



ADVOCATES

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August 30, 2007

**Centennial Communications Application for Exemption from the
Federal Motor Carrier Safety Regulations, Notice with Request
for Comments, 72 FR 41813, July 31, 2007**

Docket No. FMCSA-2007-28827
U.S. DOT Dockets, <http://dms.dot.gov>
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Centennial Communications (Centennial) has applied to the Federal Motor Carrier Safety Administration (FMCSA) for an exemption from the entire corpus of Federal Motor Carrier Safety Regulations (FMCSR) on the basis of its claim that only a small percentage of its truck fleet occasionally exceeds 10,001 pounds gross vehicle weight (GVW) and, therefore, the company would prefer to reconfigure its truck fleet so that all vehicles in operation will be below 10,000 pounds GVW instead of effecting compliance with the FMCSR. 72 FR 41613, 41614. Advocates strongly opposes a grant of exemption on several grounds.

FMCSA has misunderstood the heart of Centennial's exemption request in the Supplementary Information section of the instant notice. The agency states that Centennial regards it as "more economical to revamp its entire fleet of trucks and trailers so that when hauling generators, the combined weight of the truck/trailer/generator is below 10,001 pounds GVWR [gross vehicle weight rating]." 72 FR 41814. In fact, Centennial does not claim that its request for an exemption from the FMCSR relies on the combination described in the foregoing sentence falling below 10,000 GVWR, but rather that "it would be safer and more economical for Centennial to revamp its whole fleet of trucks and trailers so that when hauling generators the combined weight of the truck/trailer is less than 10,001 pounds." Letter of Steve Ziska, n.d. (stamped August 2, 2007, as Docket entry FMCSA-2007-28827-3), to the FMCSA Administrator (Exemption Application). Centennial does not argue that its combinations will fall below 10,000 pounds gross combination weight rating (GCWR), but that the combinations will not exceed 10,001 pounds gross combination vehicle weight (GCVW) in actual operations. Exemption Application at 1.

However, this misunderstanding inadvertently indicates the fundamental issue at stake in this proceeding, *viz.*, whether the alleged “revamping” of Centennial’s entire fleet of trucks pulling full trailers with generators will, in fact, result in combinations not exceeding 10,000 pounds GCW while the two components of the combination, taken together, in fact have a GCWR that exceeds 10,000 pounds. Centennial nowhere in its application asserts that altering the trucks and trailers of its fleet will result in combinations verified by manufacturer-assigned GVWRs to the trucks and to the trailers that result in GCWRs less than 10,001 pounds. The company only states that the fleet will *operate* the described truck-full trailer combinations at weights below 10,001 pounds GVW.¹

The contrary condition may also obtain in Centennial’s operations. Centennial may revamp its fleet so that all combinations of trucks plus full trailers do not exceed 10,001 pounds GCWR, as attested by manufacturer labels, but Centennial actually exceeds 10,001 pounds GCW in conducting operations and thereby automatically becomes subject to the FMCSR. In fact, this is a plausible result given Centennial’s statement in its Exemption Application that the truck GVWR plus the trailer laden with a generator “is more than 10,001 pounds but less than 13,400 pounds.” Exemption Application at 1. This statement appears to concede that the actual GCW of the combination laden with a generator rises to as much as 13,399 pounds. It is difficult to understand how Centennial could secure both trucks and trailers whose GCWR is less than 10,001 pounds and also actually transport generators on full trailers such that the GCW of the truck plus full trailer falls from “less than 13,400 pounds” to less than 10,001 pounds GCW. Centennial is implying that it can pare 3,400 pounds from an operating truck-full trailer combination so that it is less than 10,001 pounds GCW. Since Centennial supplies no details whatever on how it would accomplish “revamping” its fleet to secure this result, the implication of its argument raises considerable doubt.

