

% MVO fatalities age 0-4 unrestrained  
 Emergency Medical Services  
 Time of crash to hospital treatment (60 min or less)  
 Time of crash to response time (arrival at crash site)  
 Motorcycle Safety  
 % motorcyclists helmeted (restraint survey)  
 % motorcycle fatalities helmeted (60%)  
 % motorcycle injuries helmeted  
 % motorcycle fatalities with properly licensed drivers (41%)  
 % motorcycle fatalities alcohol-involved (51%)  
 % motorcycle injuries alcohol-involved  
 Number of fatal or serious head injuries  
 Pedestrian Safety  
 Number/% urban predestrain fatalities at intersections or crossings (35%)  
 Number/% alcohol-impaired pedestrian fatalities 16 yrs and older (36%)  
 Number/% total fatalities or serious injuries that are pedestrian in given jurisdiction  
 Number/% urban pedestrian injuries  
 Number/% rural pedestrian injuries  
 Bicycle Safety  
 % pedacycle fatalities helmeted (no national norm)  
 % pedacycle fatalities ages 26-39 alcohol-impaired (26%)  
 Speed  
 % fatal crashes with speed as a contributing factor (31%)  
 Number of speed-related fatalities / fatal crashes  
 Monitoring changes in average speeds overall and on specific types of roadways (interstate, other 55-60 mph roads)  
 Youth  
 (National performance measures from above plus:)  
 % drivers ages 15-20 in fatal crashes with BACs >.01 (40%)  
 % drivers ages 15-20 injured in crashes with BACs >.01  
 Total fatalities per 100K involving registered drivers, ages 15-20  
 Total fatalities per 100 million VMT for youth, ages 15-20  
 Total injuries per 100K registered drivers, ages 15-20  
 Total injuries per 100 million VMT for youth, ages 15-20  
 % MVO fatalities, ages 15-20, restrained (35%)  
 Police Traffic Services  
 (See subject categories)  
 Roadway Safety  
 Work zone fatalities  
 Work zone injuries (included M.V. occupants, peds, & work personnel)  
 Number of Highway-railroad grade crossing crashes—number of injuries or fatalities  
 Number of flaggers injured or killed  
 Number of workers injured or killed  
 Traffic Records  
 Number of personnel trained in record collection, data input, and data analysis  
 Number of high accident locations identified and improved

Unknown % for occupant protection fatalities (10%)  
 Unknown/untested % for fatal driver BAC (30%)  
 Unknown % of time of crash to hospital arrival (50%)  
 Entering data within a specific time  
 Linking data systems  
 Injury Prevention Goals  
 (See subject categories)  
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**[FHWA Docket No. MC-94-14]**

**State Commercial Motor Vehicle Safety Law Affecting Interstate Commerce; Notice of Preemption Determination**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of determination of preemption of State of Mississippi commercial motor vehicle safety law.

**SUMMARY:** The FHWA has reviewed a State of Mississippi commercial motor vehicle safety law and determined that it is incompatible with Federal regulations. This review is required by the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832). The FHWA has determined that the State law is preempted by Federal law and may not be in effect and enforced with respect to commercial motor vehicles in interstate commerce.

**EFFECTIVE DATE:** This preemption determination is effective September 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Taylor, Office of Motor Carriers, HFO-30, (202) 366-9579; or Mr. David Sett, Office of the Chief Counsel, HCC-20, (202) 366-0834; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Under the United States Constitution, the Congress is granted the power to regulate interstate commerce. In the Motor Carrier Safety Act of 1984 (the Act), the Congress authorized the Secretary of Transportation to issue regulations pertaining to the safety of commercial motor vehicles in interstate commerce. 49 U.S.C. 31136. The Congress did not choose to wholly occupy the field, however, and States are not precluded from such regulation insofar as the State laws are compatible with and have the same effect as Federal regulations.

State laws which are incompatible with and do not have the same effect as Federal regulations may not be in effect and enforced with respect to

commercial motor vehicles in interstate commerce and are subject to Federal preemption. The Act directs the Secretary of Transportation to conduct rulemaking proceedings to determine whether State laws may be preempted. The proceedings may be pursuant to the Secretary's own initiative or the petition of any interested person. 49 U.S.C. 31141.

The Commercial Motor Vehicle Safety Regulatory Review Panel, which was established by the Act to analyze State commercial motor vehicle safety laws and regulations, notified the FHWA in its final report in August 1990 that a State of Mississippi law was incompatible with Federal regulations. The law in question exempts vehicles engaged in certain industries, such as lumber and gravel hauling and farming, from compliance with State motor carrier safety laws and regulations.

On July 15, 1994, the FHWA initiated a rulemaking proceeding to review the State of Mississippi law. 59 FR 36252. All interested persons were invited to submit comments to the rulemaking docket. The only comment received was from the Advocates for Highway Safety, which agreed with the preliminary determination of preemption on the grounds that the exemptions in the State of Mississippi law are not provided in Federal regulations.

The specific provisions which were reviewed, and preliminarily found to be preempted as they apply to interstate commerce, are found in Section 77-7-16(3)(g)-(i), Mississippi Code of 1972. Subsection (3) exempts certain vehicles and operations from the provision in the Code requiring the State Public Service Commission to "promulgate as its own and enforce the rules, regulations, requirements and classifications of the United States Department of transportation or any successor federal agency charged with regulation of motor vehicle safety." Included in the exemption are:

(g) Motor vehicles owned and operated by any farmer who:

(i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;

(ii) Is not using the vehicle to transport hazardous materials of a type and quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and

(iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.

