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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–16170]

Grant of Application of Motive Power Industry Co., Ltd. for Temporary Exemption from Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Motive Power Industry Co., Ltd., (''Motive Power'') of Chang-Hwa Hsien, Taiwan, R.O.C., for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard (FMVSS) No. 123 *Motorcycle Controls and Displays.* Motive Power asserted that Acompliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. Sec. 30113(b)(3)(iv).

Given that NHTSA has provided the opportunity for public comment on a number of petitions by manufacturers of similar vehicles in the years 1998–2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues as those earlier petitions is not likely to result in any substantive submissions, and that we may proceed to a decision on this petition. See, *e.g.*, the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicant Needs a Temporary Exemption

Through its designated agent and United States Distributor, Cosmopolitan Motors Inc. of Hatboro, Pa., Motive Power has applied for an exemption for three models ''of scooter configuration,'' identified as the My BuBu 100: P100DA; My BuBu 125: PA125DA; and T-Rex 150: CP 150D. These motor vehicles are defined as ''motorcycles'' (49 CFR 571.3(b)) and must comply with all FMVSS that apply to motorcycles, including FMVSS No. 123.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of FMVSS No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Motive Power petitioned to use the left handlebar as the control for the rear brakes of three of its motorcycles whose engines produce more than 5 brake horsepower. It describes the vehicles as incorporating ''a typical step-through ''scooter'' floorboard platform without the conventional stationary frame mounted motorcycle foot pegs.'' This configuration does not incorporate ''and would not support a brake pedal, the pedal pivot, hydraulic components or cable linkage and stresses associated with a foot actuated rear brake control.'' Redesigning the scooters to comply with the rear brake control location requirement would destroy their appeal, in Motive Power's opinion, ''making them non-competitive in any market.'' Absent an exemption from FMVSS No. 123, therefore, Motive Power asserted that it will be unable to sell in the United States the scooter models named above.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles.

As required by statute, Motive Power has argued that the overall level of safety of the motorcycles covered by its petition is at least equal to that of a non-exempted motor vehicle for the following reasons. The three scooter models covered by the petition are equipped with automatic transmissions and have the rear brake control located on the left handlebar, ''as is typical for scooters extensively used throughout the world.'' According to Motive Power, the location of all controls is identifiable and accessible, and eliminating the left hand operated clutch lever, the left foot operated gearshift lever and the right foot operated rear brake control ''results in greatly simplified operation.''

In addition, Motive Power represented that these models meet the brake stopping distance requirements of FMVSS No. 122, Motorcycle Brake Systems, and enclosed copies of tests, which have been placed in the docket with the petition.

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety.

Motive Power argued that ''scooters like these are of significant and growing interest to the public,'' as evidenced by the number of exemption petitions NHTSA has received and granted for this type of vehicle.

NHTSA's Decision on the Application.

It is evident that, unless FMVSS No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, Motive Power will be unable to sell its motor scooters in the United States if it does not receive a temporary exemption from

the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of FMVSS No. 123 have an overall level of safety at least equal to that of nonexempted motorcycles.

In consideration of the foregoing, we hereby find that the petitioner has met its burden of persuasion that to require compliance with FMVSS No. 123 would prevent it from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore, Motive Power Industry Co., Ltd. is hereby granted NHTSA Temporary Exemption No. EX03–4 from the requirements of item 11,column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear brakes be operable through the right foot control. This exemption applies only to the following Motive Power models: My BuBu 100: P100DA; My BuBu 125: PA125DA; and T-Rex 150: CP 150D. The exemption will expire on August 1, 2005.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on September 17, 2003.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

[Docket No. RSPA–00–7092 (PD–22(R))]

New Mexico Requirements for the Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

Petitioner: Attorney General of New Mexico (New Mexico) on behalf of the New Mexico Regulation and Licensing Department, Construction Industries Division (CID), and the New Mexico Construction Industries Commission.

