

On two recent occasions, FMCSA has published notices concerning similar Volvo requests. The first notice was the granting of an exemption to Volvo for 11 Swedish CDL drivers permitting them to operate CMVs in the United States (71 FR 27780, May 12, 2006). The second notice sought public comment on another application by Volvo seeking exemption for seven Swedish CDL drivers for similar purposes (71 FR 45095, August 8, 2006).

Volvo's Application for Exemption

Volvo has applied for an exemption from 49 CFR 383.23, one of the CDL rules. This section sets forth the licensing requirements for drivers operating CMVs in excess of 26,000 pounds gross vehicle weight rating in interstate or intrastate commerce. Volvo wishes to operate such CMVs in the United States and requests an exemption because its driver-employees are citizens and residents of Sweden and as such cannot obtain a CDL in any State of the United States. A copy of the application is in Docket No. FMCSA-2006-25756.

The exemption would allow three drivers to operate CMVs as part of a team of drivers supporting a Volvo field test of U.S. air-quality standards and test-driving prototype Volvo vehicles. Locations include Volvo's test site and the vicinity of Phoenix, Arizona, thereby allowing Volvo to obtain test results in "real world" environments.

The drivers are: Hans Leif Esbjorn Berg, Lars Ingemar Karlsson, and Rolf Stefan Wikner. Each holds a valid Swedish CDL and has driving experience in large trucks. Volvo has submitted a copy of the Swedish driving record of each of these drivers, and each has a driving record free of violations.

The FMCSA has previously determined that the process for obtaining a Swedish-issued CDL adequately assesses the driver's ability to operate CMVs in the United States. The standards for a Swedish CDL are comparable to, and as demanding as, the Federal requirements of Part 383.

Request for Comments

FMCSA requests public comment from all interested persons on Volvo's application for an exemption for these three drivers from the CDL requirement of 49 CFR 383.23. See 49 U.S.C. 31315(b)(4) and 31136(e). The Agency will consider all comments received by close of business on January 22, 2007. Comments will be available for examination in the docket.

We will consider comments received after the comment closing date to the extent practicable.

Issued on: December 15, 2006.

John H. Hill,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Santa Fe Corporation

Docket Number FRA-2006-24812

Burlington Northern Santa Fe Corporation (BNSF) seeks a permanent waiver of compliance with the certain provisions of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment*. Specifically, they are requesting a waiver from the mileage and inspection requirements for 49 CFR 232.213, *Extended Haul Trains*.

BNSF would like to perform the 1,500-mile extended haul inspection for 13 designated trains at points that slightly exceed the 1,500-mile point for inbound and outbound inspections. On July 14, 2006, the FRA granted BNSF a 6-month temporary waiver from the requirements for which the railroad is presently seeking permanent relief. BNSF believes that the relief is critical given the increased demand for coal by the utility industry, and that the increase will not compromise railroad safety. BNSF believes that granting this waiver petition will significantly improve their ability to transport coal without any degradation to the safe operation of the following designated trains: E-PAMATM, E-PAMBAM, E-PAMBTM, E-PAMFNAM, E-PAMSMBM, E-PAMEBM, E-MHSATM, E-MHSBKM, E-MHSCAM, E-MHSEBM, E-MHSJRM, E-MHSNAM, and E-MHSRWM.

BNSF states that they will provide mechanical and operating forces with the list of trains allowed to operate past the 1,500-mile threshold. Additionally, BNSF would maintain records of defective conditions discovered during

inspections, as currently required, including any defective equipment set out en route.

Interested parties are invited to participate in these proceedings by submitting written data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2006-24812) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC. 20590-0001. All communications concerning this petition should identify the appropriate docket number (FRA-2006-26029) and may be submitted by one of the following methods:

- *Web site:* <http://dms.dot.gov>.
- Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 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; or
 - *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.

