



Pennsylvania Farm Bureau

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March 23, 2009

Mr. Daryl R. St. Clair
Bureau of Maintenance and Operations
Pennsylvania Department of Transportation
400 North Street, 6th Floor
Commonwealth Keystone Building
Harrisburg, PA 17120

RECEIVED
2009 MAR 24 AM 11:23
INDEPENDENT REGULATORY
COMMISSION

**RE: Proposed Rulemaking on Intrastate Motor Carrier Safety Requirements,
Published at 39 Pa.B. 999 (*Pennsylvania Bulletin* issue of February 21, 2009)**

VIA EMAIL TRANSMISSION (@ dstclair@state.pa.us)

Dear Mr. St. Clair:

Pennsylvania Farm Bureau appreciates the opportunity to comment on the aforementioned proposed rulemaking. Farm Bureau is the largest general farm organization in the Commonwealth with a membership of more than 44,300 farm and rural families.

The intended objective and effect of the proposed rulemaking is clearly to extend the applicable requirements imposed under federal regulations upon "commercial motor vehicles" and drivers to intrastate transportation of vehicles over 17,000 pounds. As you know, the current provisions of Chapter 231 governing intrastate transportation provide a blanket exemption from regulation to vehicles and drivers of vehicles that are exempt from registration as implements of husbandry and as farm vehicles. Chapter 231 also exempts drivers of registered farm vehicles operated intrastate (other than vehicles carrying hazardous materials in quantities that require the vehicle to be placarded) from regulatory requirements of hours of service, medical certification, pre-employment testing and other requirements imposed on drivers of "commercial motor vehicles" under Subchapters B and E.

The proposed rulemaking will essentially eliminate all of the exemptions currently provided to transportation performed as part of farming operations. If a vehicle or combination is greater than 17,000 pounds, the driver and vehicle would be subject to the standards for drivers and vehicles imposed under the federal regulations. And the farmer could be subject to recordkeeping and other requirements imposed under the federal regulations upon "motor carriers" and employers" of drivers. The potential for farmers, employees and agricultural vehicles to become substantially regulated under the proposed changes would exist, regardless of whether the vehicle being operated would be a truck, a truck tractor, motorized agricultural equipment or a farm tractor that is pulling a farm trailer.

The federal motor carrier safety regulations do provide for some limited “exemptions” from driver and from employer requirements. Most often, these “exemptions” are specific in nature to particular situations or types of vehicle operation. The “exemptions” themselves place obligations and requirements upon the driver or the employer for whom the “exemption” applies. And the criteria prescribed in the federal regulations for determining whether or not exemptions apply are not consistent with each other. The driver of a “commercial motor vehicle” used for farming purposes and his or her employer could be exempt from some requirements and not exempt from others during a single trip in which the vehicle is operated.

The Appendix to our comments contains the text of an article we prepared, which was published in the October issues of *Lancaster Farming* – a newspaper of statewide circulation that focuses on farming and rural issues in Pennsylvania. We would offer this article as part of our comments to the proposed rulemaking.

The *Lancaster Farming* article attempts to provide readers with information on what the proposed changes in Pennsylvania's intrastate motor carrier safety regulations to establish the same standards as the federal regulations will mean for agricultural vehicles, drivers of agricultural vehicles, and farmers who own the vehicles and employ vehicle drivers in a number of areas, including:

- Commercial driver's license requirements;
- Drug and alcohol testing requirements;
- Requirements for medical certification;
- Employer requirements for road testing and reviewing driver histories;
- Limitations in employee hours of driving and on-duty time and requirements for driver's time logs;
- Requirements for inspection and maintenance of vehicles; and
- Minimum safety standards for vehicles.

This article illustrates the confusing patchwork of requirements, exemptions and conditions and requirements for eligibility of exemptions prescribed in the federal regulations that would result from the proposed changes in Pennsylvania's intrastate regulations. We strongly believe the adoption of the proposed rulemaking will only enhance confusion among farmers and enforcement personnel on what does and does not apply to agricultural transportation around the farm, without any meaningful enhancement of safety in the operation of farm vehicles and equipment.

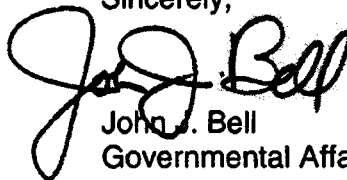
Working through the nuances of regulatory requirements and exemptions may be feasible for businesses like commercial trucking companies whose occupations and livelihoods are focused each day on moving cargo from one area to another. But it is hardly feasible to those like farmers whose businesses entail more than just transportation and whose transportation activities are sporadic.

