



North Dakota Highway Patrol



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June 6, 2007

John Hoeven
Governor
State of North Dakota

Mr. Jeffrey Jensen
Division Administrator
Federal Motor Carrier Safety Administration
1471 Interstate Loop
Bismarck, ND 58501

Dear Mr. Jensen:

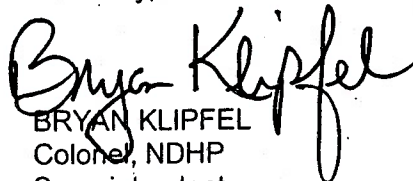
As you are aware, the Sixtieth Legislative Assembly passed HB 1359, "exemption from rear end requirements." While the bill does not specify "intrastate," that was the legislative intent. This is based on testimony in both the House and Senate Transportation Committee hearings and in discussions with the bill's sponsors.

We are requesting an exemption under 49 CFR Part 350.343. While we understand the Federal Motor Carrier Safety Administration strongly discourages these types of exemptions, it is our position that several states currently have this exemption and we do not feel such an exemption would adversely impact highway safety in North Dakota. Attached is supporting information for evaluation of this request.

The state of North Dakota has worked very hard to develop a strong motor carrier safety program and the granting of an exemption will allow us to continue in our safety efforts.

Thank you for your consideration of this request. If you have any questions or need additional information, please contact me.

Sincerely,


BRYAN KLIPFEL
Colonel, NDHP
Superintendent

bk/gs
Attachment
c/Governor John Hoeven
/Senator Byron Dorgan
/Senator Kent Conrad
/Congressman Earl Pomeroy
/Senator Bob Stenehjem
/Senator David O'Connell
/Senator Gary Lee
/Representative Rick Berg
/Representative Merle Boucher
/Representative Robin Weisz

- A. Type and scope of the industry exemption requested, including percentage of industry affected, number of vehicles, mileage traveled, and number of companies.

This exemption is being requested for farm trucks operating in the state of North Dakota. This would include both straight trucks and tractor-trailer units hauling farm commodities in the state. 49 CFR 393.86, rear impact guards and rear end protection, addresses the general requirements for trailers and semi-trailers manufactured on or after January 26, 1998, which have a gross vehicle weight of more than 10,000 pounds and more than a 12 inch overhang from the rear tires to the rear most extremity of the truck. Further, it addresses those motor vehicles manufactured after December 31, 1952, in which the rear most part of the vehicle is greater than 30 inches above the ground and with greater than a 24 inch overhang from the rear tires to the rear most point on the truck. North Dakota, under 49 CFR Part 350.341(a) has exempted all intrastate vehicles less than 26,001 pounds from the regulations, not to include those listed as not to be exempted.

The agricultural community informs us that this requirement would affect most of the farm trucks on North Dakota roads today. The state of North Dakota currently has over 36,000 farm trucks registered in the state as of January 1, 2007, which haul farm commodities. The commodities hauled would include but not be limited to: barley, canola, corn, durum, dry edible beans, dry peas and lentils, flax, potatoes, soybeans, sugar beets, sunflowers, and wheat. The vast majorities of these vehicles are privately owned and travel from farm to market and are only used during planting and harvesting season, they are not required to record their mileage. The number of farms in North Dakota listed with the National Agriculture Statistic Services (NASS) as of 2002 is 30,619. Many of these farms could be impacted by the requirement. Not having the ability to inspect all 36,000 vehicles, the exact number impacted is impossible to determine.

- B. Type and scope of the requirement to which the exemption would apply.

The exemption is from the Federal Motor Carrier Safety Administration 49 CFR 393 Parts and Accessories Necessary for Safe Operation, section 393.86, rear impact guards and rear end protection. This section has reference to 49 CFR 571 Federal Motor Vehicle Safety Standards, section 571.224 Standard No. 224; rear impact protection. This request is for "intrastate" vehicles only.

- C. Safety performance of that specific industry (e.g., accident frequency, rates, and comparative figures).

The presence of a rear impact guard is not part of our normal crash reporting requirements thus we have no data on this. Our collective experience in discussion with our personnel has not found any indications of crashes where the absence of a rear impact guard aggravated the situation. The North Dakota Vehicle Crash Facts for 2005 indicate that all truck tractor crashes including rear end crashes only accounted for 1.9 percent of the total state crashes. All truck crashes, which include 2 & 3 axle vehicles only accounted for 1.1 percent of all state crashes.

