



**DEPARTMENT OF TRANSPORTATION**

**[ 4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**[Docket No. FMCSA-2017-0360]**

**Hours of Service of Drivers of Commercial Motor Vehicles;  
Proposed Regulatory Guidance Concerning the Transportation of Agricultural  
Commodities**

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

**ACTION:** Notice of proposed regulatory guidance; request for public comment.

**SUMMARY:** FMCSA announces regulatory guidance to clarify the applicability of the “Agricultural commodity” exception to the “Hours of Service of Drivers” regulations, and requests public comments. This regulatory guidance is being proposed to ensure consistent understanding and application of the exception by motor carriers and State officials enforcing hours of service rules identical to or compatible with FMCSA’s requirements.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This guidance would expire no later than 5 years after it is finalized.

**ADDRESSES:** You may insert comments identified by Federal Docket Management System Number FMCSA-2017-0360 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, phone (614) 942-6477, email [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

## **SUPPLEMENTARY INFORMATION**

### **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

#### **A. Submitting Comments**

If you submit a comment, please include the docket number listed above, indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of

your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2017-0360, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this guidance based on your comments.

#### **B. Viewing Comments and Documents**

To view comments, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2017-0360, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, D.C. 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

#### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

## **II. LEGAL BASIS**

The National Highway System Designation Act of 1995, Pub. L. No. 104-59, § 345, 109 Stat. 568. 613 (Nov. 28, 1995), provided the initial exception for drivers transporting agricultural commodities or farm supplies for agricultural purposes. This Act limited the exception to a 100 air-mile radius from the source of the commodities or distribution point for the farm supplies and during the planting and harvesting seasons as determined by the applicable State.

In enacting the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU), Congress revised this provision, enacted it to be new section 229 of Title II of the Motor Carrier Safety Improvement Act of 1999, and defined the terms “agricultural commodity” and “farm supplies for agricultural purposes.” Pub. L. No. 109-59, §§ 4115 and 4130, 119 Stat. 1144, 1726, 1743 (Aug. 10, 2005). These terms are now defined in 49 CFR 395.2.

Most recently, the statute was amended by section 32101(d) of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. No. 112-141, 126 Stat. 405, 778 (July 6, 2012). This provision revised the description of the exception’s scope and extended the applicable distance from 100 air-miles to 150 air-miles from the source.

## **III. BACKGROUND**

The focus of today's guidance is limited to the transportation of agricultural commodities, 49 CFR 395.1(k)(1). It does not address "farm supplies for agricultural purposes" under 49 CFR 395.1(k)(2) or (3) given that the applicable range under these latter two provisions is specifically addressed. While the regulatory provision governing the agricultural commodity exception (49 CFR 395.1(k)(1)) closely tracks the statutory provisions discussed above, the language is susceptible to multiple interpretations, and the Agency acknowledges that various stakeholders and enforcement officials in different States have expressed inconsistent understandings of the exception from time to time.

This proposed regulatory guidance would clarify the exception with regard to: (1) drivers operating unladen vehicles traveling either to pick up an agricultural commodity, as defined in 49 CFR 395.2, or returning from a delivery point; and (2) drivers engaged in trips beyond 150 air-miles from the source of the agricultural commodity. In addition, the Agency seeks public comment on (1) whether grain elevators and/or livestock sale barns should be considered a "source" of agricultural commodities under section 395.1(k)(1); and (2) how the exception should apply when agricultural commodities are loaded at multiple sources during a trip.

FMCSA's final rule "Electronic Logging Devices and Hours of Service Supporting Documents" (80 FR 78292; December 16, 2015), will require most drivers who use paper logs to document their hours of service to switch to electronic logging devices. That rule did not alter the hours of service rules or the agricultural commodity exception. However, FMCSA has received questions from regulated motor carriers about the agricultural commodity exception and application of the hours of service rules due to

the practical ramifications of that rule, and the approaching December 18, 2017 compliance date. Specific scenarios are addressed further below.

#### **IV. REASON FOR THIS NOTICE OF REGULATORY GUIDANCE**

Today's proposed regulatory guidance would provide clarity to the agricultural exception in 49 CFR 395.1(k)(1) and specifically addresses two scenarios: (1) driving an unladen commercial motor vehicle to either pick up an agricultural commodity or on a return trip following the delivery of an agricultural commodity; and (2) application of the agricultural commodity exception to trips involving transportation of the commodity more than 150 air-miles from its source. In addition, the Agency seeks comment on (1) whether grain elevators and/or livestock sale barns should be considered a "source" of agricultural commodities under section 395.1(k)(1); and (2) scenarios where a trip involves the loading of agricultural commodities at multiple sources.

*Unladen vehicles:* Interpreted literally, the agricultural commodity exception could be read as applicable only during the period during which the commodity is being transported, and not extended to movements of an unladen vehicle either heading to pick up a load or returning after a delivery. However, the Agency does not consider that view as consistent with legislative intent of providing round-trip relief to farmers, and has therefore informally advised stakeholders that both legs of a trip are covered. In today's proposed guidance (Question 34), FMCSA seeks to clarify how the agricultural commodity exception applies to a driver operating an unladen commercial motor vehicle used in transportation either to a source to pick up an agricultural commodity or on a return trip following delivery of an agricultural commodity.

