

changing in ways that will allow airports to have greater control over how they allocate gates? (6) Have airport projects funded through Passenger Facility Charges been successful in promoting competition? Why or why not? (7) What actions have airports taken to promote entry? (8) How do Majority-in-Interest Agreements affect the competitive environment at airports? (9) Is there a trend away from long-term, exclusive-use gate leases? (10) Have airports reallocated gates away from incumbent carriers ("recapture" provisions) in ways that promote entry? (11) Do airports involve themselves in monitoring subleasing/use agreements among air carriers? (12) Do airports attempt to ensure that prices charged for subleased facilities or ancillary services are reasonable? (13) Is there any evidence that established air carriers are transferring access to airport facilities among themselves in ways that affect competition? (14) Are there reasons to retain current airport practices even if they adversely affect competition?

Issued in Washington, D.C., July 8, 1998.

Rosalind A Knapp,

Deputy General Counsel, Department of Transportation.

Susan L. Kurland,

Assistant Administrator for Airports, Federal Aviation Administration.

[FR Doc. 98-18615 Filed 7-10-98; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1998-4022]

In the Matter of Union Pacific (Formerly Known as Southern Pacific Transportation Company)

AGENCY: United States Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to comment.

SUMMARY: The United States Coast Guard gives notice of and provides an opportunity to comment on the proposed assessment of a Class II administrative penalty to Union Pacific, formerly known as Southern Pacific Transportation Company, for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involved the discharge of approximately 1012 barrels of oil into the waters of Buffalo Bayou, Houston, Texas and adjoining shorelines from September 25, 1995 to September 29, 1996. Interested

persons may participate or file comments in this proceeding.

DATES: Filings in this matter must be received not later than August 12, 1998.

ADDRESSES: Interested persons must submit all filings in this matter to the Hearing Docket Clerk. Filings should reference ALG Docket number 98-0001-CIV.

If you file by mail, the address is Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202-4022.

If you file by fax, then send to (410) 962-1762.

If you file in person, then deliver the filings to the same address at room 412 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public may inspect the administrative record for this Class II civil penalty proceeding at the same address and times.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, Telephone (202) 267-2940.

SUPPLEMENTARY INFORMATION: This proceeding is a Class II civil penalty proceeding brought under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321(b)). The FWPCA requires that the Coast Guard publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk. You must file not later than August 12, 1998.

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If	Then
A hearing is scheduled.	You will be given <ul style="list-style-type: none"> • Notice of any hearing. • A reasonable opportunity to be heard and to present evidence during any hearing. • Notice and a copy of the decision. 33 CFR 20.404.

If	Then
The proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102.

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR Part 20.

This proceeding (ALJ Docket Number: 98-0001-CIV) results from an alleged discharge of approximately 1012 barrels of oil into Buffalo Bayou, Houston, Texas and adjoining shorelines beginning on or about September 25, 1995, and continuing through and including September 29, 1995. The Coast Guard filed the Complaint on June 1, 1998, at New Orleans, LA.

The Respondent is Union Pacific (formerly known as Southern Pacific Transportation Company), 808 Travis, Suite 620, Houston, Texas 77001.

The Coast Guard seeks a civil penalty of \$50,000.

Dated: July 7, 1998.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 98-18555 Filed 7-10-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-97-2287; MC-96-40]

Motor Carrier Regulatory Relief and Safety Demonstration Project; Modifications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is extending the application period for the Motor Carrier Regulatory Relief and Safety Demonstration Project (Project), published in the **Federal Register** on June 10, 1997. The agency is also seeking public comment upon proposed modifications to the entry criteria and reporting requirements of the Project. In the June 1997 notice, the FHWA indicated that it would later publish additional information clarifying the eligibility criteria and application process. This notice is that clarifying document and proposes to provide additional incentives to participating

motor carriers without adversely impacting highway safety. Motor carriers operating commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds, in interstate commerce, may qualify for exemptions from certain portions of the Federal Motor Carrier Safety Regulations (FMCSRs) if they exhibit exemplary safety records. Motor carriers participating in this Project would have the opportunity to demonstrate they can maintain or improve their safety records when they are given greater latitude to select the means by which their safety performance is attained. The FHWA seeks the comments of all interested parties regarding these Project modifications, especially comments aimed at aiding the FHWA in providing substantive industry incentives while maintaining the highest degree of safety. Upon review of public comment, the FHWA intends to modify the project, authorize qualified motor carrier participation, and publish a supplemental notice of final determination.

DATES: Comments must be received no later than August 12, 1998. Written comments addressing the information collection requirements of this Project must be received on or before September 11, 1998. Applications for participation in the Project must be submitted no later January 30, 1999.

ADDRESSES: Signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, Docket No. FHWA-97-2287; MC-96-40, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—<http://dms.dot.gov>—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Miller, Office of Motor Carriers, (202) 523-0178, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15

p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su_docs/aces/aaces002.html.

