



ISSUE #4

LACK OF UNIFORMITY IN REGULATIONS AFFECTING INTER AND INTRASTATE OPERATIONS

PROBLEM

Compounding the problem of increasing exemptions at the federal and state level is the lack of federal enforcement authority over intra-state carrier operations. Section 4114 of SAFETEA-LU was intended to some extent to mitigate this problem by providing that the safety fitness of a carrier operating in interstate commerce shall also be affected by the accident and safety records of the intra-state operations of that carrier. FMCSA reaffirmed this principle in its rulemaking issued July 5, 2007 to implement certain provisions of SAFETEA-LU. The efficacy of the changes promulgated by this action is not yet understood and the problem still exists.

There are several basic concerns that hamper compliance and enforcement activities related to this issue. The most notable are the fact that there are several different definitions of a commercial motor vehicle and a motor carrier. In addition, some states are assigning U.S. DOT numbers to their intrastate motor carriers, but not all.

Third, the majority of CMV fatalities occur in crashes where the CMV is 26,001 lbs. GVWR/GCWR or more. It is expected that FMCSA's Comprehensive Safety Analysis (CSA) 2010 activities will recommend that the applicability of federal motor carrier safety regulations be altered somewhat from the existing 10,001 lbs. and above limitation. However, crashes do occur in the 10,001-26,000 lb. category and many of the CMVs operating intra-state commerce are less than 26,001 lbs GVWR/GCWR.

BACKGROUND

For a number of years, many safety professionals have agreed that there should be uniformity in the safety regulations that apply to a commercial motor vehicle's operation for both inter and intrastate operations – a truck is a truck is a truck. Where a CMV operates or the origin/destination of the freight is immaterial to how it should be done to ensure for its safe operation.

The reality of the situation is that while we have a reasonable level of uniformity in regulations and enforcement authorities between inter and intrastate motor carrier operations, it is by no means where it needs to be. Additionally, in practice, the matter of taking enforcement actions against intra-state operations remains problematic. FMCSA maintains it does not have enforcement authority over intra-state operations (with the exception of HM operations). FMCSA can cite an intra-state carrier but not prosecute. And states do not get credit for enforcement actions such as a compliance review when done on an intrastate carrier. As an example – data from California's BIT is not accounted for in FMCSA's safety performance statistics. Yet accident and safety



CVSA DOT Reauthorization Policy Issues



inspection records of an intra-state operation may be used by FMCSA to determine an inter-state carrier's safety fitness rating.

To further compound this issue is the fact that each state has various processes (and time frames) by which they adopt regulatory changes at the state level when changes are made at the federal level.

The result of this lack of uniformity both in process and substance creates many difficulties both in terms of enforcement and industry compliance.

The CSA 2010 recommendation to increase the weight limitation on safety regulation applicability is based on the premise that an increased targeting of enforcement resources to the heavier trucks will save more lives.

2005 Large Trucks in Crashes by Gross Vehicle Weight Rating

Gross Vehicle Weight Rating	Fatal		Injury		Towaway	
	Count	Percentage	Count	Percentage	Count	Percentage
<= 10,000 lbs	0	0.0%	784	1.3%	985	1.2%
10,001 - 28,000 lbs	518	10.5%	7628	12.5%	10506	13.2%
> 28,001 lbs	4384	88.9%	35125	57.7%	48511	61.1%
Missing	0	0.0%	17311	28.5%	19338	24.4%
Unknown	30	0.8%				
Total	4,932	100.0%	60,828	100.0%	79,340	100.0%

Fatal Source: FARS Injury Source: MCMIS Towaway Source: MCMIS

Canada is also in the process of studying this issue and adjusting their regulatory and enforcement regime if deemed necessary.

Compounding and adding confusion to this problem are the varying weight thresholds among the states for various types of operations (i.e. farm equipment, wholly intra-state), as well as the weight differing threshold requirements between Commercial Drivers License (CDL) holders and FMCSR applicability.

SOLUTION(S)

There needs to be clear statutory authority provided to both FMCSA personnel and their designated agents (i.e. states) that regardless of what agency they work for, as long as they meet the proper certification criteria they are able to conduct FMCSR and HMR compliance assessments and can take enforcement actions (to include the assessment of federal level sanctions) on both inter and intrastate motor carriers, regardless of whether the infraction(s) occurred on an inter or intrastate trip. Due process provisions/parameters would need to be compatible at both the state and federal levels. The optimal solution is to do away with the inter and intra-state distinction at least with respect to those carriers who operate both inter and intra-state.



CVSA DOT Reauthorization Policy Issues



There needs to be consistency in the definitions of CMVs and motor carriers who are subject to the FMCSR and HMR, as well as what vehicle(s) are subject to the collection of crash data – it should be the same as those which are subject to the FMCSR and HMR.

Each state participating in the MCSAP should be required (either they themselves or through the federal system) to issue DOT numbers for their intrastate motor carriers. The “U.S.” designation prior to “DOT” should be removed. This is to help in the collection, assessment and reciprocal use of data on all motor carriers, as well as compliance and enforcement actions on these carriers and minimize “chameleon carriers” slipping through the cracks. This action will also help in the evaluation of various exemptions and regulatory tolerances in some states.

States, with assistance from FMCSA, should put in place a program to track the safety performance of the “non-conforming” carriers (i.e. those who are subject to different requirements than the FMCSRs), whether they are inter or intrastate. This will enable them and FMCSA to periodically review whether or not the regulatory incompatibility should be permitted to continue. FMCSA needs to clearly articulate to states what is expected of them in terms of tolerance guidelines and what sanction(s) can be levied in the event states are outside the guidelines.

Consideration might also be given to an overall size and weight policy in terms of supporting increased size and weights and/or truck only lanes that would be coupled with a higher level of applicable safety and performance standards and benchmarks.

A related issue is that safety regulations are rarely removed. The “book” continues to get larger, and as a result its understanding and enforcement often gets more challenging. A number of years ago, the now FMCSA embarked on its “Zero Base” rulemaking effort which attempted to review every regulation with an eye towards removing those that were obsolete and/or ineffectual on safety. With regards to the federal regulatory framework, a process review needs to be codified in statute that the FMCSA (or its siblings should it ever change) as a part of its normal course of duties review a certain percentage of the FMCSRs each year to measure its impact on safety and if needed, modify, remove or enhance them. Ohio already has a mandatory five-year rule review process in which every state agency must review each of its administrative rules every five years to ensure that they are still necessary. A similar provision that seeks to review all of the rules during a five-year cycle, 20% each year would not be unreasonable.