

**STATE OF KANSAS**  
**STATE CORPORATION COMMISSION**

**Notice of Public Hearing on Proposed Administrative Regulation**  
**K.A.R. 82-4-3a**

September 24, 2020

The State Corporation Commission (Commission) will conduct a public hearing at 10:00 a.m. on Thursday, December 3, 2020, to consider the adoption of the proposed regulation K.A.R. 82-4-3a on a permanent basis. In response to concerns related to COVID-19, the public hearing of the Commission shall be held by video conference. Anyone desiring to participate in the public hearing video conference must pre-register at: [https://zoom.us/meeting/register/tJwtdO2orDMoEtazAHyurS21y\\_aGHjEotdpJ](https://zoom.us/meeting/register/tJwtdO2orDMoEtazAHyurS21y_aGHjEotdpJ). The meeting will also be audio streamed live on the Kansas Corporation Commission website (<https://kcc.ks.gov>).

This notice exceeds the 60-day notice requirement of the pending public hearing and shall constitute the beginning of the public comment period for the purpose of receiving written public comments on the proposed rule and regulation. A complete copy of the proposed regulation, economic impact statement and online comment form may be found on the Kansas Corporation Commission website: <http://kcc.ks.gov>, or by contacting Ahsan Latif: [a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov).

All interested parties may submit written comments prior to the hearing to Ahsan Latif, Litigation Counsel, State Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604, or by email to: [a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulation during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to ask that each participant limit any oral presentation to five (5) minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five (5) working days in advance of the hearing by contacting Dennis Peerenboom at (785) 271-3161 or the Kansas Relay Center at 1-800-766-3777.

A summary of the proposed regulation and its economic impact are as follows: (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the State Corporation Commission, other state agencies, state employees, or the general public has been identified.)

**K.A.R. 82-4-3a. Hours of service.**

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This existing regulation adopts relevant portions of the Federal Motor Carrier Safety Administration (“FMCSA”) regulations (49 C.F.R. Part 395) which establish the hours of service requirements to be followed by motor carriers and their employees. The proposed amendments to this regulation include changes that modify the rules governing how drivers calculate on-duty time in the following four scenarios:

- Short-haul movements – the driving mileage radius and driving times for these movements are extended as follows: Driving mileage radius extends from 100 air miles to 150 air miles; Driving time is extended from 12 hours to 14 hours.
- Adverse Driving Conditions - drivers encountering “adverse driving conditions” will have an extra two hours to operate before having to go off-duty.
- 30-Minute Break provision - the 30-minute break provision is modified to require the break after eight hours of driving time (instead of just on-duty time) and allows an on-duty/not driving period to qualify as the required break.
- Sleeper Berth provision – modifications to this provision allow drivers to split the 10-hour off-duty period as long as one off-duty period is at least two hours long and the other involves at least 7 consecutive hours in the sleeper berth.

In 2017, the FMCSA amended its regulations to require the use of Electronic Logging Devices. After several years in use, the FMCSA is responding to feedback from the industry by modifying the way certain activities are recorded for hours of service. To provide uniform enforcement with the FMCSA, the Commission’s proposed amendments would cause K.A.R. 82-4-3a to mirror the federal rules.

#### **K.A.R. 82-4-3a: Economic Impact Summary**

The Transportation Division of the Commission anticipates the modification of certain hours of service rules will be a benefit to the motor carrier industry, but is unable to put a dollar figure on that benefit. Government agencies and the general public should see no economic impact from the changes in this regulation.

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**82-4-3a. Hours of service.** (a)(1) With the following exceptions, 49 C.F.R. Part 395, as in effect on October 1, 2015 2019 and as amended by 85 fed. reg. 33451-33452 (2020) ~~80 fed. reg. 78383-78416 (2015)~~, excluding appendix A to subpart B, and ~~81 fed. reg. 47721-47722 (2016)~~, is hereby adopted by reference:

(A) The following revisions shall be made to 49 C.F.R. 395.1:

(i) 49 C.F.R. 395.1(a)(2) shall be deleted.