Advocates strongly opposes this exemption request. First, Advocates regards this application request as a pretext for avoiding the oversight and compliance requirements of the FMCSR. The operating weights of the combinations used by Centennial, exceeding 10,000 pounds GCW, are a common condition of motor carrier fleets using smaller motor vehicles and towed trailers. Hundreds of these companies comply with the requirements of the FMCSR. Granting the requested exemption can result in an avalanche of similar special interest requests that are based on the same or similar

¹ Centennial asserts that its trucks – Ford F150 and F250 models – have GVWRs less than 10,001 pounds. Exemption Application at 1. The subsequent narrative of the Exemption Application states that “[w]hen a Centennial truck hauls a generator, the combined weight (Truck GVWR plus trailer/generator) of the truck/trailer/generator is more than 10,001 pounds but less than 13,400 pounds.” *Id.* This assertion only states that the combination, as laden with a generator, exceeds 10,001 pounds GVW. There is no information supplied on what constitutes the GVWR of the trailer regarded separately, nor is there any statement of the GCWR of the truck plus the full trailer as verified by manufacturer plates. Centennial also makes no offer, if its exemption application is granted, to supply subsequent verification to FMCSA that its entire fleet actually consists of trucks and full trailers, as manufactured, that do not exceed 10,001 pounds GCWR.

rationalizations to escape federal interstate motor carrier oversight while undermining a cardinal principle governing whether a motor carrier is subject to the FMCSR, that is, whether some or all of its fleet consist of trucks or trailers that, together, either exceed 10,001 pounds GCWR or, if they do not, the fleet in actual operations has combinations that exceed 10,001 GVW. Granting such requests will result in an irrational enforcement environment that cannot possibly keep pace with such a crazy quilt of special interest exemptions.

Second, although Centennial argues that compliance with the FMCSR is burdensome, the company's submitted Engineering Vehicle Policy of May 2006, submitted as an attachment to its exemption application, *op. cit.*, contains prescriptive features that are closely aligned with some of the requirements of the FMCSR. The Engineering Vehicle Policy, as described, does not support Centennial's statement that compliance with the FMCSR is burdensome, but, to the contrary, demonstrates that the company would only need to take relatively undemanding actions to comply with the FMCSR. This observation leads to the conclusion that Centennial wants to avoid being scrutinized for FMCSR compliance simply because of the additional documentation required by the FMCSR and because of the multiple enforcement responses that can be applied to the company for violations of the FMCSR. With regard to the latter, in avoiding compliance with the FMCSR, Centennial also evades FMCSA and state enforcement actions for interstate motor carriers, including roadside inspections that can result in out of service orders, Compliance Reviews resulting in Conditional or Unsatisfactory safety fitness ratings, or driver disqualifications for failure to rise to the physical fitness standards required of commercial drivers by the FMCSR, to mention only a few examples.

Third, Centennial's application for a wholesale exemption from the FMCSR provides no scheme for measuring and subsequently demonstrating to FMCSA that its complete avoidance of the requirement for complying with the FMCSR is equivalent to or superior to FMCSR compliance. Simply furnishing a written safety management protocol to the agency does not suffice for an equivalence demonstration. Moreover, although it is true that Centennial's safety management protocol has several points of contact with the requirements of the FMCSR, other, major aspects of the FMCSR are missing, including the disqualification criteria used by FMCSA for certain, repeated driver violations; the once-a-year minimum requirement for vehicle inspection; and the required "lookback" by an employer of any applicant driver seeking to operate Centennial's vehicles that evaluates the driver's conviction record and seeks information about the driver from previous employers, to name only a few. Centennial's safety management system, although admirable at many points as described – if it is actually implemented and enforced² – is a voluntary system with virtually no federal or state

² FMCSA apparently has no independent verification that the safety management elements of Centennial are actually applied and enforced.

enforcement actions that would be triggered for failure by Centennial to abide by one or more of its provisions.

Centennial simply wants to render its operations immune to compliance and enforcement under the FMCSR without any evidence that the purportedly “revamped” trucks and trailers will actually have GCWR of 10,000 pounds or less and that the combinations when laden will actually have GCW of 10,000 pounds or less.

Advocates regards Centennial’s exemption request as an effort at *ex post facto* rationalization, as well as a frivolous application without merit, and it should be denied.

Respectfully submitted,
ORIGINAL SIGNED
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