Background

On November 28, 1995, the President signed the National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104-59, 109 Stat. 568 (1995)). Section 344 of the NHS Act requires the FHWA to implement a pilot program under which motor carriers operating CMVs with a GVWR between 10,001 and 26,000 pounds, in interstate commerce, could qualify for exemptions from the FMCSRs (49 CFR Part 325 *et seq.*). In accordance with the NHS Act, the FHWA developed the Project and published a detailed description of the Project in the **Federal Register** on June 10, 1997. There has been limited industry interest to participate in the Project since the publication date.

Through a series of outreach sessions, the FHWA discovered the absence of extensive industry interest is due, in part, to a lack of understanding of how the Project would work and questions about potential incentives for program participation. The purpose of this notice is to provide the public with an opportunity to assist the FHWA in determining whether clear and sufficient incentives have been included, while maintaining the highest degree of safety. Modifications have been made to the current details of the Project and additional exemptions are proposed. The FHWA is seeking all points of view before implementing these newly proposed parameters as part of the Project. The FHWA will peruse all suggestions and weigh carefully the facts upon which they are based.

The FHWA proposes that in order to participate in the Project, a motor carrier would have to meet the criteria for admission developed by the Secretary and outlined later in this notice. The criteria for admission has been modified regarding the definition of "accident" and the Project entry accident rate threshold. Motor carriers seeking to participate are still required to develop a written Safety Control Plan for the Project. This plan should outline the measures which the motor carrier would

undertake to ensure its current level of safety is not compromised while operating under the proposed exemptions. The motor carrier would also enter into a written agreement of participation with the FHWA in which it would agree to abide by its Safety Control Plan and to work with the FHWA in generating and monitoring certain Project data. The FHWA would grant, for the term of the Project only, an exemption to participating motor carriers from certain current requirements of the FMCSRs, but such exemption would apply only to the eligible CMVs and drivers designated by the motor carrier in its application. The FHWA will evaluate the Project data throughout the Project, with particular focus upon the significance of the data with regard to FHWA's regulatory reinvention and zero-base initiatives. The FHWA would, in accordance with the NHS Act, use this data to conduct a zero-base review of the need for, and the costs and benefits of, all the FMCSRs.

The requirements for participation in the Project include several information collection requirements which must be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520). On November 6, 1997, the OMB reinstated the authorization for the FHWA's submission of these information collection requirements as provided under OMB No. 2125-0575, with an expiration date of November 30, 2000.

Analysis of Project data will occur throughout the Project, and only at such time as that analysis is complete will the FHWA be in a position to consider other performance-based initiatives. Given the Project parameters, the FHWA believes that three years of continuous and sustained motor carrier operations is the minimum amount of time necessary to draw conclusions about operational safety. In view of the customary level of activity for a motor carrier, the FHWA, after three years, should be able to assert, with reasonable certainty, that the data accumulated with respect to the activity of the class of motor carriers in this Project is representative of future behavior.

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I. Introduction

Many commenters to the original June 10, 1997 proposal contended the design of the Project would discourage motor carrier participation. The explanation most frequently offered for this belief was that the paperwork requirements of the Project, both at the time of application and during the Project, were too burdensome and outweighed the regulatory relief participating motor carriers would receive. The commenters strenuously objected to the proposed paperwork requirements, while noting that substantive exemptions weren't offered. For instance, it was suggested that most motor carriers would continue to require a pre-employment road test for new hires even if they were exempt from that requirement. For these reasons and given the current level of industry interest, clarifying and amending the Project requirements, as well as providing additional incentives, seem to be in order. We believe these modifications will reduce participants' burden and improve industry interest.

II. Current Project Exemptions

In accordance with the NHS Act, qualified interstate motor carriers would be exempt from certain regulatory requirements while participating in the Project. In the June 10, 1997 **Federal Register** notice, the regulations described below were those from which participating motor carriers would be exempt. Those Project exemptions would continue to be offered. No current exemptions would be removed. Clarifications and modifications of these exemptions are explained in this section. Motor carriers participating in the Project are only exempt from the regulations specified in the Project. A participating motor carrier may elect to voluntarily comply with any of the requirements described below as part of its normal business practices. For the purposes of the Project, however, the motor carriers would be exempt from those requirements. Project motor carriers, and their eligible drivers, would, with regard to the interstate operation of CMVs with a GVWR between 10,001 and 26,000 pounds, be exempt from the following requirements of the FMCSRs:

Driver Qualifications

Drivers would not be required to prepare, or furnish to the employing motor carrier, an annual list of violations of motor vehicle laws, or a certificate in lieu thereof, in accordance

with 49 CFR 391.11(b)(8) and 391.27. Motor carriers, however, would be required to obtain a State driving record as required by 49 CFR 391.23. Further, drivers would not be required to successfully complete a Driver's Road Test, or furnish an employing motor carrier an Application For Employment, in accordance with 49 CFR 391.11(b)(10) and 391.31 and 49 CFR 391.11(b)(11) and 391.21. In addition, motor carriers would not have to maintain "complete" Driver Qualification Files on each driver in accordance with 49 CFR 391.51. The documents identified above would not be required to be in the qualification file. Only those documents from which participating motor carriers are not exempt would be required to be in the driver qualification file.

Driver Hours-of-Service

Project drivers would not be required to comply with record of duty status regulations, whether this entails maintenance of a record of duty status (logbook) in accordance with 49 CFR 395.8, use of a time card in accordance with 49 CFR 395.1(e), or the use of an interactive automatic on-board recording device in accordance with 49 CFR 395.15. Project motor carriers and drivers, however, must observe the provisions governing maximum driving time, and the use of ill or fatigued operators in accordance with 49 CFR 395.3 and 392.3. Additionally, Project motor carriers and their drivers would not forfeit any other exemptions available under the FMCSRs.

CMV Inspections

While participating in the Project, motor carriers would be exempt from those requirements pertaining to CMV inspection records and their retention, in accordance with 49 CFR 396.3 (b) and (c). Exemption would also be granted from the regulations pertaining to the preparation of driver vehicle inspection reports and the driver vehicle inspection requirements (49 CFR 396.11 and 396.13 (b) and (c)). In addition, driveaway-towaway inspections would not be required of Project motor carriers or their drivers (49 CFR 396.15). Periodic inspections and the preparation of periodic inspection reports (49 CFR 396.17 and 396.21) would also fall under the exemption. However, motor carriers would not be relieved of their responsibility to inspect, repair and maintain their motor vehicles in accordance with 49 CFR 396.3(a). Furthermore, Project drivers and CMVs would be subject to roadside safety inspections.

Accident Information

Project motor carriers would be exempt from the requirement that they maintain an accident register in accordance with 49 CFR 390.15 (b)(1) and (2).

III. Proposed Additional Project Exemptions

The FHWA has received recommendations for additional incentives to be included in the Project to increase industry interest. The FHWA has analyzed those recommendations and has determined that the following additional incentives should be offered:

Driver Qualifications

Drivers would not be required to read or speak the English language in accordance with 49 CFR 391.11(b)(2), provided they can effectively communicate with enforcement officials. Motor carriers would not be required to document investigations of drivers' employment history in accordance with 49 CFR 391.23(c). Motor carriers would also be relieved from documenting the annual review of drivers' records in accordance with 49 CFR 391.25. In addition, relief would be provided regarding medical examinations and certifications. The current requirement for drivers to be medically re-examined and certified each 24 months in accordance with 49 CFR 391.45(b)(1) would be removed for the duration of the Project, provided participating drivers have a current medical examination certification prior to entry into the Project. Newly hired drivers would be required to be medically examined once, prior to entry into the Project, in accordance with 49 CFR 391.45(a). We believe participating motor carriers will ensure drivers are physically fit for duty as part of their normal business practices.

In addition to driver qualification exemptions, motor carriers would be relieved from the unauthorized passenger transportation prohibition of 49 CFR 392.60.

Driver Hours-of-Service

The industry has asked the FHWA to reconsider providing relief from the underlying hours-of-service (HOS) regulations, not just recordkeeping. The FHWA has evaluated this request and has determined that some relief might be provided without reducing highway safety. Most trucks in this weight range are used in local transportation operations. Drivers return to the home terminal at the end of each work shift and do not spend overnight periods on the road. If overnight stays are needed, drivers generally sleep in motels

because these CMVs are usually not equipped with sleeper berths. These are optimal conditions for obtaining restorative sleep. The vast majority of drivers operating this class of CMV are local drivers operating between 6 a.m. and 9 p.m. Their on-duty hours are usually regular in nature. They are usually afforded ample time to obtain sufficient recuperative sleep (9–12 hours off-duty in every 24) during the optimal time for sleep (midnight to 6 a.m.). Due to the nature of their operations, they are the least affected by regulatory restrictions. Additionally, the largest fraction of *non-local* use is by private motor carriers of freight, primarily driver-operators in service industries. The nature of their work is such that they generally set their own schedules and are not influenced by third-party customers to the degree a for-hire motor carrier is affected.

The FHWA is, therefore, proposing to allow participating drivers to be on duty for 12 consecutive hours with no mileage limit and no constraints on their activities. The premise being that such drivers perform other functions in addition to driving and will not exceed the current 10-hour driving limitation. This action would parallel the exemption allowed by 49 CFR 395.1 (e). As stated previously, drivers will be required to comply with the driving-time provisions of 49 CFR 395.3(a) and (b).

CMV Inspections

In the June 10, 1997 **Federal Register** notice, the FHWA relieved participating motor carriers from performing annual vehicle inspections in accordance with 49 CFR 391.17. Since we are proposing to exempt participating motor carriers from the annual inspection, the participating motor carriers would be exempt from the annual inspector qualification requirements set forth in 49 CFR 396.19 while participating in the Project and inspecting program CMVs. Participating motor carriers would also be relieved of the requirements for brake inspector qualifications and recordkeeping in accordance with 49 CFR 396.25, except for inspectors working on air brake systems. The rationale for this is that most of these vehicles are equipped with hydraulic brakes.

