

EXEMPTION FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS STUDY - BACKGROUND MEMORANDUM

House Bill No. 1359, Section 2, directs the Legislative Council to study Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's laws and exemptions. This study is to include a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. In Section 1 of the bill, the superintendent of the Highway Patrol is prohibited from enforcing any requirement for rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage. Section 3 of the bill provides for a contingent effective date for this prohibition. This prohibition becomes effective on the earlier of October 1, 2008, or on approval of this state's application for exemption from rear-end protection requirements, unless the superintendent of the Highway Patrol does not complete and submit an application for exemption, then the Act becomes effective on August 1, 2007. The superintendent of the Highway Patrol did complete and submit an application for exemption on June 6, 2007, which is attached as an [appendix](#). At present, the prohibition will become effective on October 1, 2008, because the application has not been approved by the Federal Motor Carrier Safety Administration. However, the prohibition could become effective earlier if the application is approved earlier than October 1, 2008.

The impetus for the exemption for rear-end protection on certain trucks and trailers in this state appears to have arisen from a similar exemption in Minnesota. Generally, a state must adopt Federal Motor Carrier Safety Regulations or lose federal funding. A state may receive a specific variance from Federal Motor Carrier Safety Regulations for intrastate commerce. Under 49 C.F.R. 350.341(c), a state may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce. It appears Minnesota has this exemption because the state had the exemption in effect before April 1, 1988.

As for rear impact guards and rear-end protection, 49 C.F.R. 393.86 provides the provision for trailers and semitrailers and for vehicles. As for trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or more, which are manufactured after January 25, 1998, these trailers must be equipped with a rear impact guard in compliance with federal regulations. This requirement does not apply to pole trailers, pulpwood trailers, low-chassis vehicles, special purpose vehicles, wheels back vehicles, and trailers towed in drive-away/tow-away operations.

The rule defines the requirements for width, height, rear surface, cross-section vertical height, and certification and labeling. Under the same rule, each motor vehicle manufactured after December 31, 1952, with a vertical distance between the bottom edge of the body and the ground of greater than 30 inches must be equipped with a rear impact guard. This requirement does not apply to truck tractors, pole trailers, pulpwood trailers, or vehicles in drive-away/tow-away operations. The rule provides for minimum requirements for vertical distance, maximum lateral distance, width, and forward placement. The rule provides particularly that "[t]he rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means."

GENERAL LAW

The Legislative Assembly has enacted North Dakota Century Code (NDCC) Chapter 39-06.2. This chapter is entitled the Uniform Commercial Driver's License Act and is meant to implement federal law. The Act implements the Federal Motor Vehicle Safety Act of 1986 and the Motor Carrier Safety Improvement Act of 1999. The purposes of these Acts are to prevent commercial motor vehicle accidents, fatalities, and injuries by, among other things, strengthening commercial driver's licenses and testing standards. Under Section 39-06.2-01, the chapter is to be construed liberally to promote the public health, safety, and welfare.

Under NDCC Section 39-21-46, the superintendent of the Highway Patrol must adopt rules duplicate to or consistent with current Federal Motor Carrier Safety Regulations of the Department of Transportation relating to the safe operation of motor vehicles and when and how motor carrier audits or inspections will be conducted. These rules may be adopted by reference and violation of these rules is a noncriminal violation with fees set forth in Section 39-06.1-06.

Under North Dakota Administrative Code Section 38-04-01-02, the superintendent of the Highway Patrol has adopted the following parts of the Federal Motor Carrier Safety Regulations by reference:

1. Part 382 - Controlled Substances and Alcohol Use and Testing.
2. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
3. Part 390 - Federal Motor Carrier Safety Regulations: General.
4. Part 391 - Qualification of Drivers.
5. Part 392 - Driving of Motor Vehicles.
6. Part 393 - Parts and Accessories Necessary for Safe Operation.
7. Part 395 - Hours of Service of Drivers.

8. Part 396 - Inspection, Repair and Maintenance.
9. Part 397 - Transportation of Hazardous Materials; Driving.

In the adoption of those regulations, intrastate commercial motor vehicles with a gross vehicle weight of 26,000 pounds or less have been exempted from all Federal Motor Carrier Safety Regulations.

2007 LEGISLATION

During the 2007 legislative session, the Legislative Assembly adopted three bills directly relating to exemptions from Federal Motor Carrier Safety Regulations--House Bill Nos. 1068, 1359, and 1400.

House Bill No. 1068 exempted vehicles driven for military purposes from commercial driver's license requirements subject to federal regulations. In addition, the bill limited the waiver for a person driving a commercial vehicle for a political subdivision during an emergency to a political subdivision with a population of fewer than 3,000 and when necessary licensed drivers are not available.