(ii) In paragraph (b)(1), the phrase “Except as provided in paragraph (h)(~~2~~) (3) of this section,” shall be deleted.

(iii) ~~In paragraph (g)(1)(i), the phrase “393.76 of this subchapter” shall be deleted and replaced with “49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i.”~~

(iv) ~~In paragraph (g)(1)(i)(B), the phrase “, or, in the case of drivers in Alaska, the driving limit specified in § 395.1(h)(1)(i) (ii),” shall be deleted.~~

(v) ~~In paragraph (g)(1)(i)(C), the phrase “, or in the case of drivers in Alaska, the period specified in § 395.1(h)(1)(ii),” shall be deleted.~~

(vi) In paragraph (g)(1)(ii)(C), the phrase “— or, for calculation of the 20-hour period in § 395.1(h)(1)(ii) for drivers in Alaska, all on-duty time—” shall be deleted.

(vii) ~~(iv)~~ In paragraph (g)(2), the phrase “393.76 of this subchapter” shall be deleted and replaced with “49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i.”

~~(viii)~~ ~~(v)~~ In paragraph (g)(3), the phrase “393.76 of this subchapter” shall be deleted and replaced with “49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i.”

~~(ix)~~ ~~(vi)~~ 49 C.F.R. 395.1(h) shall be deleted.

~~(x)~~ ~~(vii)~~ 49 C.F.R. 395.1(i) shall be deleted.

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~~(xi)~~ (viii) In paragraph (k), the phrase "each State" shall be deleted and replaced with "the state of Kansas." The following shall be added after subparagraph (3): "(4) 'Planting and harvesting seasons periods' means the time periods for planting, growing, and harvesting that occur between January 1 and December 31."

~~(xii)~~ (ix) In paragraph (q), the phrase "49 CFR 397.5" shall be deleted and replaced with "49 C.F.R. 397.5 as adopted by K.A.R. 82- 4-3k."

~~(xiii)~~ (x) In paragraph (s), the phrase "49 CFR 390.5" shall be deleted and replaced with "49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f."

~~(xiv)~~ (xi) In paragraph (x), the phrase "49 CFR 390.38(b)" shall be deleted and replaced with "49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f."

(B) The following revisions shall be made to 49 C.F.R. 395.2:

(i) In the definition of "farm supplies for agricultural purposes," the phrase "each State" shall be deleted and replaced with "the state of Kansas." The phrase "the State" shall be deleted and replaced with "the commission."

(ii) In paragraph (4)(i) of the definition of "on duty time," the phrase "§ 397.5 of this subchapter" shall be deleted and replaced with "49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k."

(iii) In paragraph (7) of the definition of "on duty time," the phrase "part 382 of this subchapter" shall be deleted and replaced with "49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c."

(iv) The definition of "signal employee" shall be deleted and replaced with the following:  
 "Signal employee" means an individual who is engaged in installing, repairing or maintaining signal systems."

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(v) The definition of "sleeper berth" shall be deleted and replaced by the following:

"'Sleeper berth' means a berth conforming to the requirements of 49 C.F.R. 393.76, as adopted in K.A.R. 82-4-3i."

(vi) In the definition of "transportation of construction ~~materials~~ material and equipment," the following text shall be deleted: ", except that a State, upon notice to the Administrator, may establish a different air mile radius limitation for purposes of this definition if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section."

~~(C)~~ The following revisions shall be made to 49 C.F.R. 395.3:

~~(i)~~ Paragraph ~~(c)~~(1) shall be deleted and replaced with the following: "Any period of 7 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours."

~~(ii)~~ Paragraph ~~(c)~~(2) shall be deleted and replaced with the following: "Any period of 8 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours."

~~(iii)~~ Paragraph ~~(d)~~ shall be deleted.

