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### **Outline for Analyzing Federal Motor Carrier Safety Administration Regulation: Applicability for Agriculture**

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## Outline for Analyzing Federal Motor Carrier Safety Administration Regulation: Applicability for Agriculture

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Recent regulations passed by the Federal Motor Carrier Safety Administration (FMCSA) have led to much concern in the agricultural industry. These regulations address the need for electronic logging devices on vehicles hauling property, including horses and livestock. The rules are complex and can be confusing, particularly for people involved in agriculture, stock and horse showing, and rodeoing who are not engaged in the commercial trucking business and may have never dealt with these regulations before. This outline, focused specifically on agriculture, attempts to assist a hauler in determining whether the requirements of a commercial driver's license or an electronic logging device may apply.

1. **What is the “Gross Combination Weight Rating” (GCWR), “Gross Vehicle Weight Rating” (GVWR), and “Gross Vehicle Weight” (GVW) for my vehicle?**
  - a. GCWR is the value specified by the manufacturer of the power unit if displayed on the FMVSS certification label, or the sum of the gross vehicle weight ratings (GVWR) or gross vehicle weights of the power unit and the towed unit, whichever is greater.
  - b. The GVWR is an amount specified by the manufacturer as the loaded weight of a single vehicle. This is generally printed on a sticker applied to the trailer, perhaps on the escape door or on the frame.
  - c. GVW is the actual weight of the vehicle.
  - d. GCW is the actual weight of the vehicle and towed unit.

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*Example: For a Ford F-250, the GCWR ranges between 19,500-25,700. The GVWR is 10,000. For a 11' x 6' x 7' bumper pull stock trailer and for a 12' x 6' x 6'6" gooseneck trailer, the GVWR is 7,000. Thus, the GCWR of 25,700 is greater than the GVWR for the pickup and trailer of 17,000. As a result, you would use the GCWR.*

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## 2. Do I need a Commercial Driver's License (CDL)?

- a. Required for operator of a "commercial motor vehicle" (CMV) in interstate, foreign, or intrastate commerce.
- b. What is a "CMV?"
  - i. A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle is a:
    1. Combination Vehicle (Class A): Has a GCWR or GCW over 26,001 pounds inclusive of a towed unit with a GVWR or GCW of over 10,000 pounds;
    2. Heavy Straight Vehicle (Class B): Has a GVWR or GVW of more than 26,001 pounds
    3. Small Vehicle (Class C): Does not meet Class A or B, but is designed to transport 16 or more passengers or, regardless of size, is used to transport hazardous materials.
- c. Is the vehicle a "covered farm vehicle?"
  - i. Drivers of a "covered farm vehicle" are exempt, and not required to obtain a CDL if the vehicle is:
    1. Registered in a State with a license plate or other designation issued by the state that allows law enforcement officials to identify it as a farm vehicle;
    2. Operated by the owner or operator of a farm or ranch, or employee or family member of the farm owner;
    3. Used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch;
    4. Not used in for-hire motor carrier operations;
    5. Traveling in-state (regardless of weight) or out-of-state and have a GVWR or GVR of less than 26,001 pounds; or if GVWR or GVR of over 26,001 pounds and traveling out of state within 150 air miles of the farm or ranch.

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**Note:** A state may also waive the required knowledge and skills test and issue restricted CDLs to employees in the following farm-related service industries:

- Agri-chemical business;
  - Custom harvester
  - Farm retail outlet and supplier
  - Livestock feeders
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### 3. Am I required to keep paper Records of Duty Status (“RODS”)?

- a. Required for all “motor carriers,” and drivers unless an identified exception applies.
  - i. A motor carrier is anyone engaged in transportation of goods or passengers, whether for compensation, in a CMV, or both.
- b. Does an exception apply?
  - i. Covered farm vehicles (as defined above) are not required to keep RODS.
  - ii. “Short-haul operations”, as defined below, are not required to keep RODS.
    1. Driver of property-carrying commercial vehicles *for which a CDL is not required*, if:
      - a. The driver operates within a 150 air-mile radius of the location where the driver reports to and is released from work;
      - b. The driver returns to the normal work reporting location at the end of each duty tour;
      - c. The driver does not drive:
        - i. After the 14<sup>th</sup> hour after coming on duty on 5 days of any period of 7 consecutive days; and
        - ii. After the 16<sup>th</sup> hour after coming on duty on 2 days of any period of 7 consecutive days; and
      - d. The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records as required
    2. Driver (whether or not a CDL is required) operates within a 100 air-mile radius of the normal work reporting location;
      - a. The driver returns to the work reporting location and is released from work within 12 consecutive hours;
      - b. The driver has at least 10 consecutive hours off duty separating each 12 hours on duty;
      - c. A driver does not exceed the maximum driving time allowed in Section 395.3(a)(3) following 10 consecutive hours off duty; and
      - d. The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records as required
  - iii. Drivers that fall within the “agricultural operations” exemption are not required to keep RODS if:
    1. It is planting or harvest period as determined by each state;
      - a. Both Texas and Arkansas, for example, define this period to include the entire year from January 1<sup>st</sup> through December 31<sup>st</sup>.
    2. And drivers are transporting:
      - a. Ag commodities from the source of the commodity to a location within 150 air miles; or

- b. Farm supplies for ag purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the supplies are intended to be used within a 150 air mile radius from the distribution point; or
- c. 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.

