CCO Form:
Approved: 07/10 (AML)
Revised:
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MEMORANDUM OF UNDERSTANDING WITH THE
STATE OF KANSAS DEPARTMENT OF REVENUE, DIVISION OF VEHICLES

THIS MEMORANDUM OF UNDERSTANDING, (hereinafter, "MOU") is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the State of Kansas Department of Revenue, Division of Vehicles (hereinafter, "KS DMV").

WITNESSETH:

WHEREAS, the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570 (49 United States Code Chapter 313), requires any person who operates a vehicle in commerce designed to transport 16 passengers or more (including the driver) or property with a gross vehicle weight rating of at least 26,001 pounds, or a lesser gross vehicle weight, if prescribed by the Federal Motor Carrier Safety Administration in an administrative rule; or used to transport hazardous material, to obtain a commercial driver's license; and,

WHEREAS, in its administrative rules implementing the Commercial Motor Vehicle Safety Act of 1986, the Federal Motor Carrier Safety Administration has authorized states to exempt certain drivers, including operators of farm vehicles, from the commercial driver's license requirements pursuant to Title 49, Code of Federal Regulations (hereinafter "CFR") Part 383.3(d); and,

WHEREAS, operating under the authority granted by 49 CFR 383.3(d), the Missouri and Kansas legislatures have both enacted laws exempting operators of farm vehicles from the commercial driver's license requirement (see Section 302.775 Revised Statutes of Missouri; Kansas Statutes Annotated 2010 Supp. §8-2,127(a)); and,

WHEREAS, 49 CFR 383.3(d) limits the use of a farm vehicle exemption to the driver's home state, unless the home state has entered into a reciprocity agreement with adjoining states; and,

WHEREAS, the Commission and the KS DMV wish to enter into a reciprocity agreement to allow operators of farm vehicles licensed in either Missouri or Kansas to be exempt from the commercial driver's license requirement when such operators are operating farm vehicles in the other participating state, provided such operation is consistent with the exemption in 49 CFR 383.3(d) and each state's respective state law on farm vehicle exemptions to the commercial driver's license requirement; and,

WHEREAS, an agreement is necessary to document the rights and responsibilities of the Commission and the KS DMV regarding this MOU.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) DURATION OF MOU: This MOU shall be in effect commencing on the date the MOU is last executed by the Commission and the KS DMV and shall continue until one of the parties terminates the MOU, as described in paragraph (5) below, or until a statutory change becomes effective that prohibits the use of reciprocity agreements to extend commercial driver's license exemptions to adjoining states. Should either state or federal law ever prohibit the reciprocity contemplated herein, this MOU is null and void.

(2) OBLIGATIONS OF PARTIES: The Commission and the KS DMV agree that any driver from either Missouri or Kansas who possesses a valid non-commercial driver's license may operate a farm vehicle within either state if the farm vehicle:

(A) Is properly operated as a farm vehicle under the laws of either state;

(B) Is controlled and operated by a farmer, including operation by his or her employees or family members, so long as the operator holds a valid driver's license in either state and is eighteen (18) years of age or older;

(C) Is used exclusively to transport agricultural products, farm machinery, and/or farm supplies to or from the farmer's farm;

(D) Is not used in the operations of a common or contract carrier;

(E) Complies with the hazardous materials requirements and conditions included in Paragraph (3);

(F) Is properly registered as a farm vehicle; and

(G) Is only used within 150 miles of the farmer's farm.

(3) HAZARDOUS MATERIALS CONDITIONS: The Commission and the KS DMV agree that additional rules and conditions shall apply to farm vehicle drivers referenced in Paragraph (2) above when the driver is transporting hazardous materials which must be marked or placarded in accordance with Federal requirements, as set forth below:

(A) When operating in either State under this MOU, farm vehicle drivers must comply with the strictest of: (1) Missouri's safety requirements; (2) Kansas' safety requirements; or (3) Federal safety requirements, as such requirements relate to the transportation of hazardous materials;

(B) Farm vehicle drivers must comply with Federal laws relating to the transportation of hazardous materials, including, but not limited to, 49 CFR Parts 171, 172, 385, and 397; and

(C) Any person who is twenty-one (21) years of age or older driving a farm vehicle exclusively for the transportation of agricultural products, farm machinery, farm supplies or fertilizers, which may include, but are not limited to, ammonium nitrate, phosphate, nitrogen, anhydrous ammonia, lime, potash, motor fuel or special fuel may operate in either State under this MOU, provided the total combined gross weight rating of the farm vehicle does not exceed twenty-six thousand one pounds (26,001 lbs.) when transporting these hazardous materials or a combination of them and provided the driver and farm vehicle meet the Federal requirements, as well as the requirements in Paragraph (2) above.

(4) COOPERATION AND DISCLOSURE OF INFORMATION: The parties agree to notify one another prior to promulgating any administrative rules regarding the terms of this MOU or regarding the commercial driver's license exemption for operators of farm vehicles.

(5) TERMINATION:

(A) Termination For Material Breach of Obligations: The parties each have the authority to terminate this MOU at any time for a material breach of contractual obligations by providing the other party with written notice of termination. Should either party exercise its right to terminate the contract for such reasons, termination will become effective thirty (30) days after written notice is provided to the other party.

(B) Termination Without Cause: The parties each have the authority to terminate this MOU at any time without cause by providing the other party with written notice of termination. Should either party exercise its right to terminate the contract without cause, termination will become effective ninety (90) days after written notice is provided to the parties.