We would particularly note and express concerns about distinctions that would apply under the proposed rulemaking between drivers of single-unit vehicles and drivers of combination (what the federal regulations refer to as "articulated") vehicles. Essentially, the federal regulations establish a 150-mile exemption zone for "farm vehicle" drivers. But the exemption only meaningfully applies to drivers of single-unit vehicles. The applicable exemptions provided under the federal regulations to drivers of "articulated" farm vehicles are far more limited, and practically speaking, are substantially meaningless. Unlike the driver of a single-unit farm vehicle, there is no zone of exemption from the farm that is provided under the federal regulations to the driver of an "articulated" farm vehicle. Whether the towing vehicle is a truck or a farm implement, if the combination meets the threshold combination weight of a "commercial motor vehicle," that driver will become subject to all of the applicable requirements for drivers of "commercial motor vehicle" at the first point from the farm that the combination is operated on the highway.

While we are aware of the circumstances that are prompting the Department to make changes to the intrastate regulations, we foresee serious problems in the understanding and determination of what regulatory standards apply and do not apply in the context of transportation around the farm, and believe there will be serious inconsistencies among law enforcement officials in application and enforcement of these standards in agricultural communities.

Notwithstanding the potential consequences to the Commonwealth, Pennsylvania Farm Bureau would recommend that the proposed rulemaking to amend the intrastate motor carrier safety regulations be withdrawn. In the alternative, we would recommend that the exemptions currently provided to implements of husbandry, farm vehicles, and drivers of implements and farm vehicles be retained in the final rulemaking.

Sincerely,

A handwritten signature in black ink that reads "John J. Bell". The signature is written in a cursive style with a large, looping initial "J".

John J. Bell
Governmental Affairs Counsel

Appendix

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APPENDIX

PROPOSED CHANGES TO PENNSYLVANIA INTRASTATE MOTOR CARRIER REGULATIONS MAY IMPACT AGRICULTURAL VEHICLES AND DRIVERS

By John J. Bell
Governmental Affairs Counsel
Pennsylvania Farm Bureau

In June, 2005, I wrote a lengthy column that tried to give readers a good understanding of the standards and requirements that apply to agricultural vehicles and drivers of agricultural vehicles operated in Pennsylvania.

For agricultural vehicles operated exclusively in Pennsylvania, the Pennsylvania Vehicle Code is the body of law that essentially establishes the standards and requirements that ag vehicles and drivers must meet. Pennsylvania's intrastate motor carrier safety regulations (PaIMCSR) impose additional requirements for intrastate "commercial motor vehicles" and drivers. But agricultural vehicles exempt from Pennsylvania motor vehicle registration (such as implements of husbandry and farm trucks and truck tractors operating under a biennial certificate of exemption from registration) are exempt from both PaIMCSR's vehicle and PaIMCSR's driver requirements. And drivers of vehicles operating under Pennsylvania's farm vehicle registration are largely exempt PaIMCSR's additional driver requirements.

The exemptions that PaIMCSR currently provide to agricultural vehicles and drivers, however, are likely to change substantially. In March of 2007, the Federal Motor Carrier Safety Administration performed an audit of PaIMCSR and the Vehicle Code to see if Pennsylvania's standards are as "stringent" as those imposed under federal regulations. Since Pennsylvania receives federal funding, the standards for "commercial motor vehicles" and drivers must at least equal to the federal standards. Federal authorities determined in its March 2007 audit that PaIMCSR and the Vehicle Code were "less stringent" than federal standards and must be changed. The blanket exemptions provided to registration-exempt ag vehicles and drivers and the exemptions provided to drivers of registered farm vehicles were specifically identified among those PaIMCSR provisions that federal officials determined to be "deficient."

The Commonwealth could lose some \$80 million in federal funding annually if it does not change the provisions of PaIMCSR to comply with the directives of the March 2007 audit. December 2009 is the deadline for Pennsylvania to comply.