(h) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(i) Motor vehicles engaged exclusively in hauling gravel or other unmanufactured road building materials.

The Federal Motor Carrier Safety Regulations (FMCSRs) do not contain compatible exemptions. Generally, the FMCSRs do not allow industry-based exemptions. State laws which provide such exemptions for vehicles in interstate commerce are deemed less stringent than the FMCSRs.

Drivers of farm vehicles, such as defined in paragraph (g) of the Mississippi Code, do have limited (49 CFR 391.67, articulated vehicles) and full (49 CFR 391.2(c), nonarticulated vehicles) exemptions from driver qualification requirements of Part 391 of the FMCSRs. Unlike the Mississippi Code, however, the FMCSRs do not exempt farm vehicles or their drivers from any other motor carrier safety requirements. Paragraph (g) is, therefore, determined to be preempted insofar as it provides exemptions for farm vehicles not found in the FMCSRs.

The exemptions in paragraphs (h) and (i) for gravel and log haulers have no parallels in the FMCSRs. Each of these provisions in the Mississippi Code are therefore incompatible with the FMCSRs and are determined to be preempted.

Insofar as these exemptions affect vehicles in interstate commerce, they are contrary to the guideline for regulatory review in 49 CFR Part 355, app. A, which provides that the "requirements must apply to all segments of the motor carrier industry." Because the exemptions are less stringent than Federal regulations, the State law is preempted and shall not be in effect and enforced by the State of Mississippi with respect to commercial motor vehicles in interstate commerce. 49 U.S.C. 31141.

Any person, including the State of Mississippi, may petition the FHWA for a waiver from a preemption determination. 49 U.S.C. 31141(d). A petitioner is afforded the opportunity for a hearing on the record. A waiver may be granted if it is demonstrated that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

Any person adversely affected by this determination may also file a petition for judicial review of the determination in the United States Court of Appeals.

It should be reemphasized that this preemption determination is applicable

only to certain State of Mississippi commercial motor vehicle safety laws insofar as they apply to vehicles in interstate commerce. State of Mississippi laws applicable only to vehicles in intrastate commerce are not subject to preemption, and, moreover, appear to be compatible for purposes of the Motor Carrier Safety Assistance Program because they fall within the Tolerance Guidelines. 49 CFR Part 350, app. C.

(49 U.S.C. 31141; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 31, 1995.

**Rodney E. Slater,**

*Federal Highway Administrator.*

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### National Highway Traffic Safety Administration

[Docket No. 95-53; Notice 2]

#### Cantab Motors, Ltd., Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards No. 208 and 214

Cantab Motors, Ltd., of Round Hill, Va., applied for a temporary exemption of two years from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, and for three years from Federal Motor Vehicle Safety Standard No. 214 *Side Impact Protection*. The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on July 14, 1995, and an opportunity afforded for comment (60 FR 36328).

The make and type of passenger car for which exemption was requested is the Morgan open car or convertible. Morgan Motor Company ("Morgan"), the British manufacturer of the Morgan, has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In the nine years it has been in business, the applicant has bought 35 incomplete Morgan cars from the British manufacturer, and imported them as motor vehicle equipment, completing manufacture by the addition of engine and fuel system components. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their fuel system components and engines, which are propane fueled. As the party completing manufacture of the vehicle, Cantab

certifies its conformance to all applicable Federal safety and bumper standards. The vehicle completed by Cantab in the U.S. is deemed sufficiently different from the one produced in Britain that NHTSA considers Cantab the manufacturer, not a converter, even though the brand names are the same.

Morgan itself produced 478 cars in 1994, while in the year preceding the filing of its petition in June 1995, the applicant produced 9 cars for sale in the United States. Since the granting of its original exemption in 1990, Cantab has invested \$38,244 in research and development related to compliance with Federal safety and emissions standards. The applicant has experienced a net loss in each of its last three fiscal (calendar) years, with a cumulative net loss for this period of \$92,594.

#### Application for Exemption From Standard No. 208

Cantab received NHTSA Exemption No. 90-3 from S4.1.2.1 and S4.1.2.2 of Standard No. 208, which expired May 1, 1993 (55 FR 21141). When this exemption was granted in 1990, the applicant had concluded that the most feasible way for it to conform to the automatic restraint requirements of Standard No. 208 was by means of an automatically deploying belt. In the period following the granting of the exemption, Morgan and the applicant created a mock-up of the Morgan passenger compartment with seat belt hardware and motor drive assemblies. In time, it was determined that the belt track was likely to deform, making it inoperable. The program was abandoned, and Morgan and Cantab embarked upon research leading to a dual airbag system.

According to the applicant, Morgan tried without success to obtain a suitable airbag system from Mazda, Jaguar, Rolls-Royce and Lotus. As a result, Morgan is now developing its own system for its cars, and "[a]s many as twelve different sensors, of both the impact and deceleration (sic) type, have been tested and the system currently utilizes a steering wheel from a Jaguar and the Land Rover Discovery steering column." Redesign of the passenger compartment is underway, involving knee bolstering, a supplementary seat belt system, anti-submarining devices, and the seats themselves. Morgan informed the applicant on May 2, 1995, that it had thus far completed 10 tests on the mechanical components involved "and are now carrying out a detailed assessment of air bag operating systems and columns before we will be in a position to undertake the full set of