

sleeper-berth time to accommodate these military security procedures.

According to Landstar, both scenarios would interrupt the driver's 8 hours of consecutive sleeper berth use, making it operationally impossible for them to comply with FMCSA and DOD rules and regulations.

Landstar suggests that the sensitive military shipments should be considered as a national security risk. Landstar's concerns are: "Will operators comply with FMCSA and take a comfort break without waking their partner and risk leaving a high risk load unattended? Or will operators comply with DOD/SDDC rules and wake the second seat operator to monitor the load, while breaking his 8 hours of rest?" Landstar states that operators must choose between the two options. Landstar further states that, as the current rules are written, an operator transporting "security clearance, high risk freight" cannot comply with both the DOD and the FMCSA regulations.

A copy of the Landstar's exemption application is available for review in the docket.

#### Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Landstar's application for exemption from the 49 CFR part 395 HOS requirements. The Agency will consider all comments received by close of business on August 30, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 21, 2006.

**David H. Hugel,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-24231]

#### Hours of Service of Drivers: Application for Exemption; FedEx Ground Package System, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from FedEx Ground Package System, Inc. (FedEx) requesting an exemption from the on-duty time definition under the Federal drivers hours-of-service (HOS) regulations for drivers who operate commercial motor vehicles (CMVs). If granted, the exemption would allow FedEx's home-delivery drivers to operate property-carrying CMVs to and from their residence, without being considered "on duty." FedEx states the subject property is normally a package or packages which were expected to be delivered during the workday but, for one reason or another, could not be delivered that day. Thus, the drivers would operate laden CMVs from the point where the final home delivery was made for that workday to their residence, and from their residence the following workday to a FedEx terminal. FedEx believes its drivers would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. FMCSA requests public comment on the FedEx application for exemption.

**DATES:** Comments must be received on or before August 30, 2006.

**ADDRESSES:** You may submit comments identified by FMCSA Docket Number FMCSA-2005-24231 by any of the following methods:

- *Web Site:* <http://dmses.dot.gov/submit>. Follow the instructions for submitting comments to the DOT electronic docket site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- *Hand Delivery:* Room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the Docket Management System (DMS) to read background documents or comments received, go to <http://dms.dot.gov> at any time or Room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: [MCPSD@fmcsa.dot.gov](mailto:MCPSD@fmcsa.dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998), which amended 49 U.S.C. 31315 and 31136(e), provided authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, FMCSA's predecessor published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA issued a final rule (69 FR 51589) which requires FMCSA to publish a notice of each exemption request in the **Federal Register** (49 CFR 315(a)). The agency must provide an opportunity for public comment on the request and to inspect the information relevant to the application, including

any safety analyses that have been conducted.

The agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If the agency denies the request, it must state the reason for doing so. If the agency grants the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may also be renewed (49 CFR 381.300(b)).

#### Request for Exemption

FedEx requested an exemption to modify the hours-of-service (HOS) standard for determining whether the final "leg" of a FedEx driver's day, driving the commercial motor vehicle (CMV) from the point of the last delivery to the driver's residence, as well as the first leg of the following day driving the CMV from the residence to a FedEx terminal, is "on duty time" as defined in 49 CFR 395.2. FedEx is engaged in the delivery of packages by CMV in interstate commerce. In the morning FedEx drivers operate company CMVs from their residence to company terminals to begin their workday. Their FedEx truck is loaded with packages to be delivered, and the drivers then deliver packages to nearby residences. The drivers do not pick-up packages or take on additional cargo during the day. Following the final delivery of the day and a post-trip vehicle inspection, the drivers are relieved of all responsibility to FedEx and are free to pursue their own personal activities and to use the FedEx CMV to do so. The following morning the drivers are permitted to operate the FedEx vehicle from their residence to the FedEx terminal to begin a new workday.

The HOS rules define "on-duty time" as "all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work" (49 CFR 395.2). FMCSA permits time spent going to and from a residence in a CMV to be treated as "off-duty time" if two conditions are met. First, the driver must be relieved from work and all

responsibility for work while operating the CMV. Second, the CMV must be "unladen," or empty (49 CFR 395.8, Question 26, Regulatory Guidance). If both these conditions are met, the CMV is viewed as a personal conveyance, and the time spent may be treated as "off-duty time."

FedEx seeks exemption for itself and its 4,136 drivers from the requirement that the CMV be unladen in order for the time to be considered "off-duty time." FedEx states that at the end of the workday these CMVs occasionally contain a package or packages that could not be delivered that day. It may be that the package was misaddressed, or the addressee was not home. Delivery of the package is usually attempted again the following day.

FedEx believes that granting the exemption would not adversely affect its safety performance, and that it would be able to maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

A copy of the FedEx exemption application is available for review in the docket for this notice.

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment on FedEx's application for exemption from the definition of "on-duty time" in 49 CFR 395.2, and the Guidance provided in Question 26 under 49 CFR 395.8, to the extent that the CMV must be unladen. The Agency will consider all comments received by close of business on August 30, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 21, 2006.

**David H. Hugel,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-22937]

#### Hours of Service of Drivers: Application for Exemption; Summit Helicopters, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Summit Helicopters, Inc. (Summit) for an exemption from the commercial motor vehicle drivers' hours-of-service (HOS) requirements for their drivers who transport materials to and from job sites to assist in the company's aerial application of herbicides. The exemption, if granted, would enable Summit's drivers to conduct these operations, including transportation to and from the herbicides application sites, without having to comply with the HOS regulations. Summit believes that relief from the HOS regulations would permit their drivers to work longer periods of time and at the same time maintain a high level of safety. FMCSA requests public comment on the Summit Helicopters, Inc. application for exemption.

**DATES:** Comments must be received on or before August 30, 2006.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA-2005-22937 by any of the following methods:

- *Web site:* <http://dms.dot.gov/submit/>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information