~~(D)~~ (C) The following changes shall be made to 49 C.F.R. 395.8:

(i) In paragraph (a)(1), the phrase "§ 390.5 of this subchapter" shall be deleted and replaced with "49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f."

(ii) All references to "December 18, 2017" shall be replaced with "January 3, 2018."

~~(E)~~ (D) The following revisions shall be made to 49 C.F.R. 395.11:

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(i) In paragraph (a), "December 18, 2017" shall be replaced by "January 3, 2018."

(ii) Paragraphs (h)(1), (h)(2), and (h)(3) shall be deleted and replaced with the following:

"A carrier utilizing an FMCSA authorized supporting document self-compliance system will be deemed to comply with K.A.R. 82-4-3a."

~~(F)~~ (E) The following revisions shall be made to 49 C.F.R. 395.13:

(i) In paragraph (a), the phrase "every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter)" shall be deleted and replaced by "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(ii) 49 C.F.R. 395.13(c)(2) shall be deleted and replaced by the following: "Within fifteen days following the date any driver is placed out of service, the motor carrier that employed the driver shall personally deliver or place in the U.S. mail to the state director of transportation and to the federal motor carrier safety administration a signed certification in a form acceptable to the commission. Any signed certification acceptable to the commission shall include the following information:

"(i) All violations have been corrected;

"(ii) action has been taken to ensure compliance with 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15, each as adopted by K.A.R. 82-4-3a; and

"(iii) the motor carrier understands that false certification can result in appropriate enforcement action."

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(iii) 49 C.F.R. 395.13(d)(4) shall be deleted and replaced with the following: "49 C.F.R. 395.13 as adopted by K.A.R. 82-4-3a does not alter the hazardous materials requirements prescribed in 49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k pertaining to attendance and surveillance of commercial motor vehicles."

(G) (F) The following revisions shall be made to 49 C.F.R. 395.15:

(i) In paragraph (a), "December 18, 2017" shall be replaced with "January 3, 2018."

(ii) The last sentence in 49 C.F.R. 395.15(b)(3) shall be deleted.

(iii) ~~In paragraph (i)(4), the term "FMCSA" shall be deleted and replaced by~~  
~~"commission."~~

(iv) ~~In paragraph (i)(7), the term "FMCSA" shall be deleted and replaced by~~  
~~"commission."~~

(v) In paragraphs (j)(1) and (j)(2), the term "FMCSA" shall be deleted and replaced by  
 "commission."

(G) In 49 C.F.R. 395.20(b), the phrase "December 18, 2017" shall be replaced with  
"January 3, 2018."

(H) In 49 C.F.R. 395.22(j), the phrase "§ 390.29 of this subchapter" shall be replaced  
with "49 CFR 390.29 as adopted by K.A.R. 82-4-3f."

(I) In 49 C.F.R. 395.26(a), the phrase "in accordance with the requirements contained in  
appendix A to subpart B of this part" shall be deleted.

(H) (J) In 49 C.F.R. 395.28(c), "§ 390.3(f) of this subchapter" shall be replaced with "49  
 CFR 390.3 as adopted by K.A.R. 82-4-3f."

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(~~F~~) (~~K~~) In 49 C.F.R. 395.34(~~d~~)(2), (~~d~~)(3), (~~d~~)(4), and (~~d~~)(5), the phrases "FMCSA Division Administrator for the State of the motor carrier's principal place of business" and "FMCSA" shall be replaced by "the Commission."

(~~J~~) (~~L~~) 49 C.F.R. 395.38 shall be deleted.

(2) As used in this regulation, each reference to a portion of 49 C.F.R. Part 395 shall mean that portion as adopted by reference in this regulation.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted.

