

improving safety, States have the flexibility and discretion to determine the level of enforcement warranted for a given segment of the motor carrier population operating in the State. The State would identify its planned activities in its annual Commercial Vehicle Safety Plan (CVSP) that must be submitted to the FMCSA. Therefore, ODOT would submit its CVSP identifying CMV enforcement activities, based on ODOT's analysis of safety data. The FMCSA would then review the plan to ensure compliance with the requirements of 49 CFR part 350.

The DOT is committed to working with ODOT to ensure compliance with the MCSAP requirements. This action does not take exception to ODOT's CVSP, but to the State's failure to rescind an incompatible statute applicable to CMVs operating in interstate commerce. Therefore, adopting compatible laws and regulations should not be considered a Federal mandate to include an expanded enforcement program for motor carriers certified by and registered with ODOT as farmers. Requiring compatible laws and regulations does not negate the State's flexibility in managing its enforcement program. The DOT will continue to work with ODOT officials to achieve full compliance with 49 CFR part 350.

With regard to the comments from Advocates, the Department agrees that exemptions must not be used to evade compliance with part 350. However, the Department does not consider ODOT's request to represent such an effort. ODOT presented an application in which the State proposed that its requirements, while significantly less specific than the applicable Federal rules, would achieve the requisite level of safety. After reviewing the public comments and the application for exemptions, the DOT concluded—as did Advocates—that there is insufficient information to support such a determination, and that the Department must therefore deny the application. The fact that the application had shortcomings should not be construed as an attempt by ODOT to evade compliance with the MCSAP requirements.

In response to Advocates comment about procedural requirements concerning exemptions applications, and the impact the exemptions would have on ODOT's MCSAP eligibility, the DOT disagrees. Neither the statutes authorizing the granting of exemptions (49 U.S.C. 31315 and 31136(e)), nor the implementing regulations under 49 CFR part 381 explicitly prohibit a State or other entity from submitting

applications for exemptions on behalf of motor carriers subject to the FMCSRs. Although it is unusual for a non-motor carrier entity to submit such a request, it is not prohibited and it is not unique. Exemptions have been granted in the past concerning fuel tank fill rates and certification markings on fuel tanks in response to applications from Ford Motor Company and General Motors Corporation submitted on behalf of motor carriers operating vehicles manufactured by those companies.¹

In regard to MCSAP eligibility, the granting of the exemptions would only temporarily, and indirectly, resolve ODOT's incompatible regulation. Exemptions granted pursuant to 49 U.S.C. 31315 or 31136(e) preempt incompatible State rules. During the time period that exemptions are in effect, States are prohibited from enforcing any law or regulation that conflicts with or is inconsistent with the exemptions with respect to a person operating under the exemptions. This means that if the exemptions from 49 CFR parts 393 and 396 had been granted for motor carriers certified by and registered with ODOT as farmers, without limiting the applicability of the exemptions to interstate motor carrier operations within the State boundaries of Oregon, *all* States would have been prohibited from enforcing parts 393 and 396 against farm-plated vehicles from Oregon that traveled through their jurisdiction. The only vehicle-related safety requirements would have been provided through the terms and conditions of the exemptions itself rather than the current safety regulations applicable to other motor carriers operating CMVs in interstate commerce. Given that the exemptions would have automatically preempted any Oregon laws or regulations that were incompatible with its own terms, it is difficult to see how the exemption application could be granted and still withhold Oregon's MCSAP funds as punishment for failure to adopt parts 393 and 396, which ODOT would be prohibited from enforcing during the period of the exemptions. Furthermore, if there were sufficient information to

support granting the exemptions, the State would have been considered to have effectively demonstrated that the terms and conditions of the exemptions ensure a level of safety equivalent to or greater than the level of safety obtained by compliance with parts 393 and 396, which would suggest that the State requirements, while significantly less specific than the Federal requirements, are indeed compatible in terms of safety outcomes, and would therefore satisfy MCSAP requirements.

DOT Decision

In consideration of the comments submitted in response to the agency's December 26, 2002, notice and for the reasons stated above, the Secretary denies ODOT's application for exemptions from the requirements of 49 CFR parts 393 and 396, on behalf of motor carriers certified by and registered with ODOT as farmers. The exemption application does not demonstrate that the exemptions would achieve a level of safety equivalent to or greater than the level of safety that would be achieved by complying with the Federal regulations. The State of Oregon must adopt State laws or regulations compatible with 49 CFR parts 393 and 396, applicable to motor carriers certified by and registered with ODOT as farmers, that are operating in interstate commerce, in a timely manner, to fulfill its obligations under 49 CFR part 350. The DOT will work with ODOT to ensure to the greatest extent practicable, the continued funding of their CVSP while compatible laws or regulations are being developed.

Issued on: April 30, 2003.

Norman Y. Mineta,

Secretary of Transportation.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2003-22]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain

¹ On March 27, 2002, an exemption renewal was granted to the Ford Motor Company (Ford) (67 FR 14765) and General Motors Corporation (GM) (67 FR 14764) submitted on behalf of motor carriers operating certain vehicles built by these manufacturers. These exemptions enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford and GM which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria.