

Rules of the road for transporting farm workers

By Carlene Thissen, Mike Bayer and Fritz Roka

The U.S. Department of Labor classifies anyone who for a fee “solicits, recruits, furnishes, hires, employs, houses, and/or transports” seasonal and migrant farm workers as a farm labor contractor (FLC). This article provides an overview of the rules and responsibilities that agricultural employers must keep in mind when driving workers to their farm fields or groves. In this article, we will touch on three areas: 1) licensing, 2) carpool considerations and 3) extra considerations for drivers needing a commercial driver’s license (CDL).

To begin, let’s make it clear there are *no* state or federal laws that require agricultural employers to provide transportation for their farm workers. Many growers and FLCs elect to provide transportation (in most cases at no charge) as a way of recruiting workers. If offered, transportation must be listed on the workers’ terms and condition statement (also known as the DOL 516 form). Further, it is important to emphasize that both the grower and the independent FLC share *joint* responsibility for the safety of workers they transport.

One federal agency, the Department of Labor (DOL), and two state agencies, the Florida Department of Business and Professional Regulation (DBPR) and Florida Highway Patrol (FHP), oversee the rules and regulations regarding transportation of farm workers. The DOL and DBPR incorporate driver and vehicle safety concerns into their licensing requirements and as part of their field inspections to enforce provisions of the Migrant and Seasonal



Worker Protection Act.

FHP targets its enforcement efforts at CDL drivers and enforces the regulations from the Federal Motor Carrier Safety Administration (FMCSA), which Florida has adopted as its regulatory code. In 2011, FHP took over the vehicle compliance regulations, which had been enforced by the Florida Department of Transportation (FDOT). In so doing, the number of potential law enforcement officers increased from 200 to more than 2,000. As more FHP officers are trained in the FMCSA regulations, the more likely farm labor vehicles will be stopped, checked and investigated.

In general, drivers of farm labor

vehicles must:

- Be at least 21 years old with at least one year of driving experience
- Read and speak English well enough to understand traffic signals and converse with officers who may stop them
- Possess the correct driver’s license for the vehicle they are driving, as determined by state law

LICENSING

For both the federal (DOL) and state (DBPR) registrations, any FLC who transports workers must be “driving authorized (DA)” and/or “transport authorized (TA).” DA requires that individuals hold the

proper driver's license given the vehicle being operated and carry a medical card which attests that he/she is healthy enough to operate the farm labor vehicle. The DOL medical card must be renewed every three years, unless an individual's medical situation requires more frequent doctor checkups. To be TA, the farm labor vehicle(s) must pass an annual inspection and carry sufficient vehicle and liability insurance coverage. A farm labor contractor can be DA, TA or both.

CARPOOLS

When buses or vans are not provided by farm employers, workers must find other means of getting to work. Some workers may choose to form car-pools, which simply means that two or more people agree to ride together in the same vehicle. While this definition may seem obvious, it is important to emphasize that a carpool is a voluntary arrangement among the workers for which the driver, or owner of the vehicle, is compensated *only* for the cost of gas. Carpool vehicles are considered

personal vehicles and not subject to the same regulatory standards as designated farm labor vehicles.

A carpool is *not* a carpool when:

1. A farmer, supervisor or FLC is involved in any way to organize drivers and riders.
2. A farmer, supervisor or FLC directs and/or pays the driver to bring workers as part of his/her job.
3. A farmer, supervisor or FLC owns the vehicle or pays for gas.
4. Riders pay the vehicle's owner or driver more than the cost of gas.

DOL and DBPR investigators will be suspicious if big vans, recreational vehicles or buses are said to be carpool vehicles, as a reasonable person would suspect that a large number of workers could be purposely transported. If the driver is working under the direction of a farmer, supervisor or FLC and/or is being paid beyond the cost of gas, the driver has moved into a role of "farm labor contractor" and his/her car is considered a "farm labor vehicle" with all the pursuant federal and state farm labor vehicle regulations.

Employers must maintain driver qualification files, as well as vehicle maintenance records, and enroll their drivers in a drug and alcohol testing program.

DOT/FHP Medical Card: A DOT/FHP medical card is based on a more rigorous examination than needed to obtain a DOL medical card. A DOT/FHP medical card must be renewed every two years (as opposed to every three years for a DOL medical card) unless the doctor determines the driver requires more frequent monitoring for conditions such as high blood pressure that could worsen over time.

Daily Vehicle Inspections: Drivers of farm labor buses must inspect their vehicles every day. Any needed repairs have to be reported and fixed before the vehicle can be returned to service. An approved vehicle inspection form with repair notations must be filled out daily and retained in the office files.

Hours-of-Service: CDL drivers are required to account for their hours of service both daily and over a given number of consecutive days. Hours-of-service is the total time a CDL driver is "on duty." "On duty" includes driving time as well as any time spent doing other job duties. For example, a crew bus driver drives his crew one hour to a farm where he supervises their work for seven hours, after which he drives them back to the morning pick-up point. This driver has been "on duty" for at least nine hours. Time spent performing a vehicle inspection would be added "on duty" time.