*Loads beyond a 150 air-mile radius:* The Agency recognizes that some motor carrier safety enforcement personnel and other stakeholders have interpreted the agricultural commodity exception as inapplicable to any portion of a trip if the destination exceeds 150 air-miles from the source. Under that reading, the word “location” in section 395.1(k)(1) is interpreted as reflecting only the final destination of the load. FMCSA notes that the statutory language, as amended,<sup>1</sup> and the implementing regulation<sup>2</sup> are ambiguous, however, and considers this strict interpretation too narrow. In today’s regulatory guidance (Question 35), the Agency proposes to clarify that “location” means the outer limit of the exception distance, *i.e.*, 150 air-miles from the source. Thus, the Agency would interpret the exception as available to a driver transporting agricultural commodities for a distance up to 150 air-miles from the source, regardless of the distance between the source and final destination or place of delivery. Once a driver crosses the 150 air-mile point, however, the driver would be subject to the hours of service rules for the remainder of the trip.

*Meaning of “sources,” and multiple sources:* Several agricultural transporters have requested guidance on the extent to which grain elevators and/or livestock sale barns should be considered a “source” of agricultural commodities under section 395.1(k)(1). While these facilities are originating points for many agricultural commodity loads, they are not expressly encompassed within the statutory or regulatory terminology of the exception. Many of these transporters have also asked how the agricultural commodity exception would apply if the driver were to pick up partial loads at two or more locations. Specifically, they asked whether a pick-up at a subsequent

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<sup>1</sup> SEE MAP-21, Pub. L. 112-141, § 32101(d), 126 Stat. 778 (July 6, 2012). ...

<sup>2</sup> SEE 49 CFR 395.1(k)(1). The term “agricultural commodity” is defined in 49 CFR 395.2.

source has the effect of extending the 150 air-mile radius, *i.e.*, restarting the calculation of the 150 air-mile distance. Previous informal guidance has been that the 150 air-mile radius is based on the first source of an agricultural commodity on a particular trip, and that additional stops to load additional agricultural commodities do not extend the 150-mile radius. The Agency invites public comment on this interpretation, however, and on how additional sources might affect the exception under 49 CFR 395.1(k)(1).

## V. REGULATORY GUIDANCE

FMCSA proposes Regulatory Guidance, Questions 34 and 35 to 49 CFR 395.1 as follows:

### PART 395—HOURS OF SERVICE OF DRIVERS

#### § 395.1 Scope of the rules in this part

**Question 34:** Does the agricultural commodity exception (§ 395.1(k)(1)) apply to drivers while driving unloaded to a source where an agricultural commodity will be loaded, and to an unloaded return trip after delivering an agricultural commodity under the exception?

**Guidance:** Yes, provided that the trip does not involve transporting other cargo and the sole purpose of the trip is to complete the delivery or pick up of agricultural commodities, as defined in § 395.2. In that case, driving and on-duty time are not limited, nor do other requirements of 49 CFR part 395 apply.

**Question 35:** Does the agricultural commodity exception (§ 395.1(k)(1)) apply if the destination for the commodity is beyond the 150 air-mile radius from the source?

**Guidance:** The exception applies to transportation during the initial 150 air-miles from the source of the commodity. Once a driver operates beyond the 150 air-mile radius

of the source, part 395 applies. Starting at zero from that point, the driver must then begin recording his or her duty time, and the limits under the 11-hour, 14-hour, and the 60-/70-hour rules apply. Once the hours of service rules begin to apply on a given trip, they continue to apply for the duration of that trip, until the driver crosses back into the area within 150 air-miles of the original source of the commodities and is returning to that source. If the driver is not returning to the original source, the HOS rules continue to apply, even if the driver reenters the 150-mile radius.

## **VI. EXPIRATION DATE FOR THE PROPOSED REGULATORY GUIDANCE**

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312, 1535 (Dec. 4, 2015), the proposed regulatory guidance will be posted on FMCSA's Web site, [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov), if finalized. It would be reviewed by the Agency no later than five years after it is finalized. The Agency would consider at that time whether the guidance should be withdrawn, reissued for another period up to five years, or incorporated into the safety regulations.

## **VII. REQUEST FOR COMMENTS**

Refer to the **ADDRESSES** section above for instructions on submitting comments to the public docket concerning this regulatory guidance. The FMCSA will consider comments received by the closing date of the comment period to determine whether any further clarification of these regulatory provisions is necessary. In addition to comments concerning the proposed regulatory guidance above, including the issue of "sources" of agricultural commodities, as outlined above, the Agency is seeking information on the following:

1. Are there particular segments of the industry that would take advantage of this change more than others?
2. How does the flexibility provided in this guidance impact a carrier's need for an electronic logging device?
3. How many carriers and drivers are there transporting agricultural commodities in various segments (livestock, unprocessed food, others) that are impacted by this guidance?

Issued on: December 13, 2017

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Cathy F. Gautreaux  
Deputy Administrator

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