In response to the federal audit, Pennsylvania is expected to gut its current intrastate regulations, including the exemptions expressly provided for ag vehicles and drivers. PaIMCSR's current provisions will likely be replaced with language that generally states whatever is required or not required for interstate vehicles and drivers under federal regulations will apply to intrastate vehicles and drivers. Pennsylvania will be able to retain its current threshold of 17,001 pounds actual weight or vehicle weight rating necessary for intrastate vehicles and drivers to be subject to the motor carrier safety regulations, rather than the threshold of 10,001 established in federal regulations for vehicles and drivers operating interstate.

If changes are made in PaIMCSR as expected, Pennsylvania's agricultural vehicles over 17,000 pounds and their drivers will be subject to the same requirements and exemptions that are provided under federal regulations. I hope to summarize how the proposed changes to PaIMCSR would affect the standards that currently apply to the intrastate operation of Pennsylvania agricultural vehicles in several key areas:

- Commercial driver's licensing requirements;
- Drug and alcohol testing requirements;
- Requirements for medical certification;
- Employer requirements for road testing and reviewing driver histories;
- Limitations in employee hours of driving and on-duty time and requirements for driver's time logs;
- Requirements for inspection and maintenance of vehicles; and
- Minimum safety standards for vehicles.

Commercial driver's licensing (CDL) requirements.

The proposed changes to PaIMCSR should not change the requirements or exemptions that currently apply to drivers of Pennsylvania agricultural vehicles. CDL requirements and exemptions are established in the Pennsylvania Vehicle Code. The Vehicle Code has adopted the limited exemption provided in federal regulations to "farm vehicle drivers" operating agricultural vehicles or combinations within a 150-mile radius of the farm. The 150-mile-radius allowance for exemption from CDL requirements would make drivers who lawfully operate agricultural vehicles exempt from Pennsylvania vehicle registration exempt from CDL requirements. For intrastate vehicles over 17,000 pounds that are registered under Pennsylvania's farm vehicle registration, drivers operating farm vehicles within the 150-mile radius of the farm would continue to be exempt from CDL requirements, while those operating any farm vehicle outside the 150-mile radius of the farm would continue to be subject to CDL requirements.

Drug and alcohol testing requirements.

The proposed changes to PaIMCSR should not change the requirements or exemptions that currently apply relative to drug and alcohol testing of drivers of Pennsylvania agricultural vehicles. Essentially, requirements for drug and alcohol testing under federal regulations are dependent upon whether the driver needs to have a commercial driver's license to operate a vehicle. If the driver must have a CDL to operate a vehicle, then the driver and his employer must comply with the requirements for drug and alcohol testing and related recordkeeping that the federal regulations prescribe. The federal regulations do not distinguish between drivers of intrastate vehicles and drivers of vehicles operating interstate. Drivers lawfully operating agricultural vehicles exempt from Pennsylvania registration would continue to be exempt from CDL requirements, and therefore

exempt from drug and alcohol testing requirements. Drivers lawfully operating Pennsylvania-registered farm vehicles over 17,000 pounds intrastate within the 150-mile radius of the farm would continue to be exempt from CDL requirements, and therefore exempt from requirements for drug and alcohol testing. And drivers operating any Pennsylvania-registered farm vehicle outside the 150-mile-radius limitation would continue to be subject to CDL requirements, and therefore be subject to comply with drug and alcohol testing requirements prescribed in federal regulations.

Requirements for medical certification.

The proposed changes to PaIMCSR will expand the scope of drivers of agricultural vehicles who must comply with requirements for medical examination and certification.

Federal regulations currently require drivers of a "commercial motor vehicles" to be medically certified every two years and to carry while operating the vehicle a medical certification card demonstrating the driver has been periodically examined and is physically qualified. The federal regulations do provide a "farm vehicle driver" exemption from medical certification requirements; however, this exemption is more limited than the "farm vehicle driver" exemption from commercial driver's licensing requirements. Exemption from medical certification requirements only applies to drivers of agricultural vehicles that are operated as a single unit within a 150-mile radius of the farm. The exemption does not apply to drivers of "articulated (combination) farm vehicles" whose weight or weight rating cause the combination to be a "commercial motor vehicle." These drivers must comply with the requirements for medical certification prescribed in the federal regulations regardless of the distance from farm the combination is operated or the vehicle registration requirements or exemptions that may apply to the towing or towed vehicle.

