Legislative Research Council
SouthDakota

Issue Memorandum 99-13

SAFETY INSPECTIONS OF LARGER MOTOR VEHICLES

Since July 1,1999, owners of large farm trucks have been contacting legislators inquiring about what legislation passed during the 1999 Legislative Session that requires their trucks to have an annual safety inspection. The correct answer to these inquiries is that no such legislation passed in 1999. This annual inspection requirement is actually the result of the passage of Senate Bill 130 by the 1998 Legislature. That legislation was adopted to bring the state more into compliance with federal safety regulations for larger motor vehicles. Although that legislation was passed in 1998, it was not until a year later that these large vehicles became subject to any enforcement action for a violation of that annual inspection requirement. Consequently, as law enforcement officials began identifying those vehicles lacking proper inspection, the inquiries about the source of this inspection requirement began.

This issue memorandum will look at the actions at both the state and federal levels that preceded the passage of this legislation in 1998, will review what that legislation did, and will consider the consequences to the state of any further revisions to that legislation.

Background Information

The section of the code at the heart of the issue is SDCL 49-28A-3. When this section became law in 1981 it only applied to the transportation of hazardous materials. The law gave the secretary of the Department of Commerce and Regulation authority to adopt administrative rules regulating the transportation of hazardous materials. The secretary then adopted the existing federal regulations regarding such transportation as the rules of the state. This section was amended in 1986 to adopt these federal regulations in statute rather than delegating that authority to an executive agency. The law was also expanded at that time to adopt federal regulations regarding motor carrier safety requirements.

The action in 1986 was largely the result of a push at the national level to promote uniform motor carrier regulations among the states. States were independently developing safety programs addressing highway safety concerns caused by large vehicles. The resulting jumble of conflicting requirements from state to state confused motor carriers. The federal government began promoting compatible safety standards among the states to ease the regulatory burden on those motor carriers that travel interstate. These uniform standards were also promoted to help the states avoid duplication of effort in motor carrier safety inspection and enforcement activities.

To remain compatible with the other states, about every two years, the South Dakota Legislature has adopted the most current federal regulations by amending

SDCL 49-28A-3. While this procedure of adopting federal regulations as state law makes it easier to ensure compatibility with the federal regulations, this procedure also makes it more difficult to determine specific safety requirements because a person needs to review the federal regulations in addition to the state law.

Since 1986, South Dakota has had safety requirements that apply to any vehicle used to transport passengers and cargo in interstate commerce. These requirements have applied to vehicles with a gross weight of over ten thousand and one pounds and to vehicles that transport more than fifteen passengers, including the driver. These federal regulations addressed the qualification of drivers, hours of service of drivers, notification and reporting of accidents, repair and maintenance requirements, and vehicle safety inspections, among other things.

In addition to promoting uniform safety standards, the federal government, at the same time, established a grant program to financially assist the states in enforcing these uniform regulations. The name of this program is the Motor Carrier Safety Assistance Program (MCSAP), and it is administered by the Federal Highway Administration (FHWA). The primary objective of this program has been to reduce the number and severity of accidents and hazardous materials incidents involving all commercial motor vehicles by increasing enforcement activity and thereby increasing the likelihood that safety defects, driver deficiencies, and unsafe carrier practices will be detected and corrected. Another objective of this program has been to encourage states to establish compatible regulations to cover intrastate motor carrier operations. States have used these MCSAP grants to improve their programs for conducting random safety inspections of both interstate and intrastate motor carriers. The practical impact of these grants has been a significant expansion of roadside truck inspections in the participating states.

Each state is allocated MCSAP monies each year by a formula which is based on road mileage, vehicle miles traveled, number of vehicles over 10,000 pounds, population, and diesel fuel consumption. These monies can only be used to cover the direct and indirect costs associated with roadside inspections and follow-up enforcement actions or compliance measures. To be eligible for such a basic MCSAP grant, the federal legislation requires that compatible safety regulations apply to both interstate and intrastate operations. Since South Dakota's law prior to 1998 only applied to interstate operations, the state was not eligible for these grants. Consequently, from 1989 to 1997, inclusive, the state did not qualify for the approximately $400,000 each year which was allocated to the state under this program.