The FHWA seeks public comment on whether these additional exemptions are appropriate and whether these additional incentives will increase the industry's interest in participating. The NHS Act requires the FHWA to ensure the Project is designed to achieve a level of operational safety "equal to or greater than" that under the current

requirements of the FMCSRs. In considering additional exemptions under this Project, the FHWA carefully weighed whether adequate safety measures exist to ensure the exemptions do not adversely affect highway safety.

IV. Criteria for Admission to the Project

The FHWA believes participation in this Project should be limited to those motor carriers that have exemplary safety records. The agency further believes that the best measure of an exemplary record would be an accident rate equal to, or better than, that of the top 25 percent of motor carriers. The FHWA estimates this accident rate to be 0.5, or fewer, accidents per one million vehicle miles of travel. Accidents are those incidents resulting in (1) a fatality, (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

This rate is derived from an analysis of Compliance Review (CR) data, collected for the years 1993 through 1997. The decision to base this rate on accidents was made after discussions with representatives from the motor carrier industry. This approach is consistent with the FHWA's definition of the term "accident" as it appears in 49 CFR 390.5.

Note that the FHWA does not maintain any CR or other accident data specific to motor carriers operating CMVs within the 10,000 pound to 26,000 pound range. Thus, the agency's analysis of the CR data could not be limited precisely to the population targeted for this Project. The analysis was, however, limited to only those motor carriers operating at least one straight truck. The FHWA estimates that between 50 and 75 percent of all straight trucks are within the 10,000 pound to 26,000 pound range. Further, only those motor carriers, in the CR data base, having three or more years of accident data were considered. The analysis was further limited to those carriers averaging at least one million vehicle miles traveled (VMT) over a three year period. This was done to (1) be consistent with the carrier eligibility requirements established for this Project, and (2) guard against any bias resulting from including carriers having an insufficient number of VMT to determine an accident rate accurately.

For the 271 motor carriers meeting these conditions in the analysis file, 25 percent had an accident rate of 0.5 or

fewer accidents per one million VMT, based on three or more years of data. Hence, the cut-off for identifying the top 25 percent of carriers based on this analysis is 0.5.

Using CR data allows us to analyze accident data at the carrier level. No other data base available to the agency allows for such an analysis. Although it may be argued that by using such data, the agency is basing its accident rate cut-off point on a group of motor carriers already identified as substandard, only 36 out of 223, or 16 percent of these carriers had a SafeStat crash safety evaluation area (SEA) score greater than 75, thereby indicating a potentially high accident rate (for 48 of the carriers, the SEA score could not be obtained or inferred).

Furthermore, overall accident statistics produced from this file are not dramatically different from accident statistics generated from other data sources. For example, the average accident rate across all carriers based on this analysis file (composed of carriers with straight trucks, having at least three CRs between 1993 and 1997, and an average three year VMT of one million or higher) is 0.75 accidents per million VMT. If all motor carriers having had three or more CRs between 1993 and 1997 are considered, with no constraints on power unit composition or VMT, the accident rate drops slightly to 0.72. Using the General Estimates System (GES) data base for purposes of comparison, the overall accident rate between 1993 and 1996 for straight and combinations trucks is 0.6 accidents per one million VMT.

The FHWA, therefore, proposes to modify the Project participation requirement regarding accident rates by eliminating the "police-reportable" accident definition and using the definition of an "accident" in 49 CFR 390.5. Furthermore, the FHWA proposes an accident rate, for entry into and exit from the Project, of no more than 0.5 accidents per million VMT, averaged over the most recent 36 months. Motor carriers with less than one million VMT in the most recent 36 months would be eligible for the Project if they have no more than one accident during that period of time. Two or more accidents would result in a motor carrier being declared ineligible for this Project. It is important to note that the accidents and mileage used in calculating this accident rate only include vehicles eligible for the Project and no others.

The FHWA seeks public comment on these proposed criteria. Is an accident rate of no more than 0.5 accidents per 1,000,000 VMT a prudent requirement in view of the need to limit

participation to those carriers with exemplary safety records? Are there other tenable approaches? If yes, what data or rationale support them?

The criteria for admission to the Project has otherwise remained the same as published in the June 10, 1997 **Federal Register**, except for the change regarding the definition of an accident and the accident rate for Project eligibility described above. No other criteria modifications are being proposed for admission to the Project. Each motor carrier applying for admission to the Project must satisfy the following 7 prerequisites:

1. The motor carrier operates in interstate commerce.

2. The motor carrier operates CMVs having a GVWR between 10,001 and 26,000 pounds.

Note: CMVs designed to transport more than 15 passengers (including the driver), or used to transport hazardous materials in placardable quantities, as defined in regulations issued by the Secretary of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), are not eligible to participate in this Project.

