SENATE HIGHWAYS AND TRANSPORTATION

EXHIBIT NO. 5

DATE: 1/29/09

BILL NO. SB225

STATE OF MONTANA
OFFICE OF THE GOVERNOR
Executive Order No. 38-2008

EXECUTIVE ORDER ALLOWING BEET HARVESTERS IN SOUTHEASTERN MONTANA A 30 PERCENT WEIGHT TOLERANCE ON THEIR FARM VEHICLES DUE TO AN EARLY WINTER STORM, effective until November 15, 2008

WHEREAS, areas in southeastern Montana, particularly the counties of Carbon, Yellowstone, Treasure, Big Horn and Rosebud, have experienced early winter storm conditions including extensive precipitation; and

WHEREAS, since October 9, 2008, this area has experienced rain and snow, in some instances in excess of 1.7 inches; and

WHEREAS, sugar beet growers in southeast Montana are in the middle of beet harvest season; and

WHEREAS, there remain approximately 70% of 28,000 acres of sugar beets to be harvested in southeast Montana worth an estimated $25 million; and

WHEREAS, Montana law sets gross weight limitations for farm vehicles and imposes penalties for violations of the statutory limits; and

WHEREAS, because of the weather conditions in southeast Montana during the limited beet harvest season, Montana beet producers are concerned that their beets will remain unharvested, a situation which can be alleviated through a temporary allowance of greater gross weight limitations for farm vehicles than those currently imposed under § 61-10-144, MCA; and

WHEREAS, under § 61-10-111, MCA, upon a request by the Director of the Department of Transportation, the Governor may through executive order, for a specific limited period of time, during emergency circumstances and to meet unusual conditions to ensure the welfare of the public, exempt vehicles from the statutory size and weight limits imposed under Title 61, chapter 10, part 1, MCA; and

WHEREAS, in order to respond to this emergency situation, the Director of the Department of Transportation has requested me to issue an Executive Order to expand the gross vehicle weight tolerance for sugar beet farm vehicles under § 61-10-144(3) from 20% for each axle to 30% during beet harvest season.

NOW, THEREFORE, I, Brian Schweitzer, Governor of the State of Montana, by virtue of the authority vested in me under the laws and the Constitution of the State of Montana, do hereby exempt farm vehicles carrying harvested beets in southeast Montana from the 20% limits of § 61-10-144, MCA, and authorize them to operate their vehicles without incurring excess weight penalties under § 61-10-145, MCA, if the total

gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 30% for each axle. This exemption shall be in effect through November 15, 2008. All other applicable laws and regulations remain in effect. The Conditions of Exemption, submitted to me by Director Lynch of the Department of Transportation, are attached to this Executive Order and shall apply to this Order.

This Order is effective immediately.

GIVEN under my hand and the GREAT SEAL of the State of Montana, this 17 day of October, 2008.

BRIAN SCHWEITZER, Governor

ATTEST:

Brad Johnson by Susan Timer, deputy

BRAD JOHNSON, Secretary of State

Montana Department of Transportation

Conditions of Exemption

1. Applies to the weight requirements for farm vehicles in MCA 61-10-144(3) only.
2. The exemption is granted through November 15, 2008.
3. Exemption is limited to farm vehicles of beet growers in harvest activity only.
4. Applies from the harvested field to the first point of unloading only.
5. Is limited to a 100 mile radius of the harvested field.
6. Vehicles found to be in excess of a 30% tolerance will be fined for that portion of the load above the statutory legal weight limits set forth in MCA 61-10-107.
7. All other statutory, regulatory, and other safety requirements for farm vehicles and their operation shall remain in full force and effect, including but not limited to:
    a. vehicles utilizing this exemption cannot be operated above the manufacturers loaded gross vehicle weight capacity;
    b. vehicles utilizing this exemption cannot be operated above the tire manufactures rated capacity;
    c. vehicles utilizing this exemption cannot be operated above the axle rated capacity of any axle on the truck or trailer;
    d. vehicles utilizing this exemption must be in good working order. Brakes must be checked by operator daily and recorded in a book to be kept in the cab of the vehicle stating that brakes are in good working order capable of stopping truck safely with increased weight;
    e. drivers of vehicles utilizing this exemption must be qualified and capable of operating vehicles utilized;
    f. drivers of vehicles utilizing this exemption must operate in a safe, prudent and reasonable manner;
    g. this exemption cannot be used on Montana's Interstate Highways;
    h. this exemption does not give the operator permissions to exceed maximum allowable weight on any bridge in the State of Montana;
    i. vehicles found to be in excess of said 30% tolerance or not in compliance with any of the above conditions will be fined for that portion of the load above the statutory legal weight limits set forth in MCA 61-10-107.