Communication received within 30 days of the date of this notice will be considered by FRA prior to final action being taken. Comments received after that date will be considered to the extent practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on December 19, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25525; Notice 2]

Fulmer Helmets, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Fulmer Helmets, Inc. (Fulmer) has determined that certain helmets it produced in 2001 through 2006 do not comply with S5.2 of 49 CFR 571.218, Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Fulmer has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on August 8, 2006 in the **Federal Register** (71 FR 45106). NHTSA received no comments.

Affected are a total of approximately 32,052 helmets which Fulmer certified as complying with FMVSS No. 218. These consist of approximately 26,762 Modular Motorcycle Helmets AF-M produced between January 2002 and April 2006, and approximately 5,290 Modular Snowmobile Helmets SN-M produced between November 2001 and November 2005. S5.2 of FMVSS No. 218, Penetration, requires that "when a penetration test is conducted in accordance with S7.2, the striker shall not contact the surface of the test headform." When this test was conducted on the subject helmets, the striker contacted the surface of the test headform. Fulmer has corrected the problem that caused these errors so that they will not be repeated in future production.

Fulmer believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Fulmer states that it asked Harry Hurt, "a leading expert in helmet testing and motorcycle crash research * * * [whose] experience is more than 50 years," to review the test results. Fulmer further states,

[Harry Hurt's] opinion is that the noncompliance on the penetration test is inconsequential because the helmets performed exceptionally well on all impact attenuation tests. In his experience, there has never been any correlation between the penetration test and accident performance, and damage like the penetration test is never seen in crash involved motorcycle helmets.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. The petitioner has not provided sufficient arguments or data to meet its burden of persuasion.

Fulmer asserts that the noncompliance is inconsequential to motor vehicle safety based on the opinion of Hugh H. (Harry) Hurt, Jr., President of the Head Protection Research Laboratory. Mr. Hurt contends that "there has never been any correlation between the penetration test and accident performance." While Mr. Hurt may have significant research experience related to motorcycle helmets, his statement alone is insufficient to justify that the failure of the Fulmer AF-M and SN-M helmets to meet S5.2 of the standard is inconsequential to motor vehicle safety.

The agency adopted the penetration performance requirement from ANSI Z90.1-1971. This performance requirement was adopted by the Standards Committee Z90 which included representatives from various consumer groups, helmet manufacturers, testing organizations, and government organizations.

Since its adoption, NHTSA has reviewed the relationship of the penetration test to motor vehicle safety. The agency requested comments on the merits of the penetration performance test in 1988 (53 FR 11280) but received no comments regarding the elimination of this performance requirement, or proving or disproving the benefits. In 1997, a study was commissioned to evaluate upgrading FMVSS No. 218 ("Feasibility Study of Upgrading FMVSS No. 218, Motorcycle Helmets," D.R. Thom, H.H. Hurt, T.A. Smith, J.V. Ouelelet, Head Protection Research Laboratory, University of Southern California, DTNH22-97-P-02001). The study considered potential areas for FMVSS No. 218 to be upgraded, including the penetration test. With regard to the latter, the authors, including Mr. Hurt, stated that "[t]he advantage [of the FMVSS No. 218 penetration test] is that the test is very severe, simple, repeatable, and absolutely denies qualification to an inferior helmet." (pg. 11) The study (at pages 1 and 54) recommended that the agency retain the penetration tests.

These reviews provide ample support for the value of the penetration test within FMVSS No. 218.

At an independent test lab, NHTSA conducted FMVSS No. 218 compliance tests on eight of the subject Fulmer AF-M motorcycle helmets. Six of the eight helmets failed the penetration requirement of S5.2, representing a 75 percent failure rate of the sample set. NHTSA believes that the rate of noncompliance presents a safety concern, and the arguments presented by the petitioner have not alleviated this concern.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Fulmer's petition is hereby denied.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: December 18, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006-25981; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that certain tires it imported in 2005 and 2006 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on October 12, 2006, in the **Federal Register** (71 FR 60230). NHTSA received no comments.

Affected are a total of approximately 6,189 11R24.5 Load Range H BFGoodrich DR444 tires produced between November 20, 2005 and July 22, 2006. S6.5(d) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "[t]he maximum