3. The motor carrier does not currently have a Safety Fitness Rating of "Unsatisfactory" issued by the FHWA. Motor carriers that have not received a safety rating issued by the FHWA are eligible for this Project.

4. For CMVs eligible for this Project, the motor carrier has an accident rate equal to or less than 0.5 accidents per million VMT, averaged over the most recent 36 months. The term "accident" is defined in 49 CFR 390.5. For example, a motor carrier which has had 2 accidents and has 5 million VMT by eligible CMVs over the most recent 36 months would be eligible for the Project based upon the following calculation: 2 divided by 5 equals 0.4, which is less than 0.5. This calculation is to be based solely upon the accidents and mileage of those CMVs which have a GVWR between 10,001 pounds and 26,000 pounds.

Motor carriers with less than one million VMT in the most recent 36 months are eligible for the Project if they have not had more than 1 accident during that period of time. Two or more accidents would result in ineligibility for this Project.

5. The motor carrier is active on a year-round basis. "Seasonal" motor carriers are not eligible for the Project.

6. The drivers assigned by the motor carrier for participation in the Project have not been convicted, in the past three years, of:

(a) An offense that directly arose out of a fatal traffic accident;

(b) Driving a CMV while under the influence of alcohol, including;

(i) Driving a CMV while the person's alcohol concentration is 0.04 percent or more;

(ii) Driving under the influence of alcohol, as prescribed by State law; and

(iii) Refusal to undergo testing for alcohol or controlled substances as required by any State or jurisdiction;

(c) Driving a CMV while under the influence of a controlled substance;

(d) Leaving the scene of an accident involving a CMV; or

(e) A felony involving the use of a CMV, including the use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

7. The motor carrier has a written Safety Control Plan for this Project. This plan must, in some form, clearly detail the measures which the motor carrier will undertake to ensure the current level of safety is not compromised by the operation of the Project exemptions. This document may entail no more than submitting pertinent portions of a company's current Operating Plan or similar document. An outline for the creation of this document is also available, upon request, from the FHWA. In its application, the motor carrier would agree to abide by its Safety Control Plan. More detailed information regarding the Safety Control Plan is provided later in this document.

V. Applying for the Project

In the Notice of Final Determination published in the **Federal Register** on June 10, 1997, motor carriers were required to submit, in writing, their requests for admission to the Project within 180 days of the publication of the notice. The application deadline was extended to June 30, 1998 (See the December 16, 1997 issue of the **Federal Register**). The FHWA also made known that additional information clarifying the eligibility criteria and application process would be published at a later date. This notice is that clarifying document. To ensure a continuous opportunity for interested motor carriers to apply for the Project under the new criteria, the FHWA is further extending the application deadline until January 30, 1999.

There will be no change in the application process during this notice and comment period. Interested motor carriers should submit, in writing, to the FHWA, the following:

(1) A completed Motor Carrier Identification Report (Form MCS-150), which would provide updated information about the overall operation of the motor carrier;

(2) The following certification, duly executed by the Chief Operating Officer of the motor carrier:

I certify that (Name of motor carrier) operates CMVs having a GVWR between 10,001 pounds and 26,000 pounds in interstate commerce, on a year-round basis, and is not rated "Unsatisfactory" by the FHWA. I certify the company has approved the attached Safety Control Plan and will employ these controls throughout the Project. I certify that the motor carrier EITHER: (1) has an accident rate equal to or less than 0.5 accidents per million vehicle miles traveled (VMT), averaged over the most recent 36 months, based upon _____ accidents and _____ VMT, by CMVs having a GVWR between 10,001 pounds and 26,000 pounds, OR (2) has _____ actual VMT (less than one million) over the most recent 36 months and has experienced _____ (less than 2) accidents involving the subject vehicles over that period of time.

I hereby submit a roster of _____ company drivers for participation in the Project. The roster includes driver names, license numbers, State of licensure, and dates of employment. I certify that (1) each driver is eligible to participate in the Project, (2) each operates CMVs having a GVWR between 10,001 pounds and 26,000 pounds, and (3) I have independently verified that the driving record of each does not include any convictions within the past 3 years of any of the disqualifying offenses enumerated in the Project criteria. I have read and agree to be bound by the requirements for notification and submission of information to the FHWA outlined in the section entitled "The Agreement" in the Notice of Final Determination of this Project.

Signature: _____

Name: _____

Title: _____

Name of Motor Carrier: _____

(3) A Safety Control Plan;

(4) A driver roster containing drivers' names, driver license numbers, State of licensure, and dates of employment. This would enable the FHWA to advise enforcement officers of the identity of Project drivers and to monitor their driving performance.

Note: The motor carrier applicant would be required to submit the names of ALL drivers eligible for participation in the Project.

The FHWA is aware that some motor carriers with large operations may wish to volunteer a particular terminal, geographic region, or State operation for this Project. The FHWA anticipates no difficulty in affording motor carriers flexibility with this form of selection.

