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January 31, 2011

The Honorable Frank R. Lautenberg
United States Senate

Subject: *Legislative Exemptions from Safety Requirements Administered by
the Federal Motor Carrier Safety Administration*

Dear Senator Lautenberg:

This responds to the request by the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security, Committee on Commerce, Science, and Transportation, for identification of legislative exemptions from motor carrier safety laws administered by the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA). As stated in the request, the Subcommittee is examining whether motor carrier safety exemptions should be granted through the regulatory process rather than through legislation, and understanding the scope of the current legislative exemptions is a first step in that process. To date, a number of the statutory safety exemptions have been incorporated by FMCSA into its regulations.

As agreed with your staff, this correspondence summarizes legislative-based exemptions currently in effect. We have included both exemptions mandated by statute and exemptions that Congress has authorized FMCSA to implement at its discretion. In addition, we have included exemptions from provisions that pertain to safety both directly and indirectly, that is, exemptions both from traditional safety requirements (such as maximum hours of service) and from those with a significant safety-related purpose (such as the financial responsibility requirements). Consistent with the focus of the request, however, we have not included as "exemptions" provisions removing or

restricting FMCSA's threshold jurisdiction over particular activities or entities.¹

We conducted this review from December 2010 to January 2011. Our research methodology included a review of relevant provisions of Title 49 of the United States Code (pertaining to Transportation) and appropriations laws dating back to 1957, as well as a review of selected legislative history and relevant legal literature. Similar to GAO's regular practice in preparing legal opinions, we obtained FMCSA's legal views on the scope and content of legislative exemptions from its safety-related regulation of motor carriers.

We identified 20 current legislative-based exemptions from motor carrier safety laws administered by FMCSA, addressing a range of activities and entities. These exemptions are summarized below in their current form with citation to the original enacting legislation; a number of the exemptions have been amended to their current form by subsequent legislation, most recently in 2010. The earliest of the exemptions still in force was originally enacted in 1980, while the latest exemption still in force was originally enacted in 2005.

The current exemptions within the scope of the above criteria are as follows:

49 U.S.C. § 31138 (minimum financial responsibility for transporting passengers)²

Exemption: Motor carriers carrying passengers are generally required to maintain minimum levels of financial responsibility (*e.g.*, through insurance or surety bond) specified by the Secretary of Transportation, sufficient to satisfy liability amounts set by the Secretary. However, this financial responsibility requirement does not apply to carriers transporting only children or teachers to or from school; providing taxicab service; carrying no more than 15 individuals in a single daily round trip to and from work; or providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant

¹ For example, for purposes of this review, we did not include as "exemptions" from FMCSA's motor carrier safety requirements provisions such as 49 U.S.C. § 13506 (generally removing transportation service providers in 18 different categories from DOT and Surface Transportation Board jurisdiction under 49 U.S.C. subtitle IV, part B) or 49 U.S.C. § 21104(e) (granting exclusive jurisdiction to the Federal Railroad Administration, over FMCSA and all other federal authorities, to regulate service hours, duty hours, and rest periods of signal equipment employees operating motor vehicles).

² The legislative history of this provision indicates its purpose was largely to increase motor carrier safety. *See, e.g.*, S. REP. NO. 97-411, at 29 (1982) ("The purpose of this provision is to create additional incentives to carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility. The Committee feels strongly that the establishment of minimum levels of financial responsibility to enhance safety is a goal important enough to warrant congressional action").

under sections 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.

Original Legislation: Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, § 18, 96 Stat. 1102, 1120 (1982).

49 U.S.C. § 31139 (minimum financial responsibility for transporting property)³

(1) Exemption: Motor carriers carrying property are generally required to maintain minimum levels of financial responsibility (*e.g.* through insurance or surety bond), as specified by the Secretary (with a statutory minimum), sufficient to satisfy liability amounts set by the Secretary. However, the financial responsibility requirement does not apply to vehicles with a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport, in interstate or foreign commerce: (a) class A or B explosives; (b) poisonous gas; or (c) a large quantity of radioactive material.

