FMCSA-HOS-AG-395.1-FAQ38(2024-12-04)

**Question:** A driver is inspected while operating under the agricultural operations exemption in 49 CFR 395.1(k). Although exempt from 49 CFR Part 395 while so operating, the driver sometimes operates outside the exempt radius in 49 CFR 395.1(k) (150 air miles from the source of the agricultural commodity) and is therefore subject to the normal requirements of 49 CFR Part 395, for which the driver maintains a record of duty status (RODS). Upon request of an enforcement officer, the driver voluntarily provides a copy of the RODS covering one or more days prior to (and outside of) operating under the agricultural exemption in § 395.1(k). The inspector discovers an hours-of-service (HOS) violation on a previous day when the driver was not operating under the exemption. May the driver be cited for that previous-day violation?

**Guidance:** Yes. As FMCSA’s regulatory guidance notes, when “exempt” drivers operate beyond the 150 air-mile radius from the source of the agricultural commodity, 49 CFR Part 395 applies (Question 35, 83 FR 26374). Drivers operating under the agricultural exemption are not subject to any of Part 395 at that time and therefore are not required to a provide a copy of their RODS during a roadside inspection. However, if a driver voluntarily provides RODS during the inspection, the officer may examine these records and document and cite any HOS violations that occurred before the driver began operating under the exemption. The driver cannot be placed out of service for those previous violations because the driver is currently exempt from Part 395. But a driver can be cited for prior violations because the driver was not exempt when they occurred. To repeat—49 CFR 395.1(k) does not retroactively immunize drivers from citations for *previous* HOS violations simply because they are *currently* eligible for the agricultural exemption.

**Contact Info:** FMCSA Information Line, 1-800-832-5660.

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*Note: This guidance document does not have the force and effect of law and is not meant to bind the public in any way.  It is intended only to provide information and clarity regarding existing requirements under the law or agency policies.*

**Regulatory Topic: Hours of Service Agricultural Commodities**

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