

We received a mailing from the Oregon Department of Transportation encouraging us to support their request for a temporary, renewable exemption from the FMCSRs under the provisions of 49 CFR 381.310.

After reviewing the information associated with this matter the following comments are provided on behalf of the Indiana State Police Commercial Vehicle Enforcement Division. In summary, we would not object to a temporary exemption allowing Oregon the opportunity to continue to obtain legislative remedy for their current incompatibility; however, we do not believe renewable temporary exemptions would provide for the uniformity and compatibility that now exist in the MCSAP related programs.

We agree with Oregon's claim concerning the small percentage of commercial motor vehicle (CMV) crashes attributable to mechanical problems. It is our contention that greater safety benefits can be gleaned from a reevaluation of the current safety inspection process to permit critical items to be consistently applied to those items with a corresponding higher percentage of crashes. If crash data clearly reveals a mechanical defect has a minimal effect on crash causation, the inspection process should mirror such data. Rather than granting exemptions to selected members of the industry, we would favor a reevaluation of the inspection process to make it more compatible with safety data.

If Oregon permits their farm commercial vehicles to be exempt from Parts 393 and 396, how will this affect the safety fitness protocol now embedded in a variety of algorithms presently used to compute CMV safety? It would likely create a climate whereby existing safety fitness determinations would be disproportionately calculated. For example, if carrier A is granted exemptions from regulations that limit its violations/out-of-service rates and carrier B is not granted such exemptions, carrier B will more likely be exposed to greater regulatory oversight and potential sanctions.

In Oregon's comments in its application to FMCSA for the exemption, local legislators and residents claimed the burden of hauling products, considered to be interstate commerce, meant they were often not covered by the laws exempting them from "interstate movement". Since much of their movement would be a continuing move to other points, thereby constituting an interstate movement, they believe this is further justification to exempt interstate carriers from all of Parts 393 and 396. This is potentially disconcerting logic with implications for all states now enforcing a plethora of regulations based on the interpretation of what constitutes an interstate movement of goods.

While this subject is potentially far-reaching, consideration should be given to studying and evaluating the antiquated rules that have governed interstate movements since the birth of our country's transportation system. The US Congress significantly reduced the impact of Interstate Commerce Commission (ICC) rules when it eliminated that body. Nevertheless, many of the legal interpretations, opinions and regulatory guidance remains that affects states' enforcement of the FMCSRS and HMRs.

The emergence of our current global economy and transportation system is far different than what this country experienced in the 1930's when the ICC was governing the movement of goods and services. Perhaps a long-range review of the value of classifying intrastate and interstate movement of goods is worthy of consideration. Since the regulatory scheme is clearly on safety, then why is it important to differentiate between interstate and intrastate movements?

The implications of such an analysis pose constitutional issues of states' rights to regulate movements of goods/services within their borders. Some states are experiencing intrastate carrier crash rates which are higher than interstate carriers. In most cases, states do not have the resources in place to establish a framework to adequately address this problem. At a recent FMCSA meeting of all states participating in MCSAP, many of the attendees were discussing the importance of implementing and receiving MCSAP funding for intrastate safety programs. Clearly, states see safety with less of a distinction between crash rates involving intrastate and interstate carriers as the current MCSAP funding permits. In other words, commercial vehicles and carriers should be treated consistently whether intrastate or interstate if safety is truly to be improved. Unfortunately, the current laws do not permit this to occur, due in part to the legal framework in place defining and governing intrastate and interstate movements.

In summary, we certainly understand the implications for Oregon if they do not receive legislative remedy or renewable exemptions from the DOT. It would be a mistake to allow states to be exempt from the existing compatibility guidelines. We believe to do so would open the door for numerous other special interests to apply pressure in states creating the potential for erosion of the safety agenda in this country.