(6) SUCCESSORS AND ASSIGNS: The parties agree that this MOU and all agreements entered into under the provisions of this MOU shall apply to and be binding upon the parties hereto and their successors and assigns.

(7) RESPONSIBILITIES OF THE PARTIES: Each party will be responsible for its own acts and the results arising from those actions and shall not be responsible for the acts of the other party and the results arising from those actions. Each party agrees, to the extent allowed by law, that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting from any operations or conduct of its agents or employees under this MOU, and for any loss, cost, damage or expense resulting at any time from any and all causes due to any acts or acts of negligence, or failure to exercise proper precautions, of or by itself or its own agents or own employees,

while performing its obligations under this MOU. Each party's liabilities shall be governed by applicable state law.

(8) SOVEREIGN IMMUNITY AND NO THIRD PARTY BENEFICIARIES: Nothing herein shall be construed as consent by the State of Missouri to suit in the courts of the State of Kansas or a waiver of its sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. Nothing herein shall be construed as consent by the State of Kansas to suit in courts of the State of Missouri or a waiver of its sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law. The Eleventh Amendment is an inherent and incumbent protection with the States of Kansas and Missouri and need not be reserved, but prudence requires the States to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, or any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by either party to comply with the terms of this Agreement. This Agreement does not grant any rights to any party except Kansas and Missouri. Nothing in this MOU shall be considered as a waiver by the State of Kansas of any provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq.

(9) SOVEREIGNTY: Missouri and Kansas enter into this Agreement as sovereign states and not as principal and agent or as a joint venture.

(10) VENUE: Any action at law, suit in equity, or other judicial proceeding to enforce or construe this MOU, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri or in the Third Judicial District Court, Shawnee County, Kansas.

(11) SOLE BENEFICIARY: This MOU is made for the sole benefit of the parties hereto and nothing in this MOU shall be construed to give any rights or benefits to anyone other than the Commission and the KS DMV.

(12) AMENDMENTS: Any change in this MOU, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Commission and the KS DMV.

(13) COMMISSION REPRESENTATIVE: The Commission's Director of Motor Carrier Services is designated as the Commission's representative for the purpose of administering the provisions of this MOU. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this MOU.

(14) KS DMV REPRESENTATIVE: The KS DMV's Director of Vehicles is designated as the KS DMV's representative for the purpose of administering the provisions of this MOU. The KS DMV's representative may designate by written notice

other persons having the authority to act on behalf of the KS DMV in furtherance of the performance of this MOU.

(15) CONSENT FOR ASSIGNMENT: No party to this MOU shall assign, transfer, or delegate any interest in this MOU without the prior written consent of the other party.

(16) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the Commission:
Jan Skouby
Director of Motor Carrier Services
P.O. Box 893
Jefferson City, MO 65102
Fax: (573) 751-4354

(B) To the KS DMV:
Carmen Aldritt
Director of Vehicles
915 SW Harrison Street
Topeka, KS 66626
Fax: (785) 291-3755

or to such other place as the parties may designate in accordance with this MOU. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(17) SECTION HEADINGS: All section headings contained in this MOU are for the convenience of reference only and are not intended to define or limit the scope of any provision of this MOU.

(18) SEVERABILITY: If any clause or provision of this MOU is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(19) CONTRACT LANGUAGE: The language of this MOU reflects negotiations between the Commission and the KS DMV, each of which have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this MOU, general rules construing ambiguities against the drafter shall not apply. The parties agree that Paragraph (3) was included in this MOU to ensure consistency with Missouri statutory requirements applicable to farm vehicles transporting hazardous materials.

(20) AUTHORITY TO EXECUTE: The signers of this MOU warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this MOU.

(21) ENTIRE AGREEMENT: This MOU represents the entire understanding and agreement between the parties hereto regarding this subject and supercedes all prior understandings, communications and agreements, written or oral between the parties hereto with respect to the subject matter hereof.

(22) APPLICABLE TO FARM VEHICLES ONLY: This MOU is limited to commercial driver's license exemptions for operators of farm vehicles, as specified in Paragraph (2). All other laws governing motor vehicles and driver's licenses administered by the respective parties remain in full force and effect.

(23) LEGAL AUTHORITY: That under K.S.A.. 8-127(b) and K.S.A. 74-4302, the Director of Vehicles for KS DMV has authority to enter into this MOU. That Parties believes it to be beneficial to both States, their citizens, and agricultural industries, if the States entered into this MOU granting interstate reciprocity and proportional licensing upon terms set out herein.

(24) OTHER STATE AGENCIES: In addition to the parties executing this MOU, the terms and conditions of this MOU have been circulated amongst the affected State agencies, Kansas Highway Patrol and the Kansas Corporation Commission, and appropriate representatives of such agencies have been advised and do not object to the parties entering into this MOU, as the parties agree it is in the best interest of their respective States.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding on the date last written below.

Executed by the KS DMV this 2nd day of September, 2010.

Executed by the Commission this 9 day of Sept., 2010

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By _____

Title MCS Director

ATTEST:

_____

Secretary to the Commission

Approved as to Form:

_____

Commission Counsel

KANSAS DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES

By _____

Director of Motor Vehicles

ATTEST:

_____

Title Adm. Specialist

Approved as to Form:

_____

KS DMV Counsel

Acknowledged and approved by:

KANSAS HIGHWAY PATROL

By _____

Superintendent

Date 9/2/10

Approved as to Form:

_____

Counsel

KANSAS CORPORATION COMMISSION

By _____

Executive Director

Date 8/31/2010

Approved as to Form:

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Counsel