The FHWA would carefully scrutinize any suggested "subunits" to be certain they advance the congressional mandate, particularly the requirement that this Project examine a broad cross-section of the motor carrier industry. All of the above items should be assembled and submitted to: United States Department of Transportation, Federal Highway Administration, 10-26 Safety Demonstration Project, HMT-1, 400 Seventh Street, SW., Washington, D.C. 20590-0001.

VI. Safety Control Plans

Motor carriers interested in applying for the Project must submit a Safety Control Plan (SCP). Through outreach sessions with the industry, the FHWA has discovered there is some confusion regarding the content of such a plan. For the purposes of this Project, the SCP should provide the answers to the following:

During the Project, how will the motor carrier applicant ensure:

(1) Project drivers are qualified to operate commercial motor vehicles,

(2) Project vehicles are in safe operating condition,

(3) Project drivers are complying with the maximum hours-of-service requirements, and

(4) It will receive a timely warning if Project drivers are violating the FMCSRs or the Agreement of Participation.

The FHWA believes the preparation of the SCP should be straightforward for most motor carriers which have the exemplary safety record required to qualify for the Project. Experience has shown that the vast majority of motor carriers who have exemplary safety records also have a well-defined set of safety controls. For this Project, the FHWA proposes that an existing set of company operating instructions, whether currently included in a manual or are a set of policy documents, could be used to satisfy the SCP requirement, if the motor carrier applicant directed the FHWA to the sections which satisfy the SCP requirements.

Where an initial SCP must be created, the FHWA believes that an explanation of the day-to-day safety practices and controls which the motor carrier employs, or will employ, should suffice. Upon review of the motor carrier's SCP, the FHWA must be able to identify what safety controls are in place, and be able to evaluate them in terms of the level of safety they could be expected to produce. A model outline of an SCP is available from the FHWA upon request.

VII. Eligible Drivers

Drivers operating CMVs with a GVWR between 10,001 pounds and 26,000

pounds are eligible for the Project. The FHWA will, however, permit a Project motor carrier to direct Project drivers to operate vehicles outside of the Project weight class if: (1) the driver operates Project vehicles at least 25 percent of the time, and (2) the motor carrier can provide the FHWA with a reasonable calculation of the total number of VMT accrued outside the Project, and the total number of VMT accrued within the Project, for each such driver. The FHWA can take such information into account when conducting its evaluation of the Project, and thus preserve the integrity of that evaluation. Motor carriers and their drivers are advised to be alert to the fact that when activity is conducted outside the Project, that activity is subject to all provisions of the FMCSRs. For instance, a driver who operates a CMV with a GVWR in excess of 26,000 pounds must, in accordance with 49 CFR 395.8, account for his or her hours-of-service for the previous 8 consecutive days even though the driver, during the earlier period, was exempt from the requirements of 395.8 by virtue of being engaged in Project activity.

VIII. The Agreement of Participation

If the FHWA finds that a motor carrier applicant is qualified for admission to the Project, it will, by letter, admit the motor carrier to the Project. Participation in the Project may commence immediately upon receipt of the admission letter. A copy of this letter should be made available to each Project driver to serve as the credential authorizing his/her participation in the Project.

By agreement, Project motor carriers promise to report certain information to the FHWA. The reporting requirements have remained relatively the same as in the June 10, 1997 notice. The changes in the reporting criteria primarily relate to accident reporting and notification of changes to the Safety Control Plan. To assist motor carriers in better understanding these reporting criteria, the following additional guidance is being provided:

(1) Within 10 business days following the occurrence of a fatal accident, and within 30 business days following the occurrence of a non-fatal accident, involving a Project driver, the motor carrier would be required to submit details of that accident to the FHWA. The information would have to be sufficient enough to enable the FHWA to locate the corresponding police accident report. The actual police accident report will not be required to be submitted. Normally, it would be sufficient to provide the date and physical location of the accident, the

vehicle number, and the driver's name and license number. If the FHWA needs nonconfidential insurance-related information, it would so advise the motor carrier.

Note: This information would have to be accompanied by a revised calculation of accidents per million VMT, indicating the figures used to make the calculation.

The motor carrier would be subject to removal from the Project (see below) should this accident rate exceed 0.5 accidents per million VMT for the most recent 36 month period. Project motor carriers with less than one million VMT in the most recent 36 months and having two or more accidents occur during the most recent 36 months would also be subject to removal.

(2) Immediately following the addition of a new driver eligible for the Project, the motor carrier would be required to submit an update to the roster of Project drivers, including the name, driver's license number, and date of employment of each driver added. A new and complete driver roster would not be required each time the motor carrier intends to use a new driver in the Project. This could be accomplished via facsimile (FAX), the U.S. Mail, or E-Mail and will be explained in detail in the agreement letter. Without a complete and accurate roster of the drivers participating in the Project, the FHWA would be unable to offer real-time assistance to enforcement personnel at roadside inspection locations.

(3) Removal of Project drivers would call for a procedure similar to that described in (2) above.