PaIMCSR's current exemption provisions essentially exempt all drivers of implements of husbandry, registered farm vehicles and registration-exempt farm vehicles operated intrastate from medical certification requirements. Proposed changes in PaIMCSR to delete these ag exemption provisions would have the effect of requiring medical examination and certification of drivers of combinations powered by implements of husbandry, Pennsylvania-registered farm vehicles or farm vehicles exempt from Pennsylvania registration, if the combination has an actual weight or gross weight rating of greater than 17,000 pounds. The proposed changes would also require medical examination and certification of drivers of Pennsylvania-registered farm vehicles that are operated outside the 150-mile radius of the farm.

Employer requirements for road testing and reviewing driver histories.

The proposed changes to PaIMCSR will cause farmers with Pennsylvania-registered farm vehicles greater than 17,000 pounds that are operated intrastate but outside the 150-mile radius of the farm additional requirements with respect to the hiring, investigation and testing of persons hired to operate these vehicles.

The federal regulations impose on persons employing drivers of "commercial motor vehicles" extensive requirements for obtaining background information, investigating driving histories, and road testing of prospective drivers prior to employment. The federal regulations also require employers to perform annual inquiries with state transportation departments to see if any driver-

employee has been cited for any driving violations during the year. Employers of "commercial motor vehicle" drivers must also keep appropriate records that demonstrate the employer has complied with requirements for pre-hiring and post-hiring information gathering and investigations and pre-hiring road testing of "commercial motor vehicle" drivers that the regulations prescribe. The federal regulations do exempt employers of drivers of "farm vehicles" – both single-unit farm vehicles and combination farm vehicles – from these requirements, but only if the vehicles are operated within the 150-mile radius of the farm. Employers of drivers of farm vehicles that are operated outside the 150-mile radius are not exempt from these requirements.

The proposed changes to PaIMCSR to delete the current ag exemption provisions would subject farmers with farm vehicles over 17,000 pounds operated intrastate but outside the 150-mile radius of the farm to the requirements for pre-employment and post-employment information gathering and for pre-employment road testing of drivers who operate these vehicles.

Limitations in employee hours of driving and on-duty time and requirements for driver's time logs.

While the proposed changes to delete PaIMCSR's current ag exemptions would "subject" drivers of intrastate agricultural vehicles and farmers employing these drivers to requirements prescribed in the federal regulations, the real effect of "subjection" to federal standards may not be that significant.

The federal regulations themselves provide a limited exemption to drivers who do not operate any vehicle greater than a 100-mile radius from the location where the driver reports to work. The federal regulations also provide a limited exemption to drivers who are not required to have a commercial driver's license to operate any vehicle and who do not operate any vehicle greater than a 150-mile radius from the place the driver reports to work. But the exemptions provided in federal regulations have conditions that must be met in order for the exemption to apply. An "exempt" driver may not work or drive more hours without a minimum time-period of off-duty time. The regulations specifically prescribe maximum number of hours that "exempt" drivers may work or drive and the minimum number of continuous off-duty hours that "exempt" drivers must be provided. And employers of "exempt" drivers must keep employment records that show that the drivers have not exceeded the maximum hours of on-duty and driving time and have properly received the minimum amounts of off-duty time required in the regulations.

Under normal circumstances, drivers of agricultural vehicles (single unit or combination) that are not operated beyond a 150-mile radius of the farm should fall into one of the exemptions provided in federal regulations. Still, the proposed changes to PaIMCSR will have the effect of subjecting drivers and farmers employing drivers of intrastate farm vehicles greater than 17,000 pounds that are operated more than 150 miles from the farm to all of the limitations in hours on-duty and driving without off-duty time and all of the requirements for driver logging and recordkeeping that the federal regulations impose upon drivers of "commercial motor vehicle drivers" and their employers. And farmers employing "exempt" drivers will need to maintain sufficient employment records to show each employee's on-duty, driving and off-duty time meets the requirements prescribed in the federal regulations for "exempt" drivers.

Requirements for inspection and maintenance of vehicles

The federal motor carrier safety regulations require drivers of "commercial motor vehicles" to conduct end-of-day inspections of their vehicles for proper function of brakes, steering, tires, horn, windshield wipers and other safety accessories of the vehicle and to complete a written report of findings made and deficiencies discovered during the inspection. The federal motor carrier safety regulations also require "commercial motor vehicle" drivers to perform pre-trip inspections of the vehicle, including a review of the written end-of-day report previously completed. If any deficiencies are discovered, the regulations require the employer to correct the deficiency before the vehicle is operated again. The federal regulations also require employers to keep and maintain records of maintenance activities performed on "commercial motor vehicles," including written driver inspection reports.

