

- A finding that there will not be an unreasonable burden on commerce and consideration whether there was agreement by any other affected State (49 CFR 397.71(b)(5)); and
- Consideration of other specific factors besides the existence of alternate routes and the burden on commerce, including population density, emergency response capabilities, continuity of routes, potential delays in transportation, and congestion and accident history (49 CFR 397.71(b)(9)).

Because it is clear that the Borough failed to meet these conditions and did not comply with FMCSA's standards in 49 CFR part 397, its limitation of vehicles carrying dangerous waste to Route 1 is preempted. Moreover, reconsideration of this determination is not warranted on the Borough's claim that DOT somehow failed to "substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to provisions and roads other than interstate highways."

The authority of Congress to regulate interstate and intrastate commerce is not limited to traffic on interstate highways, nor is the authority of DOT in 49 U.S.C. 5112(b) to "prescribe by regulation standards for States and Indian tribes to use" in establishing a highway routing limitation limited to the transportation of hazardous materials on interstate highways. Similarly, 49 U.S.C. 31114 limits the restrictions that a State may place on a carrier's "access" between interstate highways and terminals or other facilities, all of which are presumably not located on an interstate highway itself. Accordingly, this ground for reconsideration of the July 17, 2001 determination has no more basis than any of the other positions taken by the Borough in its petition.

D. Expansion of the Preemption Determination

In its comment on the Borough's petition for reconsideration, Med/Waste asked RSPA and FMCSA "to consider complete preemption of the entire Ordinance 902." RSPA and FMCSA decline to expand or extend the scope of their July 17, 2001 determination for the same reason that they previously declined to determine whether specific provisions not originally challenged in Med/Waste's application are preempted—because the notice inviting public comment on that application "did not clearly indicate that RSPA and FMCSA would consider these other requirements." 66 FR at 37265. Nonetheless, it would seem that the Borough would be precluded from

enforcing any provision in Ordinance No. 902 that applies to "infectious waste," "hospital waste," or "dangerous waste," because the definitions of these terms are preempted and the use of the term "dangerous waste" throughout the Ordinance is also preempted.

III. Ruling

For the reasons set forth above, the Borough's petition for reconsideration is denied. RSPA and FMCSA incorporate and reaffirm the determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. the definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 and the use of the term "dangerous waste" throughout the ordinance;
2. the designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02; and
3. the requirement that each truck transporting dangerous waste carry and have available "the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act," in Section 05(a).

IV. Final Agency

In accordance with 49 CFR 107.211(d) and 397.223(d), this decision constitutes the final agency action by RSPA and FMCSA on Med/Waste's application for a determination of preemption as to provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania. Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, D.C. on January 15, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Joseph M. Clapp,

Administrator, Federal Motor Carrier Safety Administration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2001-11211]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 21, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (AMMI@) (Registered Importer 99-192) has petitioned NHTSA to decide whether non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2002 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Harley Davidson VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2002 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: installation of a tire information label. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 Motorcycle Controls and Displays: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2001-11210]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Cadillac Seville Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Cadillac Seville passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991 Cadillac Seville passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 21, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation