

ATA correctly points out in its rebuttal comments that the District of Columbia's subsequently issued regulations do not cure the procedural defects in enacting the DC Act.

Federal hazardous material law on preemption is triggered when a highway routing designation over which hazardous material may or may not be transported is established, maintained, or enforced. 49 U.S.C. 5125(c). Similarly, FMCSA's regulations require compliance with the highway routing standards in 49 CFR 397.71 when a state establishes or modifies a highway routing designation and maintains or enforces such designation. 49 CFR 397.69. The District of Columbia has established⁶ a highway routing designation through the enactment of the DC Act and has maintained⁷ that highway routing designation by keeping the DC Act current. As such, the District of Columbia was required to comply with the statutory requirements in 49 U.S.C. 5112 and FMCSA's standards in 49 CFR part 397 with regard to each enactment. A highway routing designation made by the District of Columbia that does not comply with the requirements of part 397 is preempted. 49 CFR 397.69(b). The District of Columbia has attempted to unilaterally exempt itself from this obligation by adopting rules that would avoid FMCSA's regulatory requirements until the rule is literally applied to carriers. That is too late and not the intent of FMCSA's regulations. Consequently, FMCSA rejects the District of Columbia's ripeness argument.

Accordingly, the entire DC Act as it applies to motor carriers is preempted by 49 U.S.C. 5125(c)(1) because the District of Columbia failed to comply with FMCSA's standards for establishing highway routing designations issued pursuant to 49 U.S.C. 5112(b) and 49 CFR part 397, subpart C.

V. Ruling

Federal hazardous material transportation law preempts all provisions of the DC Act as it applies to motor carriers.

VI. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 397.223(a), any person aggrieved by this decision may file a petition for

reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek judicial review in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the circuit in which the person resides or has its principal place of business. 49 U.S.C. 5127(a).

This decision will become the final decision of FMCSA 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this determination is filed within 20 days of publication in the **Federal Register**, the action by FMCSA on the petition for reconsideration will be the final decision. 49 CFR 397.223(d).

Issued in Washington, DC, on April 3, 2006.

Warren E. Hoemann,
Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-24005]

Hours of Service of Drivers: Institute of Makers of Explosives (IME); Application for Exemption

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 for exemption from a requirement in its hours-of-service (HOS) rules from the Institute of Makers of Explosives (IME). IME requests that a member of a driving team who is transporting hazardous materials requiring constant attendance in accordance with the Federal Motor Carrier Safety Regulations and who is using the sleeper berth be allowed to exit the sleeper berth for brief specified periods without being considered "on duty." FMCSA requests public comment on IME's application for exemption.

DATES: Comments must be received on or before May 10, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket No. FMCSA-2006-24005] using any of the following methods:

- **Web Site:** <http://dmses.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 provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to 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 to be notified that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

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). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Division Chief, Driver and Carrier Operations Division (MC-PSD), Office of Bus and Truck Standards and Operations, phone (202) 366-4009, e-mail MCPSD@fmcsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, June 9, 1998, 112 Stat. 107) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety

⁶Merriam Webster's dictionary defines "establish" as "to institute (as a law) permanently by enactment or agreement." Merriam Webster's Collegiate Dictionary 397 (10th ed. 1997).

⁷"Maintain" is defined as "to keep in an existing state." Merriam Webster's Collegiate Dictionary 702 (10th ed. 1997).

regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA 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 be renewed (49 CFR 381.300(b)).

Request for Exemption

IME seeks by exemption to modify the HOS standard for determining whether a driver operating a property-carrying CMV in interstate commerce is on duty. The HOS rules require, among other provisions, a minimum of 10 hours of rest before the driver of a property-carrying CMV can begin a new duty period. A driver may obtain this rest in four ways: (1) By going off duty and remaining off duty for a single uninterrupted period of 10 or more hours, (2) by obtaining 10 or more consecutive hours of sleeper-berth time, (3) by obtaining a combination of consecutive periods of off-duty and sleeper-berth time totaling 10 or more hours, or (4) by obtaining the equivalent of at least 10 consecutive hours off duty. The *equivalent* can only be obtained by a combination of two separate periods of rest: (1) A period of at least 8 but less than 10 consecutive hours in a sleeper berth and (2) a separate period of at least 2 but less than 10 consecutive hours in a sleeper berth or off duty or a combination of sleeper-berth and off-duty time. These rules for the drivers of property-carrying CMVs (and their motor carrier employers) are prescribed by 49 CFR 395.1(g)(1).

Each of these four methods for obtaining sufficient rest to begin a new duty period is premised in whole or in part upon periods of rest (whether in the sleeper berth or off duty or a combination of the two) that are uninterrupted by on-duty time. The hours within a qualifying period cannot be interrupted by a period of time on duty or driving. The hours in the period must be consecutive in order to comply with the rule. If broken for a period of time, the calculation of consecutive hours ends at that point in time. If off-duty or sleeper-berth status is resumed, the calculation of a new period of rest begins at that point.

IME is applying for this exemption on behalf of drivers who are engaged in team operations, who are using the sleeper-berth provisions of 49 CFR 395.1(g)(1), and who are transporting hazardous materials requiring constant attendance in accordance with 49 CFR 397.5. The usual mode of operation of the team is that the drivers alternate between driving and resting in the sleeper berth of the tractor. Occasionally, circumstances may require the resting driver to perform on-duty tasks for a short period of time. Among these interruptions are roadside vehicle inspections, security checks, and attendance to the CMV while the on-duty driver leaves the immediate area.

Specifically, IME seeks “* * * exemption from 49 CFR 395.1(g) to allow the off-duty team driver to provide attendance or to participate in security checks or safety inspections for brief periods of 30 minutes or less without triggering a change of duty status and the loss of accumulated sleeper berth time.” (IME's Application for Exemption, dated November 8, 2005, page 3, paragraph 2).

A copy of IME's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b) and 31136(e), FMCSA requests public comment on IME's application for exemption from 49 CFR 395.1(g). FMCSA will consider all comments received by close of business on May 10, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA 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: April 3, 2006.

Warren E. Hoemann,
Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24375]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ASHLEY.

SUMMARY: As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-24375 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an undue adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24375. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001.