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

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Recent regulations written by the Federal Motor Carrier Safety Administration (FMCSA) have led to much concern in the agricultural industry. While a waiver from compliance with the ELD requirements for persons transporting of “agricultural commodities” is in place until June 18, 2018, and another waiver from the ELD requirements exists for persons transporting of livestock and insects is in place until September 30, 2018, once these regulations go into effect they impose requirements 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 may have never dealt with this type of regulations before. This outline, focused specifically on agriculture, attempts to assist a hauler in determining whether the requirements of a commercial driver’s license, hours of service records, or an electronic logging device may apply. Importantly, this outline **does not** address state-level hauling regulations that may differ from these federal rules. Drivers should consult with their state Department of Transportation with any questions as to state rules and regulations.

1. Am I operating my vehicle in “commerce?”

a. The FMCSA regulations, including ELD, HOS, and CDL requirements, apply only if a person is operating a vehicle “in commerce.” State-level requirements, such as the requirement that a driver have a CDL, may apply regardless of whether “commerce” is involved.

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- b. Under the federal regulations, the definition of “commerce” is broadly written: “commerce” is “trade, traffic, or transportation in the United States.”
- c. The FMCSA guidance documents, however, articulate a more narrow definition.
 - i. FMCSA states that a vehicle is not traveling “in commerce” and, therefore, is not required to comply with FMCSA regulations if the vehicle is “non-commercial” or is “not business related.” They further explain this to be a situation where a driver is not “engaged in an underlying business related to the move” and is not hauling for compensation.
 - ii. Scholarship or prize money being offered does not mean that the transportation is necessarily business related.
 - iii. Examples of this, taken from FMCSA guidance:
 - 1. Hauling horses or livestock to shows and events when the transportation in question is not business related;
 - 2. Transportation unrelated to an agricultural business, such as a cattle rancher that owns horses for personal use, unrelated to that cattle ranch.

2. If I am operating my vehicle in “commerce,” am I operating in “interstate” or “intrastate” commerce?

- a. Under the FMCSA regulations:
 - i. “Interstate commerce” is trade, traffic, or transportation involving the crossing of a state boundary.
 - ii. “Intrastate commerce” is trade, traffic, or transportation within a single state.
- b. If a person is engaged in interstate commerce, he or she is subject to all federal FMCSA regulations, including each of the ones outlined below.
- c. If a person is engaged in intrastate commerce, he or she is subject to the federal CDL requirements, as well as any CDL requirements specific to the state in which the person operates. The person is not subject to the federal FMCSA requirements for ROD and ELD outlined below, but is responsible to comply with any state-level requirements, which may or may not mirror these federal requirements. Please contact your state Department of Transportation or similar department for more information.

Each state establishes its own CDL requirements, but minimum federal standards must be met. The below outline reflects federal standards, including the “covered farm vehicle” exception.

3. 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

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*

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.

4. 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.

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

5. 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 14th hour after coming on duty on 5 days of any period of 7 consecutive days; and
 - ii. After the 16th 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 1st through December 31st.
 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.
- iv. Drivers falling under the “occasional transportation” exception, discussed in Section 6 below, are exempt from keeping RODs.

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

- a. ELDs are required for motor carriers operating “commercial motor vehicles” between multiple states when

- i. Your vehicle has a GCWR, GVWR, GVW, or GCW of 10,001 pounds or more;
- ii. You are traveling in “interstate commerce”; and
- iii. You are hauling property (includes horses and livestock).

- 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: *Until June 18, 2018, there is a waiver excluding the transportation of “agricultural commodities” from the new electronic logging device regulations. Drivers operating under this waiver must carry a copy of it to present upon request. A copy of the waiver may be found at <https://bit.ly/2uaFCoo>.*

Further, authorities will not enforce the ELD requirement for persons hauling livestock or insects through September 30, 2018. No official waiver paperwork is necessary for this provision to apply.

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

The first step is to determine whether a vehicle is being operated in "commerce" and, if so, whether that is intrastate or interstate commerce. If it is a vehicle operated in intrastate commerce, the driver should contact the appropriate state Department of Transportation. If it is operated in interstate commerce, the next step is to determine the gross combination weight rating and the gross vehicle weight rating (whichever is greater). With these initial questions answered, a driver may then continue to analyze which federal statutes apply.

A person must determine if a commercial driver's license ("CDL") is legally required. For anyone operating in commerce 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.

Next, 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 exceptions such as the covered farm vehicle, occasional transportation, or other listed exceptions. As part of analyzing the ELD requirements, a person should 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 travel more than 8 days out of a 30 day period, 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. The driver would need to determine if he was traveling in “commerce.” If the livestock owner was a ranch and the stock were to be exhibited in an open show as part of the ranch business, that likely would constitute commerce and the federal regulations would be applicable. If, however, the livestock were owned by a 4-H or FFA exhibitor and were not part of an underlying business, the hauling would likely not constitute “commerce” and the federal regulations would not apply.

Assuming a factual scenario where the hauling did constitute commerce, 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 and hours of service requirements, there are likely several exceptions that would apply, including the covered farm vehicle exception, the “occasional transportation exception”, or the 8/30 day exception 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. An additional layer of complication exists with regard to state Department of Transportation rules, which may differ from the federal rules discussed in this outline. 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.