House Bill No. 1359 provided for this study and the exception from enforcement for trucks and trailers without rear-end protection. House Bill No. 1400 included trees within the waiver from a commercial driver's license for farm-to-market operations by farmers to transport agricultural products to or from a farm and allows a waiver of knowledge and skills test for a commercial driver's license for retailers and suppliers of trees.

There were two bills that indirectly relate to Federal Motor Carrier Safety Regulations--House Bill Nos. 1081 and 1334.

House Bill No. 1081 clarified that in order to transport students or other passengers in a schoolbus or other school vehicle, the individual must hold the appropriate class of North Dakota driver's license, together with any special endorsement otherwise required by law.

House Bill No. 1334 provided that if an individual transports students or other passengers in a school vehicle that seats 10 to 15 passengers, but for which a commercial driver's license is not required, the individual must hold a North Dakota driver's license, meet the physical and medical requirements established for commercial vehicle drivers, complete annual training required by the Superintendent of Public Instruction, and meet the age requirements established by the board of the employing school district.

FEDERAL EXEMPTIONS IN GENERAL

According to a representative from the Highway Patrol, this state receives approximately \$2.5 million per biennium for the Commercial Motor Carrier Safety Assistance Program. This money is used to fund the Highway Patrol. Under 49 C.F.R. 350.331 and 350.335, the state must review its laws and regulations for compatibility with the Federal Motor

Carrier Safety Regulations. Incompatibility results in loss of eligibility for the basic program funds or incentive funds under the Commercial Motor Carrier Safety Assistance Program. Under 49 C.F.R. 350.333, the guidelines for review of state law and regulation compatibility require that if the law is not exactly the same and is less stringent than the federal regulation, then the law or regulation is not compatible. However, under 49 C.F.R. 350.341, specific variances are allowed for intrastate commerce for vehicles less than 26,001 pounds unless the vehicle is used to transport hazardous materials or 16 or more people. Exemptions may not be based on the type of transportation being performed or the distance the driver operates from a work-reporting location unless specific exemptions are otherwise provided. However, a state may retain those exemptions from its motor carrier safety laws and regulations which were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

Under 49 C.F.R. 350.343, the Federal Motor Carrier Safety Administration strongly discourages exemptions for specific industries but will consider state requests with supporting information for the following 10 factors:

1. Type and scope of the industry exemption requested.
2. Type and scope of the requirement to which the exemption would apply.
3. Safety performance of that specific industry.
4. Inspection information.
5. Other commercial motor vehicle safety regulations enforced by other state agencies.
6. Commodity transported.
7. Similar variations granted in circumstances under which they were granted.
8. Justification for the exemption.
9. Effects on safety.
10. State economic environment and its ability to compete in other markets.

Under 49 C.F.R. 350.345, a state may apply for variances from Federal Motor Carrier Safety Regulations for intrastate commerce and those variances will be granted only if the state satisfactorily demonstrates the state law, regulation, or enforcement practice achieves substantially the same purpose as the federal regulation, does not apply to interstate commerce, and is not likely to have an adverse effect on safety.

Under 49 C.F.R. 381, waivers of up to three months and exemptions of up to two years may be obtained for regulatory relief from one or more Federal Motor Carrier Safety Regulations. When applying for the waiver or exemption, an explanation of the safety impact and how safety would be maintained is required.

SPECIFIC EXEMPTIONS

There are four specific types of exemptions from Federal Motor Carrier Safety Regulations. There are exemptions from:

1. Medical qualifications.
2. Hours of service.
3. Knowledge and skills testing.
4. Commercial licensure.

Areas that do not have a specific exemption, for example, equipment requirements, may be exempt from regulation if the procedures in **FEDERAL EXEMPTIONS IN GENERAL** in this memorandum are followed.

North Dakota Century Code Section 39-08-21 grandfathered otherwise medically unqualified drivers through a state medical waiver program so as to allow them to drive intrastate. This is allowed under 49 C.F.R. 391.61 through 391.69. Under these sections, certain drivers are exempt from medical qualifications if they were driving before the federal regulations took effect. Generally, all commercial drivers must meet federal commercial medical requirements to be physically qualified to drive commercial vehicles. For continued medical qualification, a driver must be medically examined by a licensed health care provider every 24 months. This includes drivers of vehicles with a gross vehicle weight rating greater than 10,000 pounds that are used in **interstate** commerce and vehicles with a gross vehicle weight rating greater than 10,000 pounds used in **intrastate** commerce if used to transport hazardous materials requiring a plaque guard or designed to transport 16 or more passengers. Some of the medical conditions that may disqualify an individual from obtaining a commercial license are:

1. Heart ailment.
2. Hearing impairment.
3. Less than 20/40 acuity in either eye.
4. Insulin-dependent diabetes.
5. Epilepsy.
6. Loss or impairment of a limb.

