



### ISSUE #3

## EXEMPTIONS FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS

### PROBLEM

The base of uniform commercial vehicle safety regulations is slowly eroding at both the federal (regulatory and statutory) and state levels (primarily through actions of legislative bodies, but sometimes through regulatory actions as well). This lack of uniformity created by the increasing number of exemptions creates confusion among roadside officers which leads to less than optimal oversight and enforcement and increases the risk for crashes and fatalities. Safety is not unique to certain types of commercial motor vehicles or carriers and FMCSA statistics show that most of the exempt categories have crash and fatality rates at least equal to, and in some cases higher than the trucking industry as a whole.

### BACKGROUND

#### *Interstate Operations*

In recent years an increasing number of business and industry groups have sought exemptions from various CMV safety regulations through the legislative route (i.e. 2005 Reauthorization Bill, SAFETEA-LU). These groups include agriculture, utility, movie producers, and grape growers just to name a few.

These groups have circumvented the standard federal regulatory process to obtain their exemptions even though those standards were strengthened in the previous highway reauthorization legislation, TEA-21, as specified in Section 31315 of Title 49 U.S. Code and would require them to prove that the exemption would provide a level of safety equivalent to, or greater than, the level achieved absent such an exemption. When lobbying Congress for interstate exemptions, or state legislatures for intra-state exemptions (see below), groups have often used incomplete and in some cases biased information. Very few, if any, have argued their positions based on safety and performance data. To compound this issue, states have had difficulty combating this problem since they are limited in terms of how they can legally provide counterarguments.

#### *Intrastate Operations*

Another aspect of the issue at the state level are exemptions for intra-state operations that are inconsistent or incompatible with federal inter-state standards. When state statutory exemptions are obtained, the new law must be reviewed by FMCSA to ensure it does not weaken the federal interstate standard. If it does, the state must work out a plan with FMCSA to amend the law bringing it into compliance with the federal standard within a



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specified period of time (not longer than three years). If the state does not cooperate in this effort, it stands to lose some portion of its motor carrier safety funding. As a part of the federal review process, FMCSA may take into consideration tolerance guidelines which would allow "limited" deviation from the rules. Also, a state may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April, 1988. They are still in effect, and apply to specific industries operating in intrastate commerce.

### **SOLUTION(S)**

All interstate exemptions whether obtained through the regulatory or legislative process in the past should be sunsetted on a date certain in the future with the requirement that they be re-applied for through the regulatory process specifically outlined in Section 31315 of the U.S. Code. Along with the criteria in Section 31315, FMCSA should, to the extent any exemptions are warranted, establish a standard base-line exemption that would be applied nationally with respect to the particular industry seeking the exemption. This would also require FMCSA to review their 1988 tolerance guidelines on intra-state exemptions and withdraw those no longer justified.

States should be encouraged to adopt a similar process with respect to intra-state exemptions. Finally, any state should have the right to adopt motor carrier safety standards that are more stringent than the federal standards for intrastate motor carriers. For example, Kansas has chosen not to adopt expanded exemptions provided to the agricultural industry in SAFETEA-LU. Likewise, California has chosen not to adopt the utility driver hours-of-service exemption as provided in SAFETEA-LU and should not be pre-empted from doing so.