



U.S. Department  
of Transportation

**Federal Motor Carrier  
Safety Administration**

Administrator

MAR 20 2008

1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Refer to: MC-ESS

Colonel Mark A. Nelson  
Superintendent  
North Dakota Highway Patrol  
State Capitol, 600 E. Boulevard Ave., Dept. 504  
Bismarck, ND 58505-0240

Dear Colonel Nelson:

I am writing in response to a letter dated June 6, 2007, sent by Colonel Bryan Klipfel to Mr. Jeffrey Jensen, North Dakota Division Administrator, requesting that the Federal Motor Carrier Safety Administration (FMCSA) grant an exemption from the rear end protection requirements for farm trucks in North Dakota.

Currently, the Federal Motor Carrier Safety Regulations (FMCSRs) require rear impact guards on all motor vehicles manufactured after December 31, 1952, if the clearance from the rear bottom edge of the body or chassis is more than 30 inches from the ground when the vehicle is empty. Further, trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or more that were manufactured on or after January 26, 1998, must be equipped with a rear impact guard meeting Federal Motor Vehicle Safety Standards Nos. 223 and 224.

While I recognize your goal of reducing to the greatest extent possible the regulatory burden on farmers operating commercial motor vehicles (CMVs) in North Dakota, granting the exemption could be inconsistent with the safety goals enacted by Congress when the Motor Carrier Safety Assistance Program (MCSAP) was established. Additionally, an October 2007 study by the Upper Great Plains Transportation Institute, North Dakota State University found, "The analysis here shows that the rear-guard safety equipment has injury severity benefits that far outweigh equipment cost." Therefore, I cannot grant your request.

The North Dakota legislation that was mentioned in the letter makes the State's exemption effective October 1, 2008, unless FMCSA grants a variance prior to that date. The legislation as passed and signed by the Governor is not compatible with the FMCSRs because it does not achieve substantially the same purpose as the Federal regulations, is not limited to intrastate commerce, and would be likely to have an adverse impact on safety. As such, when this new law goes into effect it will make North Dakota ineligible to receive any MCSAP Basic and Incentive grant funding on October 1, 2008.

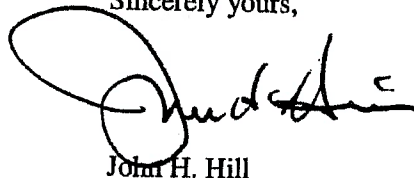
The MCSAP provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving CMVs. The goal of MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP includes conditions for participation by States and local jurisdictions, and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and the Federal Hazardous Materials Regulations for both interstate and intrastate motor carriers and drivers.

Participation in MCSAP allows some specific variances from FMCSA's safety regulations for State laws governing motor carriers, drivers, and CMVs engaged solely in intrastate commerce. The MCSAP tolerance guidelines specifically allow States to retain those exemptions from their motor carrier safety laws that were in effect prior to April 1988, are still in effect, and apply to specific industries operating in intrastate commerce. These FMCSRs variances are intended to provide the States with flexibility in managing their safety oversight of intrastate motor carrier operations, while working in partnership with FMCSA to achieve national safety goals.

North Dakota has been an excellent safety partner in the MCSAP. The FMCSA will continue to work with North Dakota State officials to achieve our safety goals while providing as much flexibility as is permissible for the State. We hope North Dakota takes the necessary steps to bring its legislation into compliance thus avoiding ineligibility.

If you need additional information or assistance, you may contact Jack Kostelnik, Acting Chief, State Programs Division, at (202) 366-5721 or e-mail him at [jack.kostelnik@dot.gov](mailto:jack.kostelnik@dot.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "John H. Hill", with a large, stylized loop at the beginning.

John H. Hill

cc:

William Paden, FMCSA Field Administrator, Western Service Center  
Jeffrey P. Jensen, FMCSA Division Administrator, North Dakota