

August 1st, 2011

Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Docket No. FMCSA-2011-0146

Dear Ms. Ferro,

On behalf of the Nebraska Farm Bureau Federation (NEFB) and our over 54,000 members, I would like to offer these comments on the *Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment*. It is our hope that the following comments will be useful as you continue your work on this important issue.

No one cares more about the safety of farm and ranch vehicles and machinery than farmers and ranchers. Our families and friends share the rural roads that are most used for agricultural transportation. We gladly shoulder our responsibility to keep our vehicles and machinery in safe working order to protect our loved ones, our communities, and ourselves.

American agriculture is a dynamic enterprise that feeds our nation and the world. There is no one-size-fits-all description of our agricultural economy. The practices and needs of agriculture vary by sector (livestock, crop, horticulture, etc.), region, culture and occasionally generation.

Interstate Commerce -- How should FMCSA distinguish between intra- and interstate commerce when a Commercial Motor Vehicle (CMV) is operated within the boundaries of a single state?

In 1975, the U.S. DOT Federal Highway Safety Administration issued guidance for enforcement agencies that stated agricultural products should be considered interstate commerce because farmers intend for their crops to be sold out of state. FMCSA continues to abide by this guidance.

This determination reveals that DOT and its agencies have no understanding of the agricultural marketing chain and how farmers and ranchers conduct business. Farmers and ranchers seek the best price available at the closest market to maximize profits. Agricultural products are then

processed by the buyers into a myriad of goods. Farmers and ranchers have no way of knowing in what form or where their crops and livestock will ultimately be sold.

The FMCSA guidance could result in farmers being forced to obtain commercial drivers licenses, federal medical cards, and more even if they only drive a short distance in state. Furthermore, such requirements would create greater challenges for farmers in moving commodities to market.

Current FMCSA guidance on agriculture and interstate commerce is based on inaccurate assumptions about farmers and ranchers and their operations. The agency should rescind current guidelines which lead enforcement officials and motor carriers to define agricultural products and operations as interstate commerce.

Crop Share Arrangements -- Should FMCSA treat farmers with crop-share lease agreements as “for-hire” commercial carriers in new entrant safety audits?

It appears that there is a sense that crop-share agreements are rarely used in agriculture today, however, within the state of Nebraska, these agreements remain very popular. These agreements vary from landowner to landowner, with no single standard arrangement.

The popularity of these types of agreements particularly land with older land owners who hope to mitigate risk for younger farmers. Many times it is these types of agreements that allow the next generation to begin their own farming operation. By treating farmers with these agreements as commercial carriers, FMCSA would make crop-share lease agreements unacceptable and eliminate a tool for younger farmers to manage the risks associated with farming. NEFB believes that the farmers with crop-share lease agreements should not be considered commercial carriers.

Commercial Motor Vehicles (CMV) -- Should implements of husbandry and other farm equipment be considered CMVs?

Implements of husbandry and other farm equipment should not be considered CMVs. They are not operated in interstate commerce and do not carry passengers.

In 2010, FMCSA stated: “Congress has explicitly denied FMCSA jurisdiction over motor vehicles controlled and operated by a farmer used to transport the farmer’s agricultural or horticultural commodities and products, or supplies of the farmer to his farm.” 49 U.S.C. 13506(a)(4) Furthermore, quoting from the same document, such vehicles are not CMVs “even if they operate large trucks in interstate commerce.” And lastly, “states have the option - which all have exercised – to exempt most farmers from the requirement to obtain a commercial driver’s license.”

NEFB opposes any effort to classify farm machinery as CMVs or to require farm machinery owners and operators to acquire CDLs, display DOT numbers, register owners' or farm name, limit mileage, obtain a medical card for the driver, or maintain hours of service records.

Where technical differences exist between federal and state laws and regulations, we believe that state laws should be the governing authority. A federal ‘one size fits all’ approach would put farmers in many states at a disadvantage by creating an undue financial and regulatory burden from the federal government. States are, in our federal system of government, closer to the issues at hand both in proximity as well as the consequences both seen and unintended, regarding the application of regulations.

The unique characteristics of agricultural transportation warrant distinction between state and federal laws and regulations. We oppose repeal of existing statutory and regulatory exemptions such as those for farm registered truck drivers from FMCSA mandated CDL requirements as long as the truck is operated intrastate, and hold that the states should prevail in determining the commercial status of off-road farm vehicles and implements of husbandry which by law were never intended to be regulated by FMCSA.

In closing we would like to again thank you for allowing us to comment on an issue that is so important to Nebraska agriculture.

Sincerely,

A handwritten signature in black ink that reads "Keith R Olsen". The signature is written in a cursive, flowing style.

Keith R. Olsen
President