The state did receive special grants from the MCSAP program in 1994, 1996, and 1997 for the amounts of $109,605, $148,000, and $137,909, respectively. Special grants are used by the MSCAP program to assist states toward meeting the conditions for eligibility for a basic MCSAP grant. The Highway Patrol had been doing safety inspections on interstate motor carriers and collecting data on these inspections but had not been sharing that information with the FHWA. Under these special MCSAP grants, the state began submitting safety inspection data and data on accidents involving motor carriers to the MCSAP program. The grant monies received by the state were used to train Highway

Patrol personnel in conducting safety inspections and to purchase laptop computers to be used by roadside inspectors.

1998 Legislation

Senate Bill 130 was introduced into the 1998 Legislature at the urging of the Highway Patrol and the FHWA and was supported by several organizations, including the South Dakota Trucking Association, the South Dakota Association of Cooperatives, the Associated General Contractors, and the South Dakota Fertilizer and AG Chemical Association. The legislation simply extended the federal safety regulations to vehicles used in intrastate operations. A concern expressed at the time was that South Dakota was the only state lacking safety regulations that met minimum federal safety regulations for larger intrastate motor vehicles and, consequently, the state was becoming the dumping ground for vehicles that could not pass safety inspections in other states. The legislation easily passed the Legislature by votes of 30-4 in the Senate and 60-5 in the House. A copy of SDCL 49-28-3 as it currently reads is attached.

The legislation did make three important exemptions from these federal regulations to address concerns about the effect that these safety regulations might have on the farming industry. The exemptions are as follows:

(1) It exempts intrastate operations involving vehicles and combinations of vehicles with three axles or less and vehicles with a gross vehicle weight rating of not more than twenty-six thousand pounds. Without this exemption the regulations would apply to any vehicle with a gross vehicle weight of over ten thousand and one pounds regardless of the number of axles. This exemption does not extend to any intrastate vehicle transporting hazardous materials or to any vehicle transporting more than fifteen passengers including the driver;

(2) It allows drivers at least sixteen years of age to drive in intrastate operations. The federal regulations require interstate drivers to be at least twenty-one years of age and intrastate drivers to be at least eighteen years of age; and

(3) It exempts intrastate drivers from the requirements to meet certain medical qualifications.

Without these exemptions, the federal regulations would apply to many more trucks, prohibit many teenagers who currently help in farming operations from driving these farm trucks, and require many farmers and ranchers to pass a medical physical before operating their trucks. Many legislators felt these requirements would have a negative impact on the agricultural industry much greater than any positive impact on highway safety. Consequently, the legislation did not have the necessary support to pass without these exemptions.

These exemptions can cause problems for anyone who on a rare occasion has to drive one of these exempt vehicles into a surrounding state. Any driver or vehicle exempted by this legislation does not have reciprocity to operate in another state just because the driver or vehicle meets South Dakota's safety requirements. These drivers and vehicles would be subject to the safety requirements of those states and subject

to enforcement action if they did not meet the other state's requirements.

The legislation did make South Dakota eligible to receive the basic MCSAP grant monies that have been allocated to the state. However, because of the exemptions in the law for intrastate operations, the law is not compatible with the federal regulations. Consequently, under federal law, the state is entitled to no more than fifty percent of its annual MCSAP allocation. For federal fiscal year 1999, the state was allocated $779,774 in MSCAP monies but because South Dakota's law was incompatible, that allocation was limited to $389,887. The amount that was eventually awarded to the state for 1999 was $246,098. Currently, only the states of Florida, Maine, and South Dakota have regulations for intrastate operations that do not meet compatibility requirements and are subject to this allocation limitation.

Annual Safety Inspections

Probably the most significant change resulting from this new legislation is the requirement that these intrastate vehicles undergo at least one safety inspection every twelve months and have documentation of that inspection on the vehicle. The documentation can be in the form of an inspection report or a decal or sticker on the vehicle which certifies that the vehicle has passed a safety inspection. Each vehicle in a combination vehicle is required to be inspected. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected. Those items on a vehicle that need to be inspected for defects are the brake system, exhaust system, steering mechanism, frame, suspension, lights, tires, wheels and rims, windshield glazing, windshield wipers, and coupling devices.

A motor carrier may perform the required annual inspection for any of his or her vehicles or the motor carrier may have a commercial garage, fleet leasing company, or other similar commercial business perform the inspection. An inspection usually takes about forty-five minutes and costs about thirty-six dollars a vehicle at a commercial business. The motor carrier is responsible to fix any item found in need of repair.

