “covered farm vehicle” to the list of definitions in § 390.5. The exemptions for “covered farm vehicles” and their drivers are codified as § 390.39(a). Section 390.39(b)(1) explains that MCSAP funds may not be withheld merely because a State exempts CFVs from State requirements relating to the operation of that vehicle. Section 390.39(b)(2) explains that CFVs transporting placardable quantities of hazardous materials (HM) are not eligible for the exemptions in § 390.39(a). This provision is based on FMCSA’s interpretation of Sec. 32934(b)(2) of MAP-21. As promulgated by § 390.39(b)(1) of this rule, Sec.

32934(b)(1) of MAP-21 clearly prohibits the withholding of MCSAP funds from States that exempt CFVs “from any State requirement relating to the operation of that vehicle” (emphasis added). However, because Sec. 32934(b)(2) makes Sec. 32934(b)(1) inapplicable to CFVs transporting placardable quantities of HM, it thus authorizes FMCSA to withhold MCSAP funds from States that exempt such CFVs “from any State requirement relating to the operation of that vehicle,” including the exemptions otherwise available to CFVs under Sec. 32934(a).

Part 391 is amended by adding paragraph (d) to the general exceptions in § 391.2. Paragraph (d) describes the exemptions applicable to drivers of “covered farm vehicles.”

Part 395 is amended by revising the provision on “agricultural operations” in § 395.1(k) to include the changes made by Sec. 32101(d) and by adding new § 395.1(s) to exempt drivers of “covered farm vehicles” from the HOS regulations.

Part 396 is amended by adding paragraph (c) to § 396.1, Scope, to exempt drivers of “covered farm vehicles” from the regulations on inspection, repair, and maintenance.

## **REGULATORY ANALYSES**

### **Regulatory Planning and Review**

FMCSA has determined that this action is not a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Neither the benefits nor the costs of this rule can be reliably estimated. The benefits consist of reductions in the expenditures that parts of the agricultural sector of the economy would otherwise incur in order to comply with regulatory requirements from which MAP-21 provides exemptions. Both the current costs of those regulatory

requirements and the value of the exemptions are unknown. In fact, the number of drivers who will qualify for the exemptions is itself unknown. Neither the benefits nor the costs of the exemptions can be estimated at this time. However, the benefits of the rule will take the form of reduced expenditures in the agricultural sector and there will be some costs associated with re-training Federal and State enforcement personnel on the sometimes intricate details of the exemptions.

Nonetheless, the Agency does not believe that the economic costs of the rule would exceed the \$100 million annually, and Congressional or public interest in the rule is likely to focus on demands for its immediate publication so that the exemptions can be utilized. This rule has not been reviewed by the Office of Management and Budget (OMB).

### **Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because this rule promulgates jurisdictional limitations enacted by Congress, as explained in the **Legal Basis** section above, FMCSA has determined that it has good cause to adopt the rule without notice and comment. An RFA analysis is therefore not required. This final rule also complies with the President's memorandum of January 18, 2011, entitled "Regulatory Flexibility, Small Business, and Job Creation" (76 FR 3827).

### **Federalism (Executive Order 13132)**

A rule has federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost

of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and has determined that it has no federalism implications.

#### **Unfunded Mandates Reform Act of 1995**

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

#### **Executive Order 12988 (Civil Justice Reform)**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency has determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

FMCSA reviewed this rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it does not effect a taking of private property or otherwise have taking implications.

## **Privacy Impact Assessment**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that affects the privacy of individuals. This rule will not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

## **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

## **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This rule does not require a new information collection. However the rule reduces by an unknown amount the information collection burden for driver physical qualifications under Part 391, HOS under Part 395, and inspection, repairs and maintenance under Part 396.