Local Laws Affected: New Mexico Statutes Annotated (NMSA), Chapter 70, Article 5 (LNG and CNG Act), and New Mexico Annotated Code (NMAC), Title 19, Chapter 15, Part 4 (LP Gas Standards).

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

Mode Affected: Highway.

SUMMARY: RSPA is modifying its September 20, 2002 determination with respect to the fees specified in New Mexico's LNG and CNG Act and LP Gas Standards for vehicle inspections, employee examinations, and identification cards. Based on additional information in New Mexico's petition for reconsideration about the collection and application of these fees, together with the prior finding that these fees appear to bear some approximation to the work involved in inspecting vehicles and administering examinations and issuing identification cards, RSPA finds that Federal hazardous material transportation law does not preempt: (1) NMAC 19.15.4.14.3(C), with respect to the fees charged for inspecting or reinspecting the cargo container and safety equipment on vehicles based within New Mexico that are used for the transportation of LP gas in bulk quantities, or (2) NMSA 70–5–7(C) and NMAC 19.15.4.15.12 through 19.15.4.15.14 with respect to the fees charged for administering examinations and issuing identification cards to motor vehicle drivers domiciled in New Mexico or non-drivers who dispense liquefied petroleum (LP) gas.

In all other respects, RSPA affirms its prior determination that Federal hazardous material transportation law preempts New Mexico's requirements in:

—NMAC 19.15.4.10.1 for an annual inspection of the cargo container and safety equipment on vehicles used for transportation of LP gas in bulk, as that requirement is applied to vehicles based outside New Mexico;

—NMSA 70–5–7(A) and NMAC 19.15.4.9.1 through 19.15.4.9.5 for examination of, and issuance of an identification card to each person who transports or delivers LP gas, as those requirements are applied to motor vehicle drivers domiciled outside of New Mexico; and

—NMAC 19.15.4.15.1 for payment of an annual license fee to ''wholesale, transport and/or deliver'' LP gas in vehicles (other than to an ultimate consumer).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In Preemption Determination (PD) No. 22(R), published in the **Federal Register** on September 20, 2002 (67 FR 59396), RSPA considered certain requirements in New Mexico's LPG and CNG Act and CID's implementing LP Gas Standards with respect to companies, their vehicles, and their employees that transport and deliver propane and other liquefied petroleum (LP) gases. These statutory and regulatory requirements, set forth in full in Part II of RSPA's determination (67 FR at 59397), govern:

Licensing: A company must pay an annual fee of $125 for each of its business locations within New Mexico in order to obtain a license to ''wholesale, transport and/or deliver [LP] gas in vehicular units into or out of any location except that of an ultimate consumer.'' NMAC 19.15.4.15.1. The LPG and CNG Act authorizes the CID's Liquefied and Petroleum Gas Bureau (LPG Bureau) to collect ''reasonable license fees,'' NMSA 70–5–9(A), and provides that ''[a]ll fees and money collected under the provisions of [that] Act * * * shall be * * * deposited in the general fund of the state.'' NMSA 70–5–10.

Vehicle inspections: The ''cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities'' must pass an annual safety inspection by the LPG Bureau. NMAC 19.15.4.10.1. The fee for the annual inspection (or a reinspection) is $37.50 per vehicle. NMAC 19.15.4.14.3(C).

Driver testing and identification: Any person who ''transports or dispenses LP gas'' must pass an ''appropriate examination.'' NMSA 70–5–7(A). The applicant must show that he or she is ''familiar with minimum safety standards and practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination.'' NMAC 19.15.4.9.1. An individual who passes the examination is issued an ''identification card,'' renewable annually, and valid only ''while employed by a licensee.'' NMAC 19.15.4.9.2–9.4. If an individual holding an identification card is not employed by a licensee for two years, the individual must take a new examination. NMAC 19.15.4.9.5. There is a fee of $25.00 for an examination (or a re-examination) and $10.00 for