PaIMCSR does not currently provide to farmers or to drivers of intrastate farm registered vehicles over 17,000 pounds any special exemption from the requirements for inspection and maintenance imposed on drivers and owners of "commercial motor vehicles" under the federal regulations. So the proposed changes to PaIMCSR should not change the requirements that drivers and farmers must already meet. However, the proposed deletion of PaIMCSR's current exemptions to implements of husbandry and to farm vehicles exemption from registration would have the effect of subjecting drivers of registration-exempt vehicles and combinations over 17,000 pounds and their owners to the inspection and maintenance requirements established in the federal regulations.

Minimum safety standards for vehicles.

The federal motor carrier safety regulations establish minimum vehicle standards for "commercial motor vehicles," including those vehicles that are operated as part of a combination. The standards applied to "commercial vehicles" under Pennsylvania vehicle inspections are essentially the same as those established in federal regulations. So, the proposed changes to PaIMCSR should not change the minimum standards that already apply to vehicles over 17,000 pounds that are operating under Pennsylvania's farm vehicle registration. Also the proposed changes to PaIMCSR should not change the minimum standards that apply to farm vehicles over 17,000 pounds that are operating under the Type I certificate of exemption (which requires the vehicle to be annually inspected).

But the proposed deletion of PaIMCSR's current ag exemption provisions will have the effect of subjecting agricultural vehicles exempt from registration with a weight rating or actual weight of greater than 17,000 pounds to the minimum vehicle standards established under federal regulations. While the Vehicle Code does require all vehicles operating on public roads to meet basic standards for vehicle safety, the standards that must be met under the Vehicle Code are not as extensive as those imposed under federal regulations. Farmers may have serious difficulty in feasibly complying with all of the minimum federal standards for many Pennsylvania's registration-exempt agricultural vehicles currently operated around their farms.

Hazardous materials transportation.

All of the discussion so far has assumed that the agricultural vehicle or combination is not carrying hazardous materials as to require the vehicle to be placarded. While I will not go into detail, most of the exemptions from motor carrier safety standards provided under PaIMCSR and the Pennsylvania Vehicle Code for intrastate operation of ag vehicles are limited to vehicles that do not carry hazardous materials in quantities that require the vehicle to be placarded. For vehicles that are required to be placarded, PaIMCSR essentially requires all vehicles, drivers and vehicle owners to meet the standards and requirements imposed in the PaIMCSR for intrastate operation of commercial motor vehicles.

What does all of this really mean?

You are probably asking this question about now. I have tried to describe what I believe to be the **legal** effects of PaIMCSR's proposed changes, if they were adopted today. These changes still need to go through Pennsylvania's regulatory review process, and opportunity for public comment, after they are formally proposed. And PennDOT has not yet formally offered them as proposed rulemaking. So we are at least several months away before these changes would be finally adopted, even if PennDOT formally proposes them in the near future.

What final adoption of these proposed changes may practically mean for farmers and drivers of ag vehicles in the future will largely depend on how aggressive Pennsylvania officers in charge of motor carrier safety enforcement will be in enforcing the changes beyond the scope of vehicles that most would normally expect enforcement – registered vehicles greater than 17,000 pounds.

Even if the proposed PaIMCSR changes are adopted, the manpower and financial resources available for enforcement will not likely allow for every additional requirement to be enforced on every person who may be required to comply. Enforcement officers already have a challenging workload in getting trucking companies and other commercial businesses having large fleets of heavier vehicles to fully comply with their requirements. Those in charge of managing enforcement will still need to prioritize the areas of enforcement and enforcement activity that are most critical for ensuring overall highway safety.

I would expect at least some enforcement effort would be made toward Pennsylvania-registered farm vehicles greater than 17,000 pounds operated intrastate, especially those that operate beyond the 150-mile radius of the farm. The picture becomes more clouded for enforcement of PaIMCSR's revised standards on registration-exempt agricultural vehicles and the drivers who drive and farmers who own these vehicles. Isolated attempts by enforcement officers to scrutinize individual agricultural vehicles seldom used on highways and their drivers for full compliance with the revised PaIMCSR standards do not seem to me to be a very efficient or reasonable use of enforcement resources. But I would not be surprised to see some coordinated effort for enforcement of revised standards in areas where significant concentrations of agricultural vehicle traffic are commonly present