(4) Within 10 business days, the motor carrier would be required to notify the FHWA when the motor carrier is sold, goes out of business, changes its name, ceases to operate, ceases to operate in interstate commerce, ceases to operate CMVs with GVWRs between 10,001 pounds and 26,000 pounds, or ceases to conduct operations on a year-round basis.

(5) Within 30 business days, the motor carrier would be required to notify the FHWA when the motor carrier chooses to amend its Safety Control Plan, or is unable, for any reason, to carry out the terms of the Safety Control Plan which it developed for this Project. A resubmission of the entire Safety Control Plan would not be necessary. Participating motor carriers would submit, in writing, an addendum to the plan which describes the changes made.

(6) Semi-annually, Project motor carriers would be required to provide the FHWA with a current calculation of

accidents per million VMT for the preceding 36 months and indicate the figures used to arrive at the calculation. The first calculation would be submitted upon the sixth-month anniversary of the date of admission to the Project. Subsequent calculations would be due every six months thereafter.

IX. Removal From the Project

The FHWA does not anticipate that any motor carrier which has satisfied the stringent admission criteria of this Project will experience any deterioration of its safety record. However, should this occur, the FHWA would, consistent with its duty under the NHS Act, take all steps necessary to protect the public interest, as well as the integrity of the Project. Participation in this Project is voluntary, and the FHWA would retain the right to revoke a motor carrier's privilege to participate in the Project if its safety performance poses a threat to highway safety. Participating motor carriers would not be exempt from roadside inspections, compliance reviews or enforcement actions pertaining to the remaining regulations from which they are not exempt, or on those portions of their operations which would not be a part of the Project. Also, Project drivers who pose a threat to highway safety would, at a minimum, be subject to immediate revocation of their privilege to participate in the Project.

Should the FHWA find the highway operations of a Project motor carrier have placed the safety of the public in jeopardy, the agency would remove the motor carrier from the Project. Should the three-year accident rate of a Project motor carrier exceed 0.5 per million VMT for the most recent 36 month period, the motor carrier would be subject to disqualification. Additionally, Project motor carriers that incur two or more accidents while accruing less than one million VMT in the most recent 36 months would also be subject to disqualification.

The FHWA would also immediately remove any Project driver convicted of any of the offenses enumerated under item 6 of the Criteria for Admission to the Project. Such driver convictions would not necessarily result in the Project motor carrier's removal. It could, however, result in more intensive scrutiny of the Project motor carrier's operation.

X. The Final Evaluation

At the conclusion of the Project, the FHWA would conduct an evaluation of the Project. The principal objective of the evaluation would be to provide

input to the FHWA's ongoing zero-base regulatory review. Simply put, we would determine whether a group of exemplary motor carriers can operate a specific class of CMVs as safely without a lot of regulation as it could when subject to the entire body of the FMCSRs.

The evaluation will focus upon operational safety by comparing the collective experience of Project motor carriers and drivers during the Project with that prior to the Project. The evaluation will also compare the collective experience of Project motor carriers with the experience of motor carriers not participating in the Project. These comparisons will be accomplished through the use of motor carrier performance data obtained from Federal and State information systems, as well as Project data reported to the FHWA by the participating motor carriers.

The FHWA is cognizant of the economic realities which underlie the suggestion that it should assure motor carriers that the exemptions that would be allowed during this Project would continue beyond the three-year life of this pilot. It is possible that the exemptions would continue in some form. The case for permanent regulatory change, however, must be made by using valid supporting data. The agency recognizes that strong participation in this Project could generate data which may support meaningful, performance-based improvements of the current regulatory scheme. The FHWA cannot predict what the Project data will show, or what regulatory changes, if any, would be supported. After the first two years of the Project, the FHWA would analyze the Project data. Depending upon the data and its analyses, indications of possible regulatory changes could result.

XI. Preemption

In response to docket comments expressing concern about the possible enforcement of intrastate regulations that would not be compatible with the requirements of this Project, a supplemental notice was published on October 29, 1996 (61 FR 55835) seeking comment on the appropriate use of Federal preemption in this Project. Eight comments to the supplemental notice were received. Five were from trade groups, one from a motor carrier, one from a union, and one from a safety advocacy group. Four were in favor of the exercise of Federal preemption, two were opposed to it, and two offered no opinion. No comments were received from the States.

The FHWA will not pursue preemption with regard to this Project. For some time, however, through various Federal initiatives, foremost of which is the program of grants to States known as the Motor Carrier Safety Assistance Program (MCSAP), the States and the Federal government have been working together to achieve a high degree of uniformity between State and Federal motor carrier regulation and their enforcement. At the same time, the Federal-State partnership has resulted in a better understanding of regulatory and enforcement problems. Thus, a new Federal program, though it may necessitate corresponding changes in State enforcement activity, is more readily understood by State officials. The FHWA believes that the Federal-State partnership is capable of absorbing the changes which this Project requires.

