

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

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 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@dot.gov](mailto:MCPSD@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, 49 U.S.C. 31315 and 31136(e)] provided authority to grant exemptions from the motor carrier safety regulations. On December 8, 1998, FMCSA's predecessor published an interim final rule implementing sec. 4007 (63 FR 67600). On August 20, 2004, FMCSA published a final rule (69 FR 51589), which requires FMCSA to publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

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's decision must be published 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

Under 49 CFR part 395, the Federal hours of service (HOS) regulations for commercial motor vehicle (CMV) drivers generally apply to motor carriers and drivers operating CMVs in interstate commerce, as defined under 49 CFR 390.5.

In relation to the HOS regulations, Summit Helicopters, Inc. (Summit) states that its situation is unique in that its drivers operate in remote areas during the early morning and late evening hours. Due to this extended schedule, there are occasions when Summit's drivers cannot maintain their desired schedule and comply with the HOS requirements. To clarify this scenario, Summit provided an outline of a typical day's schedule, and identified when the problem with HOS compliance arises.

Summit is a private motor carrier comprised of approximately 25 drivers responsible for operating 21 tank trucks. All of their trucks are based in Cloverdale, Virginia. Their trucks are dispatched to various jobsites in the states of Alabama, Georgia, North Carolina, South Carolina, and Arkansas. These tank trucks will arrive at jobsites, and go to a "water source" to be loaded with water. They will subsequently add a herbicide from a box-truck to the water to create the mixture to be dispensed from a helicopter. The tank trucks, once at the jobsites, will normally travel no more than 20 miles between the tracts of land where the chemicals are dispersed. Once the morning jobs are complete, the drivers will drive a pick-up truck to a motel, where they will have an off-duty period of around 6 hours (usually from around 11 a.m. to 5 p.m.). The drivers will then repeat the same work process during a night shift.

The HOS compliance problem arises during the night shift. The drivers have already worked a day shift consisting of

several hours of driving and on-duty time, followed by approximately 6 hours spent in the motel. All of this time is counted towards their "running 14-hour clock" (49 CFR 395.3(a)(2)), and therefore the driver would not have the necessary available driving hours during the night shift.

Summit indicates that their drivers would operate only under the requested exemption while they are conducting the aerial operations. They believe that there would be no adverse affects on safety while their drivers are operating under the requested exemption for the following reasons: (1) They do the majority of their traveling on logging roads; (2) their drivers are allowed to sleep in the motel rooms during their time off-duty; (3) they will require their drivers to fill out a daily log book, even while operating under the exemption; and (4) during their 25 years of operation, they have never had an accident that could be related to fatigue.

Summit believes that an exemption will provide them the flexibility they need to complete their extended workday under safe operating conditions.

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

##### Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Summit Helicopters, Inc.'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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