

Compliance Guidelines for the Agriculture Industry

Presented by the

Kansas Corporation Commission
(KCC)

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The KCC Transportation Division's Goal

- To continue working as active partners with the Motor Carrier Industry, the Kansas Highway Patrol (KHP) and the Federal Motor Carrier Safety Administration (FMCSA) in reducing the number of accidents involving motor carriers by promulgating regulations, enforcing the regulations and educating the industry as well as the motoring public.

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Background

- Since the mid 1930's FMCSA has regulated all motor carriers that operate in Interstate commerce, this includes farm operations;
- In the mid 1980's the KCC adopted most of the federal safety regulations as state law through our Kansas Administrative Regulations (K.A.R.'s) for the Intrastate motor carriers;
- Commercial and agricultural operations are subject to all applicable state & federal operating authority and safety regulations;
- A majority of agricultural operations meet the exceptions from both the state & federal regulations.

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Definition Section



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Interstate Commerce

CFR Title 49 Part 390.5 defines Interstate commerce as:

Trade, traffic, or transportation in the United States:

- (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
- (2) Between two places in a State through another State or a place outside of the United States; or
- (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

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Intrastate Commerce

- Means any trade, traffic, or transportation in any State which is not described in the term "Interstate commerce."

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Kansas Intrastate Commerce Policy

Absent clear evidence of the farmer's intent to engage in interstate commerce, an intrastate carrier is a carrier who operates solely in intrastate commerce and does not transport placardable quantities of hazardous materials. If the operation is solely within the state of Kansas and the commerce engaged in is solely within the state of Kansas, the shipment is considered intrastate commerce.

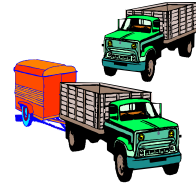
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Weight Rating

- **Gross Vehicle Weight (GVW)** means the weight of a vehicle, fully equipped and serviced for operation, including the weight of the fuel, lubricants, coolant, vehicle tools and spares, crew, personal equipment, and load.
- **Gross vehicle weight rating (GVWR)** means the value specified by the manufacturer as the loaded weight of a single motor vehicle.
- **Gross combination weight rating (GCWR)** means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle.

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Commercial Motor Vehicle (CMV)



Means any self-propelled or towed motor vehicle used on a highway in intra/interstate commerce to transport passengers or property when the vehicle:

- Has a GVWR or GCWR, or GVW or GCW, of 10,001 pounds or more, whichever is greater; or
- Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- Is used in transporting placardable quantities of hazardous material.

Private Motor Carrier

- Means a person who transports their own property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

Public (For-hire) Motor Carrier

- Means a person engaged in the transportation of goods or passengers for compensation.

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Farm Vehicle Driver

- **Farm vehicle driver** means a person who drives only a commercial motor vehicle that is:
 - Controlled and operated by a farmer as a **private motor carrier** of property;
 - Being used to transport either agricultural products, farm machinery, farm supplies to or from a farm;
 - Not being used in the operation of a for-hire motor carrier;
 - Not carrying hazardous materials of a type or quantity that requires the CMV to be placarded in accordance with §177.823 of this subtitle; and
 - Being used within 150 air-miles or 172.6 statute miles of the farmer's farm.

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Farm Supplies For Agriculture Purposes

- Means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.

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(CDL) Commercial Motor Vehicle

- **CMV** as defined in 383.5 means, a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - (a) Has a GCWR of 26,001 pounds or more, inclusive of a towed unit(s) with a GVWR of more than 10,000 pounds; or
 - (b) Has a GVWR of 26,001 pounds or more; or
 - (c) Is designed to transport 16 or more passengers, including the driver; or
 - (d) Is of any size and is used to transport placardable quantities of hazardous material.

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CDL Groups

- (Class A) any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, provided the GVWR of the vehicle's being towed is in excess of 10,000 pounds;
- (Class B) any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR;
- (Class C) any single vehicle, or combination of vehicles, that meets neither the definition of Group A or of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used to transport placardable quantities of hazardous material.

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State Law



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Intrastate Agriculture Safety Exemption

- K.S.A. 66-1,129(c) The following rules and regulations shall not apply to agriculture operations while engaged in the carriage of intrastate commerce in this state:
- (1) The owner of livestock or producer of farm products transporting livestock of such owner or farm products of such producer to market in a motor vehicle of such owner or producer, or the motor vehicle of a neighbor on the basis of barter or exchange for service or employment, or to such owner or producer transporting supplies for the use of such owner or producer, or in the motor vehicle of a neighbor on the basis of barter or exchange for service or employment.