(c) No wrecker or tow truck, as defined by K.S.A. 66-1329 and amendments thereto, with a gross vehicle weight rating or gross combination vehicle weight rating of 26,000 pounds or less that is operating in intrastate commerce and is not either carrying 16 or more passengers, including the driver, or transporting materials required to be placarded shall be subject to this regulation. (Authorized by and implementing K.S.A. 2017-Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2017-Supp. 66-1,129; effective, T-82-12-16-03, Jan. 4, 2004; effective, T-82-4-27-04, May 3, 2004; effective, T-82-8-23-04, Aug. 31, 2004; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended, T-82-10-25-05, Nov. 1, 2005; amended Feb. 17, 2006; amended, T-82-3-21-06, March 21, 2006; amended June 30, 2006; amended Oct. 2, 2009; amended Oct. 22, 2010; amended Nov. 14, 2011; amended Sept. 20, 2013; amended, T-82-4-14-15, April 14, 2015; amended July 31, 2015; amended, T-82-1-3-18, Jan. 3, 2018; amended April 27, 2018; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

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*Kansas Corporation Commission*  
*Ahsan Latif: (785)271-3118, a.latif@kcc.ks.gov*

**Kansas Administrative Regulations**  
**Economic Impact Statement**  
**For the Kansas Division of the Budget**

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**K.A.R. 82-4-3a (Permanent Version)**

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt along with the following to the Division of the Budget.

**I. Brief description of the proposed rule(s) and regulation(s).**

This existing regulation adopts relevant portions of 49 C.F.R. Part 395, which establishes the hours of service requirements to be followed by motor carriers and their employees. The proposed changes include changes which will go into effect September 29, 2020 which relax certain aspects of the hours of service rules to accommodate driving practices that are now being recorded through ELD's.

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

The adoption of this regulation is required by the federal government under 49 C.F.R. Part 350. Adoption of this regulation permits the Commission the ability to enforce the existing regulations as required by state and federal law. Adopting major changes to the regulations at the same time as other jurisdictions is important so that motor carriers face uniform enforcement as they travel throughout the country.

If periodic updates to the Kansas motor carrier regulations are not conducted, the Commission becomes non-compliant with its requirement to maintain substantial compliance with the Federal Motor Carrier Safety Regulations pursuant to 49 C.F.R. Part 350. This non-compliance would carry the following monetary consequences on both existing and future funding:

- All MCSAP Basic and Incentive funding would be suspended. No additional grant funds could be applied for; and
- Multiple state agencies (KDOR, KCC, KDOT, KHP) currently hold the following grants: MCSAP, CVISN, HP, PRISM, SaDIP and New Entrant. In addition to future applications being denied, any remaining money in these account balances would not be able to be vouchered against.

**III. Agency analysis specifically addressing following:**

**APPROVED** The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

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The Commission's changes to this regulation create uniformity of enforcement between state and federal agencies.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The Commission does not anticipate an economic impact resulting from the adoption of this proposed regulation.

- C. Businesses that would be directly affected by the proposed rule and regulation;**

Motor carriers operating in Kansas would continue to be subject to the same hours of service as they do federally. The changes relax certain rules related to hours of service.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

The regulation allows the Commission to enforce hours of service rules in conformity with the federal standards.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The Commission does not anticipate an economic impact resulting from the adoption of this proposed regulation.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$00.00

**An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$00.00

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

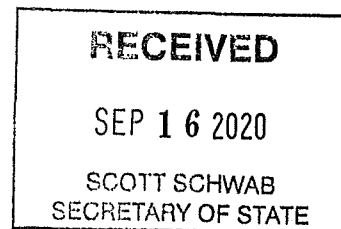
YES ☐ NO ☒

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**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

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The proposed regulation only features minor grammatical changes and a more precise reference to another regulation.

**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.**

YES ☐ NO ☒

**G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

n/a

**H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

The Commission's Transportation Division met with leaders of the Kansas Motor Carrier Association, Kansas Highway Patrol and Federal Motor Carrier Safety Administration officials in Kansas to discuss changes being made to this regulation.

**I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

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