## **National Environmental Policy Act and Clean Air Act**

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." *Id.* at chapter 1(D) (69 FR 9684). Because Congress limited the Agency's normal safety jurisdiction through the MAP-21 exemptions promulgated today, this rulemaking falls under chapter 1(D). Therefore, no further analysis is necessary.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action is expected to fall within the CAA de minimis standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

## **Executive Order 13211 (Energy Effects)**

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a "significant energy action" under that Executive Order

because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **List of Subjects**

#### **49 CFR Part 382**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

#### **49 CFR Part 383**

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

#### **49 CFR Part 390**

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

#### **49 CFR Part 391**

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

#### **49 CFR Part 395**

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

#### **49 CFR Part 396**

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA amends 49 CFR Parts 382, 383, 390, 391, 395, and 396 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

**PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING**

1. The authority citation for Part 382 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 31133, 31136, 31301 et seq., 31502; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

2. Amend § 382.103 by adding paragraph (d)(4) to read as follows:

**§ 382.103 Applicability.**

\* \* \* \* \*

(d) \* \* \*

(4) Who operate “covered farm vehicles,” as defined in 49 CFR 390.5.

**PART 383—COMMERCIAL DRIVER’S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

3. The authority citation for Part 383 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

4. Amend § 383.3 by adding paragraph (h) to read as follows:

**§ 383.3 Applicability.**

\* \* \* \* \*

(h) Exception for drivers of “covered farm vehicles.” The rules in this part do not apply to a driver of a “covered farm vehicle,” as defined in § 390.5 of this chapter.

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;**

**GENERAL**

5. The authority citation for Part 390 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 114, 1745; sections 32101(d) and 34934, Pub. L. 112-141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

6. Amend § 390.5 by adding a definition of “Covered farm vehicle” in alphabetical order to read as follows:

**§ 390.5 Definitions.**

\* \* \* \* \*

Covered farm vehicle—

(1) Means a straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of a an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord’s portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

\* \* \* \* \*

7. Add new § 390.39 to subpart B to read as follows:

**§ 390.39 Exemptions for “covered farm vehicles.”**

(a) Federal requirements. A covered farm vehicle, as defined in § 390.5, including the individual operating that vehicle, is exempt from the following:

(1) Any requirement relating to commercial driver’s licenses in 49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382;

(2) Any requirement in 49 CFR Part 391, Subpart E, Physical Qualifications and Examinations.

(3) Any requirement in 49 CFR Part 395, Hours of Service of Drivers.

(4) Any requirement in 49 CFR Part 396, Inspection, Repair, and Maintenance.

(b) State requirements — (1) In general.—Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle.

(2) Exception.—Paragraph (b)(1) of this section does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) Other exemptions and exceptions.—The exemptions in paragraphs (a) and (b) of this section are in addition to, not in place of, the agricultural exemptions and exceptions in §§ 383.3(d)(1), 383.3(e), 383.3(f), 391.2(a), 391.2(b), 391.2(c), 391.67, 395.1(e)(1), 395.1(e)(2), 395.1(h), 395.1(i), and 395.1(k) of this chapter. Motor carriers and drivers may utilize any combination of these exemptions and exceptions, providing they comply fully with each separate exemption and exception.

## **PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS**

8. The authority citation for Part 391 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

9. Amend § 391.2 by adding paragraph (d) to read as follows:

### **§ 391.2 General exceptions.**

\* \* \* \* \*

(d) Covered farm vehicles. The rules in part 391, Subpart E – Physical Qualifications and Examinations – do not apply to drivers of “covered farm vehicles,” as defined in 49 CFR 390.5.

## **PART 395—HOURS OF SERVICE OF DRIVERS**

10. The authority citation for Part 395 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec.

4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

11. Amend § 395.1 by revising paragraph (k) and adding a new paragraph (s) to read as follows:

**§ 395.1 Scope of rules in this part.**

\* \* \* \* \*

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

(1) Agricultural commodities from the source of the agricultural 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.

\* \* \* \* \*

(s) Covered farm vehicles. The rules in this part do not apply to drivers of “covered farm vehicles,” as defined in 49 CFR 390.5.

**PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

12. The authority citation for Part 396 is revised to read as follows:

**AUTHORITY:** 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

11. Amend § 396.1 by adding a new paragraph (c) to read as follows:

**§ 396.1 Scope.**

\* \* \* \* \*

(c) This part does not apply to “covered farm vehicles,” as defined in 49 CFR 390.5, or to the drivers of such vehicles.

Issued under the authority delegated in 49 CFR 1.87 on: March 8, 2013.

---

Anne S. Ferro  
Administrator

[FR Doc. 2013-05897 Filed 03/13/2013 at 8:45 am; Publication Date: 03/14/2013]