(2) Exemption: Motor carriers carrying hazardous material, oil or hazardous substances, or hazardous wastes are generally required to maintain minimum levels of financial responsibility, as specified by the Secretary (with a statutory minimum), sufficient to satisfy liability amounts set by the Secretary. However, at the discretion of the Secretary, the Secretary may lower the statutory minimum financial responsibility amount to a lower statutory minimum amount for transportation in the U.S. Territories of Puerto Rico, the Virgin Islands, American Samoa, Guam and the Northern Mariana Islands if certain conditions are met. Also at the discretion of the Secretary, if the Secretary finds that it will not adversely affect public safety, he may by regulation reduce the statutory minimum amount for (a) a class of vehicles transporting certain hazardous material, oil or substances in intrastate

³ The legislative history of this provision, like the previous financial responsibility provision, indicates that a primary purpose was to increase safety. *See, e.g.*, H.R. Rep. No. 96-1069, at 4, 8-9 (1980) (“Some committee members fear that increased safety problems will result from the expanded entry provided in this legislation. . . . That concern as well as concern about safety under the present system is reflected in the bill’s inclusion of minimum insurance coverage for operators as part of the fit, willing and able requirement. . . . [T]he committee decided that minimum insurance levels should be set to assure that public safety is not jeopardized. . . . The issue of financial responsibility was dealt with here because it is inextricably bound to the entry provisions of the legislation that directly concern the ‘fitness’ of a carrier to operate in interstate commerce.”); *id.* at 42 (“[T]he action of the Committee in increasing financial responsibility is to encourage the carriers to engage in practices and procedures that will enhance the safety of their equipment so as to afford the best protection to the public.”).

commerce except in bulk and (b) farm vehicles transporting such material or substance in interstate commerce except in bulk.

Original Legislation: Motor Carrier Act of 1980, Pub. L. No. 96-296, § 30, 94 Stat. 793, 820-21 (1980).

49 U.S.C. § 31144(c) (safety fitness of commercial motor vehicle owners and operators)

Exemption: The Secretary is required to determine whether an owner or operator is fit to safely operate commercial motor vehicles and is required to create a regulatory procedure by which to make such safety fitness determinations. In general, an owner or operator determined to be unfit is prohibited from operating starting on the 61st day after the determination (with shorter periods for carriers of passengers and hazardous material). However, at the discretion of the Secretary, the Secretary may allow carriers other than those carrying passengers and hazardous material to operate for an additional 60 days after a non-fitness determination if the Secretary determines the carrier is making a good faith effort to become fit.

Original Legislation: Transportation Equity Act for the 21st Century (“TEA-21”), Pub. L. No. 105-178, § 4009, 112 Stat. 107, 405-06 (1998).

49 U.S.C. § 31136 (promulgation of commercial motor vehicle safety standards)

- **49 U.S.C. § 31136(e)**

(1) Exemption: The Secretary is required to promulgate minimum commercial motor vehicle safety standards under this section. The Secretary is also authorized, in his discretion, to grant time-limited waivers and exemptions from any regulations prescribed under this section in accordance with 49 U.S.C. § 31315 (requiring, among other things, a finding that waiver or exemption would be in the public interest and likely would achieve an equal or greater level of safety).

(2) Exemption: As explained below, although no longer contained in the U.S. Code, a mandatory waiver for school buses from the commercial motor vehicle safety standards remains in effect unless the Secretary determines the standards should apply for public safety reasons.⁴

⁴ School bus operations generally take place only in intrastate commerce, and therefore generally are regulated only by state and local governments. *See generally* 53 Fed. Reg. 18042 (May 19, 1988) (DOT implementation of original school bus waiver).

The Motor Carrier Safety Act of 1984, Pub. L. No. 98-554, § 206(f), originally codified at 49 U.S.C. App. § 2505(f), provided in part that “[u]nder this subsection, the Secretary *shall* waive application of the regulations issued under this section with respect to school buses, as defined in section 102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. § 1391(14)), unless the Secretary determines that making such regulations applicable to such school buses is necessary for public safety taking into account all Federal and State laws applicable to such school buses.” (emphasis added). DOT implemented the school bus waiver by 49 C.F.R. § 390.3(f)(1) on May 19, 1988 (53 Fed. Reg. 18042, 18052).

Section 206(f) was recodified as 49 U.S.C. § 31136(e) in 1994 by the Codification of Certain U.S. Transportation Laws, Pub. L. No. 103-272, 108 Stat. 745, 1003 (1994). In 1998, the reference to school buses was eliminated when section 31136(e) was amended to its present form by TEA-21 section 4007(c), Pub. L. No. 105-178, 112 Stat. 107, 403 (1998). However, the mandatory waiver and the Secretary’s authority to limit the waiver remain in effect because section 4007(d) of TEA-21 provides that “[t]he amendments made by this section shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the day before the date of enactment of this Act under chapter 313 or section 31136(e) of title 49, United States Code.” Pub. L. No. 105-178, 112 Stat. 107, 404 (1998).

A recent example involving the school bus waiver is FMCSA’s regulation prohibiting texting while driving, “Limiting the Use of Wireless Communication Devices,” 75 Fed. Reg. 59118 (Sept. 27, 2010). There, FMCSA made the requisite determination that the general ban on texting while driving should apply to school bus drivers, and so excepted bus drivers from the school bus waiver for this purpose. Otherwise, FMCSA noted, the school bus waiver remains in effect.

