



August 1, 2011

Docket Management Facility (M-30)  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building, Ground Floor, Room 12-140  
Washington, DC 20590-0001

*Electronically Submitted*

**RE: Agricultural Retailers Association comments on “Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment”, [Docket No. FMCSA-2011-0146].**

To Whom It May Concern:

On behalf of the membership of the Agricultural Retailers Association (ARA), we submit the following comments in response to the Federal Motor Carrier Safety Administration’s (“FMCSA”) May 31, 2011 Federal Register Notice, *Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment*.

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors of crop inputs. ARA members are responsible for providing the product and service need to agricultural producers, including: fertilizer, crop protection chemicals, seed, equipment, crop scouting, soil testing, custom application of pesticides and fertilizers and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

ARA members and their customers use specialized equipment, called “implements of husbandry”, for field preparation, nutrient and crop protection product application, planting, harvest and transportation to grain elevators.

We appreciate FMCSA’s efforts to reach out to the agricultural community in developing regulatory guidance for this unique industry. Specifically, we plan to comment on the following: (1) Distinguishing between Intra- and Interstate Commerce and (2) Whether Implements of Husbandry should be considered commercial motor vehicles.

I. Distinguishing between Intra- and Interstate Commerce.

Implements of husbandry should not be considered a commercial motor vehicle (“CMV”) so that the distinction of inter- or intrastate commerce is unnecessary as it relates to farm vehicles. FMCSA should recognize that implements of husbandry have a primary use as tools in

agricultural production, not commercial transportation, and FMCSA should differentiate implements of husbandry from CMV's with a broad definition at the federal level.

Some agricultural retailers operate near the border of one state, so they are able to service farmers in multiple states. Within the agriculture industry, farming practices do not change substantially at the state line, and practices do not change at all within a farmer's field that may be divided by a state line. Practically, a retailer or farmer cannot change agricultural equipment or practices each time a state boarder is crossed. Thus, the definition of "implements of husbandry" should explicitly allow for operation within 150 air-miles of the retail outlet or farm, including crossing state boundaries.

Furthermore, many ARA members operate grain elevators, alongside the agronomic departments. FMCSA should clarify in guidance that farmers generally intend to sell grain at the elevator within their state, without preference or input as to the grain's transportation or final use.

The scenarios articulated in FHWA's 1975 guidance are misleading as to the agriculture industry's nature and farmers' intent in transporting grain. Retailers' farmer customers do not arrange transportation for their grain beyond the elevator, like one of the FHWA's examples suggests. The other example implies that farmers intend for their grain to be shipped out of state when they deliver the grain to the elevator. This scenario is also misleading. Grain is used as an end-use for many purposes, both in state and out of state- food, feed and fuel. For example, more recently many ethanol plants have located to the Heartland in order to be proximately located to grain production. This is a new dynamic that did not exist when FHWA wrote the guidance questions in 1975. The farmer has no intent or interest in whether his farm's grain is ultimately shipped out of state. The farmer is merely interested in selling his grain to obtain the best price or because of the services that the elevator offers customers.

FMCSA's guidance in Question 6 is relevant to the issue but unspecific to the dynamics of the agriculture industry. FMCSA's guidance is limited to the "essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of the shipment." As discussed above, farmers do not have a "fixed and persistent intent" for their grain to eventually be shipped out of state at the time of delivery to the elevator. Additionally, farmers are not traditional "shippers" of products; they are also carriers. As carriers of their grain to the elevator, farmers' intention is clearly for the grain's transportation to end at the elevator, since that is essentially the farmer's last delivery. Further, farmers do not provide the elevator with shipping papers or the like as traditional shippers would. Undoubtedly, farmers' role as a "shipper" ends at the grain elevator.

FMCSA should clarify the available guidance to reflect the realities of the agriculture industry- 1) "implements of husbandry" are not considered CMV's and are outside of the scope of interstate commerce, and 2) transportation of grain to a grain elevator by a farmer is not subject to CMV permitting requirements when farmers intend to sell grain to an in-state grain elevator, without regard to further transit of the grain.

II. Implements of Husbandry should not be considered commercial motor vehicles when operated on public roads for limited distances.

ARA agrees with FMSCA that “implements of husbandry” should not be treated as a CMV similar to the treatment of off-road motorized construction equipment. Implements of husbandry are similar to off-road motorized construction equipment in that they are not designed for transportation purposes. Implements of husbandry are not designed for use in traffic and are designed for use in agricultural production and use on the public roads is not in furtherance of a transportation purpose. For instance, the Hazardous Materials Regulations refer to nurse tanks as “implements of husbandry”. In many states, nurse tanks and their trailers are designed to be carried under 30 miles per hour, be pulled by vehicles so that the trailer would not need separate brakes and cannot be operated at night.

ARA is also concerned that defining implements of husbandry in a guidance document could be confusing on several fronts. Since states have currently adopted varying definitions into state law, the states are not clear of the effects of any federal guidance that likely varies from the state’s definition. States are also concerned that a federal definition may not take into account the types of implements of husbandry used in that state. Types of implements of husbandry can vary greatly by geographic region and crop, as evidenced by states’ various definitions for the term. Thus, any federal definition should be broad enough to capture all types of implements of husbandry.

ARA agrees with FMCSA that enforcement should be consistent and that guidance on these topics helps enforcement officials; however, there is also confusion in the industry regarding how enforcement would be treated if there were a federal definition and a varying state definition. FMCSA should clarify this issue for industry. Also, states should not use a varying definition within the state in order to collect revenue through CMV registrations.

Finally, ARA members are concerned that a guidance document on the definition of implements of husbandry does not have the force of law and can be easily changed in the future.

If FMCSA proceeds with providing guidance on the scope of “implements of husbandry,” ARA believes that term should be defined broadly to include those types of equipment and machinery whose primary purpose is obviously not related to transportation on a public road, rather, the primary purpose of this type of equipment and machinery is in the furtherance of agriculture, horticulture, or livestock purposes. To that end, ARA offers the following definition of “implement of husbandry”:

*An implement of husbandry is “a vehicle designed and adapted exclusively for the primary function of serving agricultural, horticultural or livestock operation. This includes self-propelled application type vehicles, farm wagons, farm trailers or like equipment used to transport products necessary to agricultural production so long as the implements are operated within a 150 air mile radius of the source of the supply or the farm field. Placarded quantities of hazardous materials necessary for agricultural production are limited to: (1) diesel fuel in quantities*

*of 3,785 liters (1,000 gallons) or less; (2) liquid fertilizers including anhydrous ammonia in quantities of 11,355 liters (3,000 gallons) or less; and (3) solid fertilizers that are not transported with any organic substance.”*

This definition would include nurse tanks and is consistent with FMCSA treatment of similar equipment in the regulations at 49 C.F.R. § 383.3(f) and the Pipeline Hazardous Material Safety Administration regulations at 49 C.F.R. § 173.315(m).

Since an implement of husbandry is not a CMV, its weight should not be considered for the purposes of determining whether the towing vehicle is a CMV.

### Conclusion

In sum, ARA believes the following:

- Implements of husbandry should not be considered a commercial motor vehicle (“CMV”) so that the distinction of inter- or intrastate commerce is unnecessary as it relates to farm vehicles;
- Transportation of grain to a grain elevator by a farmer is not subject to CMV permitting requirements when farmers intend to sell grain to an in-state grain elevator, without regard to further transit of the grain; and
- Guidance on the definition of implement of husbandry would promote consistent enforcement, but any federal definition should be consistent with existing regulations and broad enough to account for the various types of farming circumstances.

ARA appreciates your consideration of our comments on the applicability of the FMCSR to operators of certain farm vehicles and off-road agricultural equipment. If you have any questions, please contact me at (202) 595-1706 or via email at Carmen@aradc.org.

Sincerely,



Carmen Haworth  
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