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Interstate Hobbyist Exemption

- Question: Does the exemption in [§390.3\(f\)\(3\)](#) for the “occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise” apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?
- *Guidance:* The exemption would apply to this kind of transportation, provided: (1) The underlying activities **are not undertaken for profit**, i.e., (a) prize money is declared as ordinary income for tax purposes, and (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant; (2) corporate sponsorship is not involved. Drivers must confer with their State of licensure to determine the licensing provisions to which they are subject.

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Federal Regulations and Applicability



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Controlled Substances & Alcohol Testing

- Agriculture operations engaged in intrastate and/or interstate commerce are exempt from Parts 382 & 40, Controlled Substances & Alcohol Testing while operating a CDL Class motor vehicle within 150 miles from the farm or ranch;
- Beyond 150 miles each driver shall complete pre-employment testing and be enrolled in a substance and alcohol testing program.

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Commercial Drivers License (CDL)

- Agriculture operations engaged in intrastate and/or interstate commerce are exempt from Parts 383 CDL while operating a CDL Class motor vehicle within 150 miles from the farm or ranch. In order to operate under this exemption in interstate commerce, the states must have a signed “**Reciprocity Agreement**”;
- Beyond 150 miles, agriculture operations are subject to CDL laws in CDL class motor vehicle.²¹

Reciprocity Agreements

- Nebraska (Signed)
- Missouri (Signed)
- Arkansas
- Oklahoma (Signed)
- Texas
- Colorado (Pending)
- Iowa

Safety Fitness Procedures

- Intrastate agriculture operations are exempt from Part 385, Safety Fitness Procedures such as the New Entrant Safety Program;
- Interstate agriculture operations must comply with the New Entrant Safety Program rules and the HM safety permit requirements.

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New Entrant Safety Assurance Process Summary

- The rule was published in the federal register on December 16, 2008, with an effective date of February 17, 2009 and an implementation date of December 16, 2009;
- FMCSA has identified 16 regulations that are essential elements of basic safety management controls necessary to operate in interstate commerce and makes a motor carrier's failure to comply with anyone of the regulations an automatic failure of the Safety Audit (SA);
- This means: If you applied for an interstate USDOT number after February 17, 2009, and audited after December 16, 2009, you must pass the safety audit, (see handout for details).

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Minimum Levels of Financial Responsibility

- Part 387, Intrastate insurance requirements for Anhydrous Ammonia:
 - Bulk (greater than 3,500 gallons) \$5,000,000
 - Non-bulk (less than 3,500 gallons) \$ N/A
- Part 387, Intrastate insurance requirements for Diesel Fuel:
 - Bulk (greater than 3,500 gallons) \$1,000,000
 - Non-bulk (less than 3,500 gallons) \$ N/A
- Part 387, Interstate insurance requirements for Anhydrous Ammonia:
 - Bulk (greater than 3,500 gallons) \$5,000,000
 - Non-bulk (less than 3,500 gallons) \$1,000,000
- Part 387, Interstate insurance requirements for Diesel Fuel:
 - Bulk (greater than 3,500 gallons) \$1,000,000
 - Non-bulk (less than 3,500 gallons) \$ 1,000,000

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General Applicability and Definitions

- Intrastate agriculture operations are exempt from Part 390, General Applicability and Definitions;
- All interstate operations using a motor vehicle that meets the definition of a commercial motor vehicle are subject to this Part 390;
- Part 390 includes U.S. DOT Number, Marking of CMV's and Accident File to name a few of the requirements.

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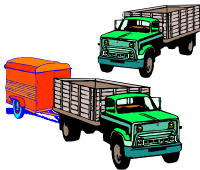
Interstate Registration Guidelines

- As of January 1, 2007, motor carriers operating CMV's in Interstate commerce are subject to the Unified Carrier Registration (UCR).
- CMV, as defined under 49 USC § 31101, means a self-propelled or towed vehicle used on the highways in commerce principally to transport passenger or cargo, if the vehicle:
 - Has a GVWR or GVW of at least 10,001 pounds, whichever is greater;
 - Is designed to transport more than 10 passengers including the driver ;
or
 - Is used in transporting material found by the USDOT to be hazardous;
- The UCR applies to all Interstate operations.
- You can register for UCR at the following website:
www.ucr.in.gov

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Qualification of Drivers

- Intrastate agriculture operations are exempt from Part 391, "Qualification of Drivers".
- 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 drivers license.



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Driver Qualification Check List ✓

Interstate agriculture operations beyond 150 air-miles are subject to Part 391. Part 391 requires operators to maintain the following in a "driver's file":

- Driver Application for Employment;
- Inquiry to state agencies - Motor Vehicle Record;
- Inquiry to previous employers for three years for drivers of non-CDL vehicles and an additional seven years for CDL drivers;
- Medical examiner's certificate;
- Driver's road test - certifications of road test;
- Annual driver's certification of violations and annual review of driving record;
- Driver data sheet;
- Entry-level driver training certification;
- Pre-employment & random alcohol and controlled substance testing for all CDL drivers.

