



**NATIONAL
FARMERS
UNION**

July 28, 2011

Mr. Thomas L. Yager
Chief, Driver and Carrier Operations Division
Office of Bus and Truck Standards and Operations
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590-0001

RE: Docket No. FMCSA-2011-0146

Regulatory Guidance: Availability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

Dear Mr. Yager:

National Farmers Union (NFU) is pleased to offer comments on this docket regarding the applicability of the Federal Motor Carrier Safety Regulations to farm equipment. NFU has represented family farmers, ranchers and rural residents since 1902 and the organization works to improve the well-being and quality of life for family farmers, ranchers and rural communities by advocating grassroots-driven policy adopted annually by our membership.

Farm vehicle safety is an important issue to our members, many of whom have raised concerns about this matter. There have been serious discussions throughout rural America regarding the potential effects of reinterpretation of the Motor Carrier Act of 1935, the Motor Carrier Safety Act of 1984, and the Commercial Motor Vehicle Safety Act of 1986. Careful regulatory oversight must be exercised in these matters and NFU appreciates the work of the Federal Motor Carrier Safety Administration to ensure a safe and effective national transportation network.

Farmers care deeply for the safety of their families and of other travelers, and are mindful of their machinery, equipment and motor vehicles. It is important for regulators to keep that fact in mind when promulgating rules and determining the applicability of federal motor carrier safety regulations to operators of farm vehicles and off-road agricultural equipment. Additionally, it should be remembered that agriculture is a unique form of commerce as agricultural transportation is seasonal and occurs over relatively short distances, especially between producers and processors.

NFU policy, adopted by our grassroots membership, states: “we believe family-farm operations hauling their own commodities should be exempt from mileage limitations, commercial driver’s licenses and commercial truck licensing requirements... relative to the Federal Motor Carrier Safety Act.” NFU understands the difficulty of translating the needs of family farmers into statute and regulation and this docket is a welcome opportunity for those affected by the rules to offer their input.

Distinguishing Between Intra- and Interstate Commerce

NFU is of the opinion that the intent of an agricultural producer in delivering a commodity to market is not interstate when the product is sold prior to being shipped out of state. Such an activity may fall under the legal definition of “interstate commerce,” but other requirements should be considered for production agricultural transportation. The regulatory guidance for distinguishing between intrastate and interstate commerce should reflect this, and ought to be changed to state that when ownership of a commodity is transferred within the state of origin, the movement of that commodity from farm to the first point of delivery is strictly intrastate in nature.

Most farmers have little, if any, control or knowledge of the final destination of the commodities they produce. As such, it is inappropriate to consider a farmer’s commodity delivery to a grain handling facility, for one example, within the state as interstate commerce. While such a commodity movement might fall under a broader definition of interstate commerce, for all practical purposes, this is an intrastate transaction. Deeming this sort of commodity delivery as interstate commerce and subjecting the farmer to additional levels of regulation is an overly burdensome interpretation of statute. NFU asks that a more reasonable approach toward the licensing of intrastate commodity delivery be found.

Applicability of Commercial Drivers License Rules to Farm Vehicle Drivers Operating Under a Crop Share Farm Lease Agreement

Farmers and landowners engage in many types of land rental agreements that vary widely. These agreements can be fairly simple to very complex and may not even be grounded in a document. Despite the differences in structure, the underlying principle for all land rental agreements is for both the landowner and tenant farmer to benefit. It is quite common for crop share agreements to allow for agricultural renters to provide uncompensated services to the landowner, including commodity transportation. Such terms of an agreement should not alter the commercial status of the renter and should not change the farm exemption for transportation of the commodity produced.

If FMCSA were to enforce regulations that deemed farm vehicle drivers operating under a certain type of crop share agreement as a common or contract motor carrier, a great deal of additional information would be required. In the guidance language provided in the initial publication of this docket, there was acknowledgement of the fact that many crop share renters provide for the transportation of the commodities in exchange for reduced rental rates, which should not designate the renting farmer as a commercial grain hauler. These services are merely terms of the rental agreement. It would be exceedingly difficult for FMCSA to distinguish between this and the other varying types of land rental agreements and would necessitate the gathering of a large amount of information.

In addition, burdensome regulations on the transportation of crops under a crop share agreement could effectively discourage farmers and landowners from pursuing such agreements, which are often more beneficial to farmers than cash rent agreements. Crop share agreements are particularly attractive to beginning or socially disadvantaged farmers and ranchers, who often do not have the capital required to cash rent.

Implements of Husbandry

It has been a long-standing and practical policy that farm equipment and other “implements of husbandry” not be considered commercial motor vehicles when operated for limited distances on public roadways. This has been the case regardless of whether these movements are part of a private farm operation or during for-hire activities. Farm equipment operators are involved in considerable amounts of safety training regarding the use of this machinery.

In accordance with our policy, NFU does not believe that “implements of husbandry and other farm equipment” be categorized or regulated as commercial motor vehicles. These vehicles and implements should not be considered commercial motor vehicles and made subject to the FMCSA vehicle safety equipment regulations. Issuing guidance consistent with the approach used for off-road construction equipment is an appropriate course of action and the language offered in the initial docket publication is appropriate.

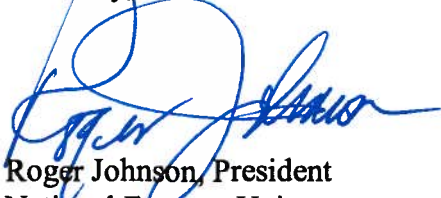
Additionally, the definition of “implements of husbandry” provided in the guidance should not be interpreted as excluding any equipment used in agricultural production. When operating these vehicles for long distances and not connected to agricultural purposes, they may then best be classified as commercial motor vehicles. However, “implements of husbandry” should not be automatically included in the definition of commercial motor vehicles. Above all, this is a determination that may be best left to the states, of which many already have certain exemptions for agricultural transportation.

Conclusion

Many of the documents already submitted in this docket view this comment period as an attack on agriculture. One commenter wrote that “these extra regulations would put extreme pressure on the agricultural industry... these regulations would simply cause too much cost and administrative hassles and would not increase the safety of our nation’s highways.” NFU understands that this opportunity to provide feedback to federal regulators should not be interpreted as an attempt to create undue burden for farmers. This important comment period merely seeks clarification for future application of regulations.

NFU appreciates the opportunity to submit the above comments. Our members strongly encourage FMCSA to consider its guidance language regarding agricultural transportation to ensure that it allows farmers to continue to safely operate their farms without additional layers of regulatory oversight. Additional explanation and application of these rules should recognize the unique aspects of agricultural transportation and be reasonable and sensible for agricultural practices across the country.

Sincerely,



Roger Johnson, President
National Farmers Union