Self-inspection may be an option for many farmers and ranchers who have mechanical abilities and have vehicles that are required to be inspected. If a person chooses to perform a self-inspection, the person needs to meet certain inspector qualifications that are established in the federal regulations. To be a qualified inspector a person must have a good understanding of the inspection criteria established in federal regulations, must have the equipment to perform an inspection, and must of have the experience, training, or both, necessary to perform an inspection. Any person self-inspecting can create his or her own report forms, decals, or stickers as long as they contain the information required by the federal regulations. The South Dakota Trucking Association also has these documents available at a nominal cost. Anyone who self-inspects a vehicle, however, should consider the liability he or she might face if the vehicle is involved in an accident and vehicle safety defects are found to be a contributing factor to the accident.

Failure to have an annual safety inspection is a Class 2 misdemeanor. The typical fine for such a violation has been eighty-three dollars.

Roadside Safety Inspections

The new legislation did not suddenly subject these intrastate vehicles to roadside inspections by the Highway Patrol. Safety requirements for vehicles and vehicle accessories are established in SDCL chapters 32-15, 32-17, 32-18, and 32-19 and these requirements are fairly similar to the requirements in the federal regulations. Under these laws, the Highway Patrol already had the authority to stop any vehicle and conduct a safety inspection. However, since the Highway Patrol will be receiving additional federal dollars to beef-up its motor carrier inspection program, there will probably be more roadside inspections performed each year by the Highway Patrol.

If a safety violation is found at one of these roadside inspections, the severity of safety violation dictates the enforcement action taken. If a particular safety violation presents no immediate threat to public safety, the motor carrier inspector may assess a warning or a fine and the repairs to correct the condition may be done at the roadside or deferred to another time and place. Should the violation present an inherently dangerous situation, the inspector may issue an out-of-service order. This means that the vehicle cannot be moved until the proper repairs are made.

The Highway Patrol uses the North American Uniform Out-of-Service Criteria established by the Commercial Vehicle Safety Alliance (CVSA) to determine whether a vehicle or driver found in violation of the law should be allowed to continue down the highway. The Highway Patrol adopted these criteria by administrative rule in September 1998. The CVSA is an association of state, local, provincial, and federal officials responsible for the administration and enforcement of motor carrier safety laws in the U.S., Canada, and Mexico. The criteria are a list of conditions that the CSVA membership has agreed are sufficiently hazardous to justify restricting the vehicle's or the driver's ability to continue down the highway. With these criteria, motor carriers are able to anticipate reasonably uniform treatment for violations in all jurisdictions.

In 1996 the Legislature passed a law that provides for the disqualification of the commercial driving license privileges for any driver who violates an out-of-service order. The period of disqualification for a first, second, and a third or subsequent violation of an out-of-service order is one hundred eighty days, three years, and five years, respectively. Congress made the adoption of these stiff penalties a condition of continued receipt of the state's full allocation of highway construction funds.

Future Considerations

Questions have arisen as to whether SDCL 49-28A-3 can be revised and to what degree it can be revised. The simple answer is the Legislature is free to make whatever revisions to the law it desires. The state is not mandated by the federal government to have safety inspections of vehicles, but with each possible revision to the law, there are safety and financial consequences that must be considered.

If the law were amended to read as it did before 1998, the federal regulations would no longer apply to intrastate operations and the state would no longer be eligible for MSCAP grant monies of about $350,000 a year. South Dakota would once again become the only state where there is no annual safety inspection of intrastate trucks and that could increase the possibility of large

unsafe vehicles operating on the highways. If these intrastate vehicles would ever be driven to another state, they would be subject to the annual inspection requirement of that state and be subject to law enforcement action. The Highway Patrol would continue to have authority to perform roadside safety inspections, but the funding for these inspections would have to come from another source and that would probably result in fewer inspections.

The law could also be amended to revise the exemptions for intrastate operations. Should any such change fit into the tolerances allowed by the federal government, the state could qualify for its full MCSAP allocation of about $700,000 a year. If the exemption for vehicles three axles or less was eliminated, if the required age for intrastate drivers was increased from sixteen to eighteen, and if intrastate drivers were made subject to physical requirements, for example, the state would qualify for its full MCSAP allocation. However, if the law were revised to expand the current exemptions and create additional variances from the national standards that action could jeopardize the state's eligibility for any of the MCSAP grant monies. For instance, it is within the federal tolerances to exempt intrastate vehicles with a gross vehicle weight rating of twenty-six thousand pounds or less; however, should this exemption be expanded to cover any heavier vehicles, the exemption would then exceed the tolerances to the national standards.