The hours-of-service regulations are designed to prevent overly-tired drivers from operating a motor vehicle, especially when transporting passengers. Law enforcement considers operating a motor vehicle while sleep-deprived to be a violation and may be subject to the same penalties as driving under the influence of alcohol.

Rules about hours-of-service depend on distance traveled as well as interstate and intrastate driving. In some circumstances, time records are sufficient to keep track of a driver's hours-of-service. Under other

REGULATIONS FOR CDL DRIVERS

If a gross vehicle's weight exceeds 26,000 pounds, its driver is required to hold a commercial motor vehicle driver's license (CDL). Many farm labor buses are converted or retired school buses that exceed the gross vehicle weight threshold, and therefore their drivers must hold CDLs.

Drivers of CDL-required vehicles need to be aware of the additional regulations that are not applicable to vans or cars, including holding a DOT/FHP (not DOL) medical card, filing daily vehicle inspection reports and tracking hours of service and driving time.

Farm labor bus drivers are required to inspect their vehicles daily.

circumstances, drivers must keep a log book that shows when they are on-duty, working and off-duty, plus notations about their location during the shift. In 2017, it is likely that on-board electronic systems will be required to track drivers' times.

Driver Qualification Files: Before hiring a new driver, employers need to check the individual's driving history, including references from previous employers and driving records from every state where the person has worked. Even if the driver is a returning employee, but works for another company over the summer, his driver qualification files must be updated to include his summer employer.

Drug and Alcohol Testing: CDL drivers are required to be part of a DOT-approved controlled substances and alcohol testing program. This should *not* be confused with a "drug-free workplace." There are specific requirements for drivers to be tested before they are hired, after an accident, upon "reasonable suspicion" and randomly throughout the year. Before operating any on-road vehicle, new or returning drivers have to pass a drug test, and until the results are received, they are not permitted to do any "safety sensitive tasks." Safety-sensitive is a broad and encompassing category that even includes washing the vehicle.

It is important to recognize that a proper drug and alcohol testing program is very technical and requires a proper procedure. Many companies rely on a qualified consultant to design and implement a correct testing program. DOT/FHP officials offer periodic workshops to educate employers as to what constitutes a proper drug and alcohol testing program. 🍌

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New Tool Provides Shot of Optimism

By Harold Browning



As we head into our sixth year in existence, the Citrus Research and Development Foundation (CRDF) remains focused on the prize: advancing tools and tactics that retain productivity of current tree inventories while long-term solutions are developed, tested and delivered.

In that vein, due to the work of the CRDF and many others, growers across Florida are now using three bactericides designed to knock back *Liberibacter* and provide therapy to infected trees in the ground. Being able to use these compounds provided a huge dose of good news and optimism to the Florida citrus industry.

Exercising authority given to him under federal law, Florida Commissioner of Agriculture Adam Putnam in early March declared an agricultural crisis which permits growers to use streptomycin sulfate (FireWall™ 50WP, AgroSource Inc.), oxy-tetracycline hydrochloride (FireLine™ 17WP, AgroSource Inc.) and oxytetracycline calcium complex (Mycoshield®, Nufarm Americas Inc.) in foliar applications.

Putnam's declaration couldn't have happened at a better time. It allowed growers to apply the bactericides before the spring flush and bloom occurred. Research has shown for optimum efficacy, the products need to be applied during maximum flush of young leaves at the appropriate use rate and finished spray volume to ensure coverage of the young foliage.

Megan Dewdney and Jim Graham of the University of Florida's Institute of Food and Agricultural Sciences have created a document on suggested use patterns that can be found at <http://lake.ifas.ufl.edu/agriculture/citrus/documents/AntibioticReferenceSheetv5-web.pdf>

Will these products improve yield, maintain yield or slow decline? We do not have enough data at this point to answer that definitively. What we do know is that younger, healthier trees respond better than older, unhealthy trees. And we are seeing a reduction in infection, improved phloem, root recovery and an increase in leaf development. These processes all have to happen before you can have better yields.

Data provided by grower use during this first application period should provide more answers.

An important point that growers must keep in mind is that they can use any of the three products until the Environmental Protection Agency (EPA) completes its review of the Section 18 petition submitted by the Florida Department of Agriculture and Consumer Services late last year. The EPA has not given a time frame to complete the review.

While we wait on the decision by EPA, it is essential that growers make sure they carefully follow the guidelines spelled out in Commissioner Putnam's declaration letter if they use any of the bactericides. To view the letter, go to <http://files.ctctcdn.com/168a5f59201/e7bd14cf-0a3a-4f5c-9d3d-66ac12574bbc.pdf>

Growers should recognize the importance of maintaining the rotational aspects of these three products, and the use conditions concerning worker re-entry and pre-harvest intervals. Deviation from the label is against the law. If the EPA approves the Section 18 exemption, some of the details could change. So growers need to stay on top of the latest news.

Harold Browning is Chief Operations Officer of CRDF. The foundation is charged with funding citrus research and getting the results of that research to use in the grove.



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