- **49 U.S.C. § 31136(f)**

Exemption: In addition to the authority provided to the Secretary under § 31136(e), summarized above, to grant time-limited waivers and exemptions from the commercial motor vehicle safety standards, § 31136(f) creates a statutory exemption from the safety standards for any person continuously authorized to operate a commercial motor vehicle in a municipality or commercial zone between Nov. 19, 1987 and Nov. 18, 1988, who is otherwise qualified to operate the commercial motor vehicle, provided the person operates the vehicle entirely in a municipality or commercial zone. The exemption applies notwithstanding certain other limitations including minimum age and medical/physical condition criteria.

Original Legislation: Truck and Bus Safety and Regulatory Reform Act of 1988, Pub. L. No. 100-690, § 9102, 102 Stat. 4181, 4528 (1988).

- **49 U.S.C. § 31136 Note**⁵

Exemption: The hours-of-service regulations⁶ prescribed by the Secretary under §§ 31136 and 31502 do not apply during planting and harvest seasons, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.

Original Legislation: National Highway System Designation Act, Pub. L. No. 104-59, § 345, 109 Stat. 568, 613 (1995).

- **49 U.S.C. § 31136 Note**

Exemption: The 34-hour restart provision in the hours of service regulations (49 C.F.R. § 395.3(c)) does not apply to drivers primarily in the transportation and operations of a groundwater well-drilling rig. Regulations prescribed by the Secretary shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a groundwater well-drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of any off-duty period of 24 or more successive hours. Except as required in 49 C.F.R. § 395.3 as in effect on August 10, 2005 (the date of enactment of this provision), no additional off-duty time shall be required in order to operate such vehicle.

Original Legislation: National Highway System Designation Act, Pub. L. No. 104-59, § 345, 109 Stat. 568, 613 (1995).

- **49 U.S.C. § 31136 Note**

Exemption: The 34-hour restart provision (discussed in the previous section) does not apply to transportation of construction materials. In the case of a driver of a commercial motor vehicle used primarily in the transportation of construction materials and equipment, regulations prescribed by the Secretary must permit that any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

⁵ Statutes enacted by Congress which are not part of the formal United States Code are included as “Notes” to the relevant U.S. Code section and carry the force and effect of law. *See, e.g., Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1251 (11th Cir. 2005), *citing Schwier v. Cox*, 340 F.3d 1284, 1288 (11th Cir. 2003).

⁶ Among other things, hours-of-service regulations specify the allowable number of duty hours during a standard work day and work week for interstate operators of commercial motor vehicles. 49 C.F.R. part 395.

Original Legislation: National Highway System Designation Act, Pub. L. No. 104-59, § 345, 109 Stat. 568, 613 (1995).

- **49 U.S.C. § 31136 Note**

Exemption: Drivers of utility service vehicles⁷ are exempt from certain regulations, interpreted by FMCSA to mean all hours-of-service regulations.⁸

Original Legislation: National Highway System Designation Act, Pub. L. No. 104-59, § 345, 109 Stat. 568, 613 (1995).

- **49 U.S.C. § 31136 Note**

Exemption: States are authorized to waive the requirements of Title 49, Chapter 313 (pertaining to commercial motor vehicle operating requirements) for purposes of snow and ice removal from a roadway (by plowing, salting, or sanding) by a vehicle being operated within the boundaries of an eligible unit of local government by an employee of such unit under certain circumstances.

Original Legislation: National Highway System Designation Act, Pub. L. No. 104-59, § 345, 109 Stat. 568, 613 (1995).

- **49 U.S.C. § 31136 Note**

Exemption: In a propane or pipeline emergency, drivers of commercial motor vehicles used primarily in the transportation of propane winter heating fuel or motor vehicles used to respond to a pipeline emergency are exempt from regulations prescribed under 49 U.S.C. §§ 31136 or 31502 (pertaining to commercial motor vehicle safety standards and requirements), provided such regulations would prevent the driver from responding to an emergency condition requiring immediate response.

⁷ In general, a utility service vehicle is a commercial vehicle involved in the repair, maintenance, or operation of structures delivering public utility services such as electric, gas, water, sanitary sewer, telephone, and television cable or community antenna services. 49 U.S.C. § 31136 Note.

⁸ In the original legislation, the National Highway System Designation Act, utility service vehicles were exempt only from the 34-hour restart provision in the hours-of-service regulations. This provision was amended in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (“SAFETEA-LU”) to its current form: “[s]uch regulations do not apply to drivers of utility service vehicles.” The phrase “such regulations” does not refer to a specific regulation set forth in current law, however; FMCSA interprets the phrase to refer to all hours-of-service regulations, an interpretation it indicates is commonly accepted in the motor carrier industry.