Under NDCC Section 39-32-02, certain intrastate drivers are not subject to hours-of-service limitations. These include drivers of authorized emergency vehicles, drivers of vehicles with a gross vehicle weight rating equal to or less than 26,000 pounds, and of tow trucks operating at the request of a law enforcement officer. In addition, hours-of-service limitations do not apply to intrastate drivers during a declared emergency. This section also contains an exemption from maintaining a logbook for an intrastate driver within 150 area miles from the driver's normal work area, if the driver returns to the work area and is released within 12 consecutive hours, and if the driver has at least 8 consecutive hours off separating each 12 hours of duty.

Under this section, on June 29, 2007, the Governor issued an executive order declaring an emergency for drivers of commercial motor vehicles while transporting fuels to customers. This executive

order has been extended a number of times, at least through September 9, 2007.

Under 49 C.F.R. 395, specific exemptions for hours of service of drivers are provided for by federal regulation. These exemptions relate to emergency conditions, sales persons, oilfield operations, short-haul operations, and retail store deliveries.

Under NDCC Section 39-06.2-06(5), the knowledge and skills test for a commercial driver's license may be waived and a restricted license issued to employees of agrichemical businesses, custom harvesters, farm retail outlet and suppliers (including retailers and suppliers of trees), and livestock feeders.

Under 49 C.F.R. 383.3, a state may waive the required knowledge and skills test for a commercial driver's license for employees of these designated farm-related service industries:

1. Agrichemical business;
2. Custom harvesters;
3. Farm retail outlets and suppliers; and
4. Livestock feeders.

If one begins with the axiom that anyone driving a vehicle for a commercial purpose must have a commercial driver's license, this state has a number of exemptions to having a commercial driver's license. These exemptions manifest themselves as vehicles that may be operated by a person with a Class D license. Under NDCC Section 39-06-14, a driver with a Class D license may operate any single vehicle with a gross vehicle weight rating of 26,000 pounds or less or that vehicle towing a trailer with a gross vehicle weight rating not in excess of 10,000 pounds. A Class D licenseholder may operate a farm tractor towing another vehicle having a gross weight in excess of 10,000 pounds and a truck towing a trailer when the gross weight of the trailer not including the weight of the towing vehicle does not exceed 16,000 pounds. In addition, under Section 39-06-14, a Class A, B, or C license may not be issued to a person under 18 years of age except if specifically restricted to use for custom harvest purposes and the person is at least 16 years of age and satisfactorily completes appropriate examinations.

Under NDCC Section 39-06.2-06(1), a person does not need a commercial driver's license and may use a Class D license if:

1. The vehicle being driven is a house car or a vehicle towing a travel trailer used for personal purposes;
2. The vehicle is emergency or firefighting equipment necessary for the preservation of life or property; or
3. The vehicle is being used for military purposes.

North Dakota Century Code Section 39-06.2-06(3) provides for a waiver from a commercial driver's license for farm-to-market operations by farmers. The waiver is limited to operators of a farm vehicle that is:

1. Controlled and operated by a farmer;

2. Used to transport agricultural products (including trees), farm machines, and farm supplies to and from a farm;
3. Not used in the operations of a common or contract carrier; and
4. Used within 150 miles of the farmer's farm.

Under NDCC Section 39-06.2-06(4), commercial driver's license requirements are waived for an individual operating a vehicle for a political subdivision with a population of less than 3,000 people during an emergency for the removal of snow and ice if regularly employed drivers are not available.

Under 49 C.F.R. 383.3, a state must exempt from commercial driver's license standards individuals who operate commercial motor vehicles for military purposes. In addition, a state may exempt operators of a farm vehicle, firefighters, or a driver employed by a local government removing snow or ice if there is an emergency.

The waiver in NDCC Section 39-06.2-06 and combined with Section 39-06-14 results in the following exemptions:

- A driver who is 14 or 15 years of age may operate a farm motor vehicle within 150 miles of the driver's farm, having a gross vehicle weight of not more than 50,000 pounds, when transporting agricultural products of farm supplies.
- A farmer may operate any two-axle, tandem-axle, or truck tractor farm vehicle transporting

agricultural products, farm machines, or farm supplies to a farm within 150 miles of that farmer's farm. A farm vehicle may tow a trailer, semitrailer, or farm trailer, except double or triple trailers, and if the operator is under 18 years of age, a truck tractor.

- A farmer may operate a farm vehicle transporting hazardous material within 150 miles of the farm without a hazardous material endorsement.

SUGGESTED STUDY APPROACH

This study appears to have resulted from a specific equipment issue and federal regulations. The committee may wish to receive updates from the Highway Patrol on the application for exemption. If available, the committee may wish to receive testimony from individuals, subject to a regulation, who are seeking an exemption from the regulation.

Since January 1, 2007, there have been eight violations for not having a rear impact guard on a trailer or semitrailer and one violation for not having a rear impact guard on a motor vehicle. The committee may receive testimony on the particulars of the violations to better understand the enforcement of rear-end protection requirements and the effect on the driving public.

ATTACH:1



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.