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Driving of Commercial Motor Vehicles

- Intrastate agriculture operations are exempt from Part 392, "Driving of Commercial Motor Vehicles" requirements;
- Interstate agriculture operations are subject to Part 392, regulations, such as:
 - Sick or fatigued operator;
 - Alcohol prohibition;
 - Seat Belt Use;
 - Operating of CMV;
 - Emergency equipment;
 - Inspection of cargo.

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Parts and Accessories Necessary for Safe Operation

- Intrastate agriculture operations are exempt from Part 393, standards for CMV's; however operators are still subject to state law requirements (Chapter 8, Article 17).
- Interstate agriculture operations are subject to Part 393 requirements, such as:
 - Lighting devices;
 - Brakes;
 - Coupling devices;
 - Emergency equipment;
 - Protection against shifting and falling cargo;
 - Frames, wheels, steering, and suspension systems.

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Towing Two Trailers, K.S.A. 8-1907(d)

- Except as otherwise provided in subsection (c), not more than three vehicles, including the towing vehicle, in any combination of vehicles may be connected by means of a towbar mechanism, and if the three such vehicles are connected by towbar mechanisms, the towbar mechanism between the towing vehicle and the first towed vehicle shall be equipped with an anti-sway mechanism;
- In addition, the second towed vehicle of every combination of vehicles so connected shall be equipped with service brakes acting on the wheels of at least one axle, and which are of a type approved by the secretary of transportation and of such character as to be applied automatically and promptly;
- Except that the brake requirement shall not apply to combinations of vehicles which include a slow-moving vehicle which is an implement of husbandry when moving from field to field.

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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, Part 395.1(k);
- Beyond 100 air-miles from the farm or ranch in interstate commerce a log book is required;
 - Non CDL 150 air-mile exception

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Inspection Repair and Maintenance

- Intrastate agriculture operations are exempt from Part 396, “Inspection Repair and Maintenance”.
- Interstate agriculture operations are subject to Part 396 requirements, such as:
 - Lubrication;
 - Unsafe operation forbidden;
 - Inspection of vehicles in operation;
 - Driver vehicle inspection reports;
 - Periodic inspection;
 - Inspector qualifications.



Transportation of Hazardous Materials

- Agricultural operations transporting placardable quantities of HM in **Intrastate and/or Interstate** commerce are subject to all the applicable HM regulations such as, Parts 397 and 100-185:
 - Driving & Parking rules;
 - Hazard Communication Requirements;
 - Shipping Paper;
 - Placarding;
 - Marking;
 - Labeling;
 - Loading & Storage;
 - Packaging Requirements;
 - Emergency Response;
 - Training;
 - Security Plan

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Transporting Diesel Fuel

- Intrastate operators are exempt over local roads between fields of the same farm;
- To or from the farm; operators transporting more than 119 gallons but less than 502 gallons of Diesel intrastate within 150 miles of the farm must understand and comply with: Subpart A: General; Subpart B: Table of HM and Special Provision; Subpart C: Shipping Papers; Subpart D: Marking; Subpart E: Labeling; Subpart F: Placarding.
- Operators transporting more than 502 gallons, to or from the farm, intrastate or 119 gallons interstate must comply with everything listed above, plus Subpart G: Emergency Response; Subpart H: Training.

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Subpart C, Shipping Papers

- The HM shipping description on the shipping paper must include:
 - The **Identification Number** as shown in Column (4) of the §172.101 table;
 - The **Proper Shipping Name** prescribed in Column (2); “” “”
 - The **Hazard Class or Division Number**, as shown in Column (3); “” ””
 - The **Packing Group** in Roman numerals, as designated for the hazardous material in Column (5).
- The following are excepted from the requirements of paragraph (a)(5) of this section:
 - Bulk packages, provided some indication of the total quantity is shown, for example, “1 cargo tank;
 - Cylinders, provided some indication of the total quantity is shown, for example, “10 cylinders.”

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Shipping Paper “Example”

ABC Farms
RR1 Topeka, KS 66611
Telephone (785) 112-3344

1 Cargo Tank, **Gasoline,**
3, UN1203, PG II

Emergency Contact Haz- Mat Response Inc.
(800) 229-5252

Hazard Class → 3, UN1203, PG II
ID Number → 3, UN1203, PG II
Proper Shipping Name → Gasoline,
Packing Group → PG II

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Subpart F, Placarding

- Applicability of placarding requirements
 - Each person who offers for transportation or transports any hazardous material subject to this subchapter shall comply with the applicable placarding requirements of this subpart;

 - Each placard on a motor vehicle must be clearly visible from the direction it faces.;

 - Each bulk packaging, transport vehicle containing any quantity of a hazardous material must be placarded on each side and each end with the type of placards specified in §§172.519 through 172.560.

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Subpart G, Emergency Response

- General requirements, Part 172.602(c):
- No person to whom this subpart applies may transport a hazardous material unless:
- (1) Emergency response information (Material Safety Data Sheet, MSDS) conforming to this subpart is immediately available for use at all times the hazardous material is present; and
- (2) Emergency response information, including the emergency response telephone number, required by this subpart is immediately available to any person who, as a representative of a Federal, State or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

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Emergency Response Providers

- Haz-Mat Response, Inc.
 - Olathe, Kansas Ph# (800) 229-5252;
 - Great Bend, Kansas Ph# (620) 603-6460;
 - Wichita, Kansas Ph# (316) 524-6800;
 - North Platt, Nebraska Ph# (308) 532-5753.

- CHEMTREC
 - Ph# (800) 262-8200.

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Subpart H, Training

- **HM Training must include:**
 - General awareness/familiarization training;
 - Function-specific training;
 - Safety Training;
 - Security awareness training;
 - In-depth security training.

- **Recordkeeping:**
 - A record of current training, inclusive of the preceding three years, in accordance with this section shall be created and retained by each hazmat employer for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include:
 - (1) The HM employee's name;
 - (2) The most recent training completion date;
 - (3) A description, copy, or the location of the training materials used;
 - (4) The name and address of the person providing the training; and
 - (5) Certification that the hazmat employee has been trained and tested, as required by this subpart.

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Subpart H, Training

- The Federal Motor Carrier Administration (FMCSA) offers free web based training material, the link is:
<http://www.phmsa.dot.gov/hazmat/training/publications/modules>.
- Also, several cooperatives have offered to train their members.

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Transportation of Anhydrous Ammonia Intrastate

- Intrastate operators transporting Anhydrous Ammonia in Nurse Tanks “over local roads between fields of the same farm” must understand and comply with: Subpart A: General; Subpart B: Table of HM and Special Provision; Subpart C: Shipping Papers (see exemption); Subpart D: Marking; Subpart E: Labeling; Subpart F: Placarding;
- Operators transporting Anhydrous Ammonia nurse tanks to or from the farm intrastate or across state lines must comply with everything listed above, plus Subpart G: Emergency Response; Subpart H: Training; and Subpart I: Security Plan (see exemption).
- See exemptions on following slides and on brochures.

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Anhydrous Ammonia Class 2.2



Part 172: When transporting Class 2 products operators must understand and comply with the HM Table, Special Provisions, HM Communications, such as;

- Subpart A: General;
 - Subpart B: Table of HM and Special Provisions;
 - Subpart C: Shipping Paper; (**Exempt < 3000 gallons**)
 - Subpart D: Marking;
 - Subpart E: Labeling;
 - Subpart F: Placarding;
 - Subpart G: Emergency Response
 - Subpart H: Training
 - Subpart I: Security Plan (**Exempt if gross receipts from the sale of Ag commodities or products is less than \$500,000 and operations are within 150 mile radius of the farm**).
- See exceptions in the Transporting Anhydrous Ammonia handout.

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HM Exemptions

Agriculture operations are exempt from the HM safety permit while transporting Class 2 materials such as “Anhydrous Ammonia” as long as the tanks capacity is less than 3,500 gallons.

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Intrastate Exemption



K.A.R. 4-10-5 specifically exempts nurse tanks used for the transportation of anhydrous ammonia from the safety regulations such as lights & brakes.

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Additional Exemptions

- Subpart I: Security Plans;
 - Farmers that meet the following requirements are exempt from this requirement as stated in 172.800(c) if they earn less than \$500,000, annually in gross receipts from the sale of agricultural commodities or products and transportation activities are:
 - Conducted by highway or rail;
 - In direct support of their farming operations; and
 - Conducted within a 150 air-mile radius of that operation;
- 107.601(b) exempts bulk agricultural operations transporting < 3,500 gallons from the PHMSA registration.

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Exceptions Continued

- A Nurse Tank with a capacity of 3,000 gallons or less and used to transport Anhydrous Ammonia is exempt from the shipping paper requirement under 173.315 (m)(7).

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Contact Information

- **KCC** kcc.ks.gov
- 1500, SW Arrowhead Road
- Topeka, KS 66604
- **Phone#** (785) 271-3333, **Mike J. Hoeme, Transportation Director**
- **Phone#** (785) 271-3151, **Gary Davenport, Deputy Director**

- **FMCSA** www.fmcsa.dot.gov
- 1303, SW First American Place, Suite 200
- Topeka, KS 66604
- **Phone#** (785)271-1260, **Max Strathman, Division Administrator**

- **KHP**
- 700, SW Jackson, Suite 704
- Topeka, KS 66603
- **Phone#** (785) 296-7189, **Daniel D. Meyer, Captain**

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