Original Legislation: Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (“SAFETEA-LU”), Pub. L. No. 109-59, § 4147, 119 Stat. 1144, 1749 (2005).

- **49 U.S.C. § 31136 Note**

Exemption: Transportation to movie production sites is exempt from the maximum-daily-hours-of-service restrictions. The exemption provides that notwithstanding 49 U.S.C. §§ 31136, 31502, or any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle transporting property or passengers to or from a theatrical or television motion picture production site located within a 100-air mile radius of the work reporting location of such operator shall be those in effect under the regulations in force under such sections on April 27, 2003 (the extendable 15-hour driving window in effect before 2003, rather than the non-extendable 14-hour window).

Original Legislation: SAFETEA-LU, Pub. L. No. 109-59, § 4133, 119 Stat. 1144, 1744 (2005).

49 U.S.C. § 31305(b) (general driver fitness and testing requirements)

Exemption: Authorizes the Secretary, in his discretion, to prescribe regulations exempting individuals from commercial vehicle operation administrative requirements for up to 90 days under certain conditions, *e.g.*, passing driving test, having valid driver’s license.

Original Legislation: Commercial Motor Vehicle Safety Act of 1986, Pub. L. No. 99-570, § 12005, 100 Stat. 3207-170, 3207-172, 3207-173 (1986).

- **49 U.S.C. § 31305 Note**

Exemption: This provision in effect created a legislative exemption, by directing the Secretary to revise FMCSA’s September 3, 2003 final rule (which had restricted diabetics from operating commercial motor carrier vehicles) to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles under fewer restrictions. The Secretary was directed that the final rule must provide for in the individual assessment of applicants who use insulin and who are, except for their insulin use, otherwise qualified under the federal motor carrier safety regulations.

Furthermore, the Secretary may not predicate an exemption on a requirement that individuals with insulin-treated diabetes mellitus who are applying for a physical qualification exemption have experience operating commercial motor vehicles.

Original Legislation: SAFETEA-LU, Pub. L. No. 109-59, § 4129, 119 Stat. 1144, 1742-43 (2005).

49 U.S.C. § 31310(c)(2) (disqualifications for commercial motor vehicle operators)

Exemption: Authorizes the Secretary, in his discretion, to promulgate regulations detailing guidelines under which disqualification from operating a commercial motor vehicle for life for committing certain offenses listed (*e.g.*, driving under the influence) may be reduced to a period of not less than 10 years.

Original Legislation: Commercial Motor Vehicle Safety Act of 1986, Pub. L. No. 99-570, § 12008(a)(2)(B), 100 Stat. 3207-170, 3207-178 (1986).

49 U.S.C. § 31315(b) (waivers, exemptions, and pilot programs)

Exemption: Authorizes the Secretary, in his discretion, to grant certain waivers and exemptions, under certain circumstances, from the commercial motor vehicle operator requirements under chapter 49 U.S.C. §§ 31301 *et seq.* or 49 U.S.C. § 31136 to individuals or classes of individuals if the exemption or waiver will likely achieve an equal or greater level of safety.

Original Legislation: TEA-21, Pub. L. No. 105-178, § 4007, 112 Stat. 107, 401 (1998).

49 U.S.C. § 31502(e) (service utility driver qualifications, hours of service, safety, and equipment standards)

Exemption: Drivers of service utility vehicles during an emergency period of up to 30 days declared by an elected State or local government official in the area covered by the declaration are exempt from certain regulations issued under 49 U.S.C. § 31136 (*e.g.*, hours of service, installation of recording devices).⁹

Original Legislation: TEA-21, Pub. L. No. 105-178, § 4012, 112 Stat. 107, 408 (1998).

⁹ The exemption in 49 U.S.C. § 31502(e) may not be construed “(A) to exempt any utility service vehicle from compliance with any applicable provision of law relating to vehicle mechanical safety, maintenance requirements, or inspections; or (B) to exempt any driver of a utility service vehicle from any applicable provision of law (including any regulation) established for the issuance, maintenance, or periodic renewal of a commercial driver’s license for that driver.” 49 U.S.C. § 31502 Note.

49 U.S.C. § 31504(a)(1) (identification of motor vehicles)

Exemption: Motor contract carriers are exempted from displaying an identification plate on a motor vehicle should the Secretary exercise his/her discretion provided in this section to issue and require such a display by certain transportation providers.

Original Legislation: Pub. L. No. 97-449, § 3104, 96 Stat. 2413, 2439 (1983).

* * *

If there are questions concerning these matters, please contact me at SawtelleS@gao.gov or 202-512-6417. Assistant General Counsel Hannah R. Laufé and Senior Staff Attorney Lauren E. Calhoun made key contributions to this review.

Sincerely yours,



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