- D. Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).

For Federal Fiscal year 2006 the North Dakota Highway Patrol conducted 18,832 total inspections of all commercial motor vehicles. Their cargo is inspected and reported on the individual inspection reports. Our out-of-service rate for a full level one inspection is 19.58 percent. Our average out-of-service rate for level one, two, and three drivers is 4.44 percent. During this period a total of nine violations of Part 393.86 were noted. These inspections included all types of vehicles and cargo. We have no specific data on rear-dump vehicles hauling agricultural products. The majority of our inspections take place at locations where there is a high volume of interstate traffic and very seldom encounter farm vehicles that operate on farm to market roads.

- E. Other CMV safety regulations enforced by other state agencies not participating in the MCSAP.

The North Dakota Highway Patrol is the only agency authorized to enforce the Federal Motor Carrier Safety Regulations which were adopted by reference.

- F. Commodity transported (e.g., livestock, grain).

The commodities transported by these trucks will include but not be limited to: barley, canola, corn, durum, dry edible beans, dry peas and lentils, flax, potatoes, soybeans, sugar beets, sunflowers, and wheat. In addition, farm trucks regularly transport farm inputs such as chemicals, fertilizer, water, seed, and animal waste.

- G. Similar variations granted and the circumstances under which they were granted.

Our neighboring states of Minnesota and Montana already have this type of exemption for farm trucks conducting intrastate commerce. A survey conducted by the Commercial Vehicle Safety Alliance of the 50 states indicates that of the 24 respondents in addition to Minnesota and Montana the states of Tennessee, Georgia, Michigan, Illinois, and Oregon currently have this exemption; these states had the exemption in place prior to April 1, 1988. In Minnesota, road construction controlled horizontal discharge trailers have also been given an exemption to this regulation. A road construction controlled horizontal discharge trailer is very similar to many of the farm trucks operating within the state which transport sugar beets and potatoes. All of these trailers have to deliver their product into a hopper where the rear impact guard would interfere with the proper discharge of their products.

- H. Justification for the exemption.

As farm trucks perform their job, which is to transport commodities from a field to a point of storage or from a point of storage to a point of processing, they are required to deliver a commodity into a hopper. These hoppers are of sufficient height to be able to receive the commodity and not incur damage or spillage to that commodity. A rear end protection device will often time come into contact with these hoppers, causing damage to the hopper as well as the rear end protection device.

- I. Identifiable effects on safety.

We feel that giving an exemption of rear end protection devices to farm trucks will not have a detrimental effect on safety to other motorists on the highways. This is based on years of investigating traffic crashes by the North Dakota Highway Patrol and in interviews with other states and local jurisdictions. We are a low traffic volume state with minimal congestion which reduces the incidence of rear end collisions.

- J. State's economic environment and its ability to compete in foreign and domestic markets.

The requirement to install rear end protection on farm trucks will cause a financial burden to the farmers of North Dakota. 49 CFR 393.86(b) (1) addresses non certified rear end protection for straight trucks built after December 31, 1952, and trailers built before January 26, 1998. We know of only one metal fabrication business in the state of North Dakota currently making and installing rear end protection. The cost for these devices can be substantial. In addition to the cost of the device is the issue of liability this business would be taking on with respect to these devices. There are concerns if any other businesses would be willing to assume this level of liability.

For certified rear end protection devices which are required on trailers built after January 26, 1998, we have not been able to find one metal fabricating business which is manufacturing these devices. We are aware of one trailer manufacturing firm that is working with a local university to design and test a certified rear end protection device for one model of their trailers. Because of different configurations of framework on the other trailers, this device will not be applicable for certification on those other models. This will require the trailer company to design and test a separate bumper for each trailer

model. This trailer company has invested over \$15,000 in testing and research on this one bumper style.

Because of these issues of product development cost, timeline of development, testing, compliance approval and the general lack of availability of the product, the farm truck owners in the state of North Dakota that are in need of a device for their trailer find it virtually impossible to acquire a product that performs according to the law.

The requirement of part 393.86 has been in place for many years and is not new to our inspectors. But due to the fact that we concentrate on high volume interstate traffic, our observance of farm vehicles has been minimal and the exact number not in compliance is unknown. We are aware of the problems in the agricultural industry that have led many farmers to purchase larger truck "boxes" to carry more commodity and that rear impact guards are not part of the refitting operation.