#### 4. Do I need an Electronic Logging Device, or “ELD”?

- a. ELDs are required for motor carriers operating “commercial motor vehicles” when
  - i. Your vehicle has a GCWR, GVWR, GVW, or GCW of 10,001 pounds or more; and
  - ii. You are hauling property (includes horses and livestock).

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**Note:** *There is currently a 90-day waiver excluding “the transportation of agricultural commodities” from the new hours-of-service and electronic logging device regulations. This would apply to persons hauling commodities, as well as livestock and horses, and will be in place until March 18, 2018. A copy of the waiver may be found at <http://bit.ly/2EMopmH>.*

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- b. Are you excluded from the requirement?
  - i. Vehicles older than model year 2000 are not required to have an ELD.
  - ii. Drivers required to complete RODS for not more than 8 days within any 30 day period are not required to have an ELD.

*Note: Drivers not required to keep RODS at all fall under this exception.*

- iii. Drivers of a “covered farm vehicle” are not required to have an ELD if:
  - 1. Registered in a state with a license plate or other designation issued by the state that allows law enforcement officials to identify it as a farm vehicle;
  - 2. Operated by the owner or operator of a farm or ranch, or employee or family member of the farm owner;
  - 3. Used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch;
  - 4. Not used in for-hire motor carrier operations; and
  - 5. Traveling in any state with a GVWR or GVW of less than 26,001 pounds; or if GVWR or GVW of over 26,001 pounds, traveling within the state in

which is registered or out of state within 150 air miles of the owner's farm or ranch.

- iv. Drivers engaged in the "occasional transportation of personal property" are not required to have an ELD. This exception applies if:
  1. The transportation is not in return for compensation; and
  2. It is not in the furtherance of a commercial enterprise
    - a. Any prize money is declared as ordinary income for taxes;
    - b. The cost of underlying activities is not deducted as a business expense for tax purposes;
    - c. Corporate sponsorship is not involved.

### **Summary**

As noted above, the first step is to determine the gross combination weight rating and the gross vehicle weight rating (whichever is greater). Next, a person must determine if a commercial driver's license ("CDL") is legally required. For anyone with a weight rating or actual weight of more than 26,001, a CDL is required, unless the vehicle qualifies as a covered farm vehicle. Third, a person must analyze whether installing an electronic logging device ("ELD") is required. ELDs are required for any vehicle hauling property weighing over 10,001 pounds that does not fall under an exception such as the covered farm vehicle, occasional transportation, or other listed exception. As part of analyzing the ELD requirements, a person may need to consider whether he or she is required to keep paper records of duty status (RODS.)

Many livestock owners will fall under an exception to the rules, such as the covered farm vehicle exemption or an exemption for drivers not required to maintain certain records more than 8 out of a 30 day period. There may be concern, however, for persons with vehicles over 26,001 pounds who are traveling more than 150 miles out of state.

For example, a rodeo athlete living in San Antonio who is going to travel to Oklahoma City to compete in a rodeo may have to have a CDL, ELD, and be required to keep RODS. The "covered farm vehicle" exception to the CDL requirement would not apply as the athlete would be traveling out of state and more than 150 miles. Thus, a CDL would be required. The "covered farm vehicle" exception to the ELD requirement would not apply for the same reasons. Further, the occasional transportation exception likely would not apply because most athletes in this situation would deduct underlying expenses from taxes and many may have corporate sponsorships. Thus, the only potential exception left would be if the person was not required to keep paper records of duty status "RODS" for more than 8 days during a 30 day period. This would likely depend on how many trips the driver had taken, and where the trip destinations were, within the last month.

Livestock exhibitors would be another example. Assume a person in Amarillo has a vehicle with a GCWR or GVWR over 26,001 pounds headed to a stock show to exhibit cattle. If the exhibitor hauls to Houston, he or she would not be required to have a CDL if the farm vehicle exception applies (farm

tags are required on the vehicle) because the travel would be in-state. If the same vehicle was headed to show at Denver, a CDL would be required because that would be out-of-state and more than 150 miles. With regard to an ELD, one would likely not be required if the “occasional transportation exception” applies, meaning the exhibitor was not deducting expenses for tax purposes or if the driver was not required to keep paper RODS more than 8 out of a 30 day period.

### **Conclusion**

As with most regulations, the FMCSA rules are complicated and determining applicability can be very fact specific. Anyone concerned should visit with an attorney, Department of Transportation employee, or FMCSA official to determine what, if any, of these rules may apply to their situation.