Currently, 26 States and Territories automatically adopt revisions to the FMCSRs. It is reasonable to believe those States and Territories would accept the pilot Project and its attendant exemptions while permitting examination of the effect of performance-based standards on highway safety. The FHWA will renew its dialogue with the various States to reaffirm their understanding of the Project and ensure proper coordination and communication is accomplished.

XII. Paperwork Reduction Act of 1995

The FHWA is aware that this Project would impose special recordkeeping and reporting requirements upon participating motor carriers. The FHWA believes the paperwork requirements proposed in this document are absolutely necessary to conduct this Project and to ensure the safety of the public on the highways. For instance, in the absence of a roster of drivers participating in the Project, the FHWA would be unable to assist roadside enforcement officials in the conduct of their duties. The FHWA also believes that most of the remaining records which would be required by this Project are routinely maintained by most motor carriers in the course of their day-to-day operations.

The voluntary participants in this program would be required to comply with information collection requirements which are subject to review by the OMB under the PRA. Persons are not required to respond to a collection of information unless it displays a valid OMB control number. The information collection requirements related to this Project have been approved by the OMB until November 30, 2000, and assigned OMB Control No. 2125-0575.

Generally, **Federal Register** concerning each collection of information. Comments on the information collections proposed in this notice will be considered by the FHWA in its request for long-term approval. With respect to the collections of information described below, the FHWA invites comments on: (1) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the FHWA's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of these information collections upon those who are to respond, including the use of automated collection techniques, and other forms of information collections technology.

The title used to identify the information collections proposed in this notice and submitted for OMB's approval is "Motor Carrier Regulatory Relief and Safety Demonstration Project."

This **Federal Register** notice proposes a voluntary pilot Project. In return for receiving exemptions from certain requirements of the FMCSRs, each Project motor carrier would be required to develop and/or furnish certain information about its operations. It is anticipated that the initial application will require about one-half hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the Project, and to indicate their desire to participate in the Project. The Safety Control Plan, outlining the safety management measures the motor carrier would have in place to ensure that it would achieve the appropriate level of operational safety during the Project, would require approximately one and one-half hours to prepare. This document would be subject to examination by the FHWA, and would be used to assist the FHWA in ensuring that Project participants did not neglect those aspects of motor carrier safety which are normally addressed by the regulations from which they are temporarily exempt. The Safety Control Plan would require approximately one and one-half hours to prepare. Further, participating motor carriers would be required to submit to the FHWA the name, driver's license number, and date of employment of each participating driver. The motor carrier would also be required to advise the FHWA

immediately of any changes in this information. These collections and submissions of information are necessary in order to effectively grant Project exemption to identifiable operators of CMVs and to permit the performance of each to be monitored and evaluated. It is estimated that the reporting and recordkeeping burden for these items would be one hour.

It is also proposed that each accident involving Project drivers and/or Project vehicles would be reported to the FHWA as it occurs (within 10 or 30 business days, depending upon severity). Each Project motor carrier would also calculate and submit its accident rate per million VMT on a semi-annual basis, and advise the FHWA if that rate exceeds 0.5. This information is necessary in order to identify those motor carriers whose safety performance is declining during the Project and would also be used to assist in comparing the performance of the exempt motor carriers with the performance of those which remain subject to the FMCSRs. The annual reporting and recordkeeping burden for this information collection is estimated to be one-half hour.

The most likely respondents to this information collection will be motor carriers operating CMVs with a GVWR between 10,001 pounds and 26,000 pounds, operated in interstate commerce, have a satisfactory safety rating or is not rated, and have an accident rate less than 0.5 per million VMT. The approximate number of motor carriers currently eligible to participate in the Project is 33,000. Therefore, it is estimated that the total annual reporting and recordkeeping burden will be 275 hours.

XIII. Conclusion

The FHWA welcomes comment on any and all aspects of these proposed changes to the Project from all interested parties. Upon review of public comment, the FHWA intends to modify the project, authorize qualified motor carrier participation, and publish a supplemental notice of final determination.

(49 U.S.C. 31136 and 31141; 49 CFR 1.48)

Issued on: July 7, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98-18539 Filed 7-10-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3983]

Mercedes-Benz of North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz of North America, Inc. (Mercedes-Benz) of Montvale, New Jersey has determined that some 1998 Mercedes-Benz M-class vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and noncompliance reports." Mercedes-Benz has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The purpose of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Paragraph S5.3, Label information, of FMVSS No. 120 states that each vehicle shall show the appropriate tire information (such as: recommended cold inflation pressure) and rim information (such as: size and type designations) in the English language. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format. In addition, FMVSS No. 120 requires that the label be affixed to the hinge pillar, the door-latch post, the door edge that meets the latch post, or next to the driver's seating position. If these locations are impractical, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. However, if all of the preceding locations are not practical, the manufacturer can notified, in writing, NHTSA and request approval for an alternate location in the same general location.

Mercedes-Benz states that 35,357 vehicles were produced from the beginning of production in January 1997 through April 13, 1998 that do not meet the labeling requirements stated in the