

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Florence E. Harmon,

Acting Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0076]

Hours of Service of Drivers: United States Department of Energy (DOE); Application for Exemption

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

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

SUMMARY: FMCSA has received an application from the U.S. Department of Energy (DOE) for an exemption from certain provisions of the Agency's hours-of-service (HOS) regulations. DOE proposes that its contract motor carriers and their employee-drivers engaged in the transportation of transuranic waste (TRU) be granted an exemption from the HOS rules pertaining to use of a sleeper berth (SB). Current HOS rules require that all SB rest regimens include, in part, the regular use of a SB period of at least 8 hours—combined with a separate period of at least 2 hours, either in the SB, off-duty or some combination of both—to gain the equivalent of at least 10 consecutive hours off-duty. DOE proposes that its contract drivers be allowed to take the equivalent of 10 consecutive hours off duty by splitting SB time into two periods, provided neither of the two periods is less than 2 hours. DOE asserts that if its request for exemption is granted, the level of safety of its TRU operations would be equivalent to, or greater than, the level of safety that would be obtained by complying with the current HOS regulations. FMCSA requests public comment on DOE's application for exemption.

DATES: Comments must be submitted on or before July 14, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2008-0076 by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.

- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- **Hand Delivery:** Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the ground floor, room W12-140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: 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, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit <http://www.regulations.gov>.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the <http://www.regulations.gov> Web site and also at the DOT's <http://docketsinfo.dot.gov> Web site. 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 online.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. **Telephone:** 202-366-4325. **E-mail:** 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) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must 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. 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 decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is 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

U.S. Department of Energy (DOE) contractors provide long-haul transportation of transuranic disposable waste (TRU), a hazardous material (HM) under Federal regulations, to and from a DOE repository in Carlsbad, New Mexico. The contractors transport this nuclear waste by means of commercial motor vehicles (CMVs) equipped with cargo tanks. These operations are time sensitive and involve a high security risk. The contractors conduct approximately 30 round-trips a week, each between 2,500 and 3,500 miles. Alternating between driving and sleeper-berth (SB), the two-driver teams normally complete a trip within 3 to 4 days.

DOE requests an exemption from the current regulations for these TRU waste long-haul operations to eliminate the requirement that SB regimens include a period of at least 8 but less than 10 consecutive hours in the SB (49 CFR 395.1(g)(1)(ii)(A)(1)). DOE proposes that these commercial motor vehicle (CMV) drivers transporting TRU waste shipments be allowed to split SB time into two periods, provided neither of the two periods is less than 2 hours in length. The TRU waste shipments require a team of two drivers and the use of the SB. DOE believes it is

³⁷ 17 CFR 200.30-3(a)(12).

imperative for them to receive flexibility for team drivers who use the SB in order to expedite the delivery of high security-risk and time-sensitive TRU waste shipments in a safe and secure manner. According to DOE, acceptance of their proposed option would allow team drivers to manage their en-route rest periods effectively, thus resulting in a safe driving performance during the long distance trip.

The DOE's proposed exemption option would initially apply to those CMV drivers of only two DOE contracted motor carriers who are currently responsible for transporting TRU waste shipments. However, according to DOE, motor carrier contracts are subject to change, and they therefore request that FMCSA grant the exemption from 49 CFR 395.1(g)(1)(ii)(A)(1) for all DOE contractors transporting TRU waste shipments. If the exemption is granted, DOE will monitor and control the use of the exemption by the contracted motor carriers.

The DOE proposes to impose the following safety controls as part of its TRU waste operations under the exemption:

- Limit driving time to 10 hours before appropriate rest must be obtained;
- Real-time tracking and monitoring of TRU waste shipments using DOE's satellite-based TRANSCOM system;
- Use of electronic on-board recorders on trucks is contractually required by DOE/Waste Isolation Power Plant contracted motor carriers to ensure compliance with driver's HOS rules;
- Additional driver qualification and training requirements are established in the TRU waste transportation contract in addition to DOT regulatory qualification training requirements for HM and highway-route-controlled-quantity shipments;
- Train all CMV drivers on fatigue awareness;
- Maintain DOE's strict penalty system for infractions committed by its TRU waste drivers;
- Enhance fleet inspection program in accordance with the Commercial Vehicle Safety Alliance Level VI requirements prior to dispatch and en route. The tractor and trailer fleet maintenance programs are based primarily on the manufacturer's recommended service requirements;
- Monitor the TRU waste CMVs via satellite and in-cab video cameras; and
- Monitor the safety of these operations via FMCSA's SafeStat Program and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's proposed safety controls can be found in their application for exemption, which can be accessed in the docket identified at the beginning of this notice.

The DOE contends that the 8-hour SB requirement conflicts with DOE's security and safety regulations. In addition, DOE states that the TRU waste transportation requirements imposed by the SB rest period provisions of the current rule negatively impact team drivers' sleep and alertness. The DOE states that if its request for exemption is granted, the level of safety of its TRU waste operations would be equivalent to, or greater than, the level of safety that would be obtained by complying with the current SB regulations.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on DOE's application for a limited exemption from 49 CFR 395.1(g)(1)(ii)(A)(1). The Agency will consider all comments received by close of business on July 14, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: June 5, 2008.

Charles A. Horan III,
Acting Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0074; Notice 1]

Goodyear Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Goodyear Tire & Rubber Company (Goodyear), has determined that certain passenger car tires manufactured during the week of January 7, 2008 did not fully comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles*. Goodyear has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Goodyear has petitioned for an exemption from the notification

and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Goodyear's petition 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 petition.

Affected are 18 P235/55R18 99V Goodyear Eagle RS-A passenger car tires manufactured in its Lawton, Oklahoma plant during the week of January 7, 2008.

Paragraph S5.5.1(a) of FMVSS No. 139 requires:

S5.5.1 *Tire identification number.* (a) Tires manufactured before September 1, 2009. Each tire must be labeled with the tire identification number required by 49 CFR part 574 on a sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

Goodyear explains that due to a mold labeling error the labeling information on the subject tires incorrectly states "NOT FOR