If the law were amended to eliminate the exemptions for intrastate operations, the state law would become compatible with federal regulations and the state would be eligible for its full allocation of MSCAP grant monies. Annual safety inspections would be required for all vehicles with a gross vehicle weight of over ten thousand and one pounds. Drivers of these larger vehicles in intrastate operations would have to be at least eighteen years of age and have to meet certain physical requirements. Since the requirements for vehicles and drivers would be uniform with surrounding states, there would not be the risk of enforcement action in another state as long as the vehicle and driver met the requirements of South Dakota's law. With more monies available to the Highway Patrol to conduct roadside safety inspections, more inspections would probably occur.

Another possible option, which would allow the state to get its full MCSAP funding, is for the state to apply to the FHWA requesting that an industry exemption (i.e., farm vehicles) from the national standards for intrastate vehicles be included in South Dakota's law. If granted, this industry exemption would have to replace the current exemptions for intrastate operations. The federal regulations allow for this exemption process and some states have been granted such exemptions. The FHWA, however, strongly discourages these industry exemptions. The state would have to demonstrate that any proposed variance would have no adverse impact on vehicle safety before the state would gain FHWA's approval.

Conclusion

The purpose of legislation passed in 1998 was to provide uniform safety standards for similarly sized vehicles whether they travel in interstate or intrastate operations. That legislation, with certain exceptions, adopted federal safety regulations as the state law governing large vehicles used in intrastate operations. In doing so South Dakota became the last state in the union to

apply these safety regulations to intrastate operations. The legislation helps ensure that these large vehicles are safe to operate on the highways by requiring these vehicles to submit to an annual safety inspection. The legislation was necessary for the state to qualify for federal monies that can be used to enhance its motor carrier inspection program. While this legislation should benefit highway safety, it does come at the cost of being an inconvenience to the owners of some vehicles that infrequently use the highways. As future changes to the law are considered, the Legislature will need to be attentive to the impact on public safety and to the monetary consequences any revision would have on the citizens of the state.

This issue memorandum was written by David L. Ortbahn, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.

49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B, chapter I, subchapter C, parts171 to 180, inclusive, as amended through January 1, 1998, and Title 49 of the Code of Federal Regulations, subtitle B, chapter III, subchapter B, parts 390 to 397, inclusive, as amended through January 1, 1998, with the following modifications:

(1) All references to interstate operations shall also include intrastate operations except that drivers and motor carriers operating intrastate vehicles and combinations of vehicles with three axles or less or with a gross vehicle weight rating of not more than twenty-six thousand pounds which are not used to transport hazardous materials requiring placarding under part 177, or designed to transport more than fifteen passengers, including the driver, are not subject to parts 390-397;

(2) For the purposes of part 391.11(b) (1), a driver shall be at least twenty-one years old if engaged in interstate commerce, or transporting hazardous material of a type or quantity requiring placarding under part 177, or operating a vehicle designed to transport more than fifteen passengers, including the driver. All other drivers shall be at least sixteen years of age;

(3) Intrastate drivers are exempt from the physical requirements of part 391.41.

Any violation of parts 390 to 396, inclusive, the motor carrier safety requirements governing the qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe operation, notification and reporting of accidents, assistance with investigations and special studies, hours of service of drivers, inspection, repair and maintenance is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to general information, regulations and definitions, hazardous materials tables, hazardous materials communication regulations, and test and inspection marking requirements found in parts 171, 172, and 178 to 180, inclusive, is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to packaging, prohibited shipments, loading and unloading, segregation and separation, retesting and inspection of cargo tanks, and other carriage by regulations found in parts 173 to 180, inclusive, or violation of the driving and parking rules in part 397, is a Class 1 misdemeanor.

Source: SL 1981, ch 241, § 2; SDCL Supp, § 32-9-49; SL 1984, ch 309, § 3; 1986, ch 22, § 16; 1986, ch 395, § 1; 1989, ch 400; 1991, ch 383; 1993, ch 235, § 6; 1995, ch 262; 1997, ch 265, § 1; 1998, ch 273, § 1.