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Transportation Economic and Safety Exemptions for the Oil and Gas Industry

The Kansas Corporation Commission (KCC) understands how important business growth is to our state's economy. The compliance program administered by the Transportation Division is a proactive approach to provide information not only to protect the motor carrier business interest but also to make businesses more efficient and productive. Our goal is to provide you, our Industry partners, with the tools to be successful. This document outlines the applicability of the state and federal regulations and industry specific exemptions. With the increase in exploration due to new technology and techniques like horizontal drilling and hydraulic fracturing, understanding the regulations and exemptions can make all the difference for a successful business operation.

INTRASTATE SAFETY APLICABILITY

49 C.F.R. Part:	K.A.R. or K.S.A.	Lightweight or non-CDL CMV (10,001 – 26,001 pounds) Subject:	CDL Class CMV (26,001 or more pounds) Subject:	Any Class CMV Transporting Placardable Hazardous Materials Subject:
Part 367	K.A.R. 82-4-30	N/A	N/A	N/A
Part 382:	K.A.R. 82-4-3c	N/A	Yes	Yes
Part 383:	K.S.A. 8-2,126 et seq.	N/A	Yes	Yes
Part 385:	K.A.R. 82-4-3d	N/A	Yes	Yes
Part 387:	K.A.R. 82-4-3n	N/A	Yes	Yes
Part 390:	K.A.R. 82-4-3f	N/A	Yes	Yes
Part 391:	K.A.R. 82-4-3g	N/A	Yes	Yes
Part 392:	K.A.R. 82-4-3h	N/A	Yes	Yes
Part 393:	K.A.R. 82-4-3i	YES* (Load Securement)	Yes	Yes
Part 395:	K.A.R. 82-4-3a	N/A	Yes, See FMCSA Guidance *	Yes See FMCSA Guidance *
Part 396:	K.A.R. 82-4-3j	YES* (Annual inspection(s))	Yes	Yes
Part 397:	K.A.R. 82-4-3k	N/A	Yes	Yes
Part 398:	K.A.R. 82-4-3l	N/A	Yes	Yes
Part 399:	K.A.R. 82-4-3m	N/A	Yes	Yes

***Operating Authority Exemption:**
K.S.A. 66-1,109 (f): Motor vehicles carrying tools, property or material belonging to the owner of the vehicle and used in repair, building or construction work, not having been sold or being transported for the purpose of sale;

***Safety Compliance Exemption:**
K.S.A. 66-1,129 (c) Any rules and regulations of the commission, adopted pursuant to this section, shall not apply to the following, while engaged in the carriage of intrastate commerce in this state:

Commercial motor vehicles operating in intrastate commerce which do not equal or exceed a gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW) or gross combination weight rating (GCWR) of 26,001 pounds, except commercial motor vehicles, regardless of weight, which are designed or used to transport 16 or more passengers, including the driver, or which are used in the transportation of hazardous materials and required to be placarded pursuant to 49 C.F.R. part 172, subpart F. Notwithstanding the exemption granted under this paragraph, all commercial motor vehicles shall comply with 49 C.F.R. part 393, subpart I, as adopted by K.A.R. 82-4-3i, and 49 C.F.R. § 396.17, as adopted by K.A.R. 82-4-3j. Vehicles found to be in violation of 49 C.F.R. part 393, subpart I, as adopted by K.A.R. 82-4-3i, prior to October 1, 2014, shall be issued a warning citation. Vehicles found to be in violation of 49 C.F.R. § 396.17, as adopted by K.A.R. 82-4-3j, prior to July 1, 2015, shall be issued a warning citation. The provisions of this paragraph shall expire and have no effect on and after July 1, 2015. (*See* K.S.A. 66-1,129 (c)(3))

***Definitions:**
K.S.A. 79-3603(p)(1)-(3)

"Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building, facility or utility structure damaged or destroyed by fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances.

"Building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building.

"Facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility.

Any driver operating a commercial motor vehicle (CMV) beyond the scope of the exemption or any driver of a commercial driver's license (CDL) class motor vehicle is subject to all the applicable state and/or federal safety regulations.

INTERSTATE SAFETY APPLICABILITY

49 C.F.R. Part:	K.A.R. or K.S.A.	Lightweight or non-CDL CMV (10,001 – 26,001 pounds) Subject:	CDL Class CMV (26,001 or more pounds) Subject:	Any Class CMV Transporting Placardable Hazardous Materials Subject:
Part 367	K.A.R. 82-4-30	Yes	Yes	Yes
Part 382:	K.A.R. 82-4-3c	N/A	Yes	Yes
Part 383:	K.S.A. 8-2,126 et seq.	N/A	Yes	Yes
Part 385:	K.A.R. 82-4-3d	Yes	Yes	Yes
Part 387:	K.A.R. 82-4-3n	Yes	Yes	Yes
Part 390:	K.A.R. 82-4-3f	Yes	Yes	Yes
Part 391:	K.A.R. 82-4-3g	Yes	Yes	Yes
Part 392:	K.A.R. 82-4-3h	Yes	Yes	Yes
Part 393:	K.A.R. 82-4-3i	Yes	Yes	Yes

Part 395:	K.A.R. 82-4-3a	Yes, See FMCSA Guidance *	Yes See FMCSA Guidance *	Yes
Part 396:	K.A.R. 82-4-3j	Yes	Yes	Yes
Part 397:	K.A.R. 82-4-3k	Yes	Yes	Yes
Part 398:	K.A.R. 82-4-3l	Yes	Yes	Yes
Part 399:	K.A.R. 82-4-3m	Yes	Yes	Yes

Part 395*:

- **Part 395.1(d) Oilfield operations. (1)** In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

- **(2)** In the case of specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as "off duty" for purposes of Sections 395.8 and 395.15, with remarks or annotations to indicate the specific off-duty periods that are waiting time, or on a separate "waiting time" line on the record of duty status to show that off-duty time is also waiting time. Waiting time shall not be included in calculating the 14-hour period in Section 395.3(a)(2). Specially trained drivers of such commercial motor vehicles are not eligible to use the provisions of Section 395.1(e)(1) the "Short-haul operations".

FMCSA Regulatory Guidance on 49 C.F.R. 395.1

The guidance below was promulgated by the FMCSA and can be found in the FMCSA publication of the Federal Motor Carrier Safety Regulations Handbook (February 2012).

- ***Question 6:*** What does "servicing" of the field operations of the natural gas and oil industry cover?

- *Guidance:* Servicing of field operations, as described by the Interstate Commerce Commission Forms (ICC) report issued with this exemption, covers those services generally performed by specialized companies supporting the petroleum drilling and producing industry, "including testing, mudfilling, cementing, hydraulic fracturing, voltage, logging, and resistivity measurements, and cleaning of industrial equipment, as the particular requirement might arise in the normal course of well digging or maintenance operations * * *" (89 M.C.C. 19, at 28, March 29, 1962). Water servicing companies, whose operations are exclusive to servicing the natural gas and oil industry, are also covered by the provisions of Section 395.1(d).

- Section 395.1(d) applies only to situations involving drilling or the operation of wells. It does not apply to exploration activities.

- ***Question 7:*** What is considered "oilfield equipment" for the purposes of Section 395.1(d)(1)?

- *Guidance:* Oilfield equipment is not specifically defined in this section. However, its meaning is broader than the "specially constructed" commercial motor vehicles referred to in Section 395.1(d)(2), and may encompass a spectrum of equipment ranging from an entire vehicle to hand-held devices.

- ***Question 8:*** What kinds of oilfield equipment may drivers operate while taking advantage of the special rule of Section 395.1(d)(2)?

- *Guidance:* The special rule in Section 395.1(d)(2) applies only to drivers transporting the equipment identified by the former Interstate Commerce Commission (now part of the Federal

Highway Administration) in a 1962 report to accompany the oilfield rule. The report indicated the specialized equipment normally consist of heavy machinery permanently mounted on commercial motor vehicles, designed to fill a specific need.

- ***Question 9:*** Are drivers required to be dedicated permanently to the oilfield industry, or must they exclusively transport oilfield equipment or service the field operations of the industry only for each eight-day (or shorter) period ended by an off-duty period of 24 or more consecutive hours?

- *Guidance:* A driver must exclusively transport oilfield equipment or service the field **operations** of the industry for each eight-day (or shorter) period before his/her off-duty period of 24 or more consecutive hours. However, he/she must be in full compliance with the requirements of Section 395.3(b) before driving other commercial motor vehicles not used to service the field operations of the natural gas or oil industry.

- ***Question 10:*** A driver is used exclusively to transport materials (such as sand or water) which are used exclusively to service the field operations of the natural gas or oil industry. Occasionally, the driver has leftover materials that must be transported back to a motor carrier facility or service depot. Would such a return trip be covered by Section 395.1(d)(1)?

- *Guidance:* Yes. Transporting excess materials back to a facility from the well site is part of the servicing operations. However, such servicing operations are limited to transportation back and forth between the service depot or motor carrier facility and the field site. Transportation of materials from one depot to another, from a railhead to a depot, or from a motor carrier terminal to a depot, is not considered to be in direct support of field operations.

- ***Question 11:*** May specially trained drivers of specially constructed oil well servicing vehicles cumulate the 8 consecutive hours off duty required by Section 395.3 by combining off-duty time or sleeper-berth time at a natural gas or oil well site with off-duty time or sleeper-berth time while en route to or from the well?

- *Guidance:* These drivers may cumulate the required 8 consecutive hours off duty by combining two separate periods, each at least 2 hours long, of off-duty time or sleeper-berth time at a natural gas or oil well location with sleeper-berth time in a Commercial Motor Vehicle (CMV) while en route to or from such a location. They may also cumulate the required 8 consecutive hours off duty by combining an off-duty period of at least 2 hours at a well site with: (1) another off-duty period at the well site that, when added to the first such period, equals at least 8 hours, or (2) a period in a sleeper-berth, either at or away from the well site, or in other sleeping accommodations at the well site, that, when added to the first off-duty period, equals at least 8 hours.

- However, such drivers may not combine a period of less than 8 hours off duty *away* from a natural gas or oil well site with another period of less than 8 hours off duty *at* such well sites. The special provisions for drivers at well sites are strictly limited to those locations.

****Hazardous Materials Regulations (HMRs):**
Any vehicle transporting Hazardous Materials (HM) in commerce, as defined in 49 C.F.R 171.8, is subject to the HM Regulations for both Inter & Intra-state transportation. The only allowable exceptions are those found within the HMRs, with two of the most common for Oil Field Operations, being 49 C.F.R. 173.5a and 173.6. Other product specific exceptions may apply as well.

Kansas state law requires every motor carrier to instruct its officers, agents, employees, and representatives to be familiar with and comply with all regulations of the Kansas Corporation Commission (K.A.R. 82-4-2). If you need additional information, please call Mike Hoeme at (785) 271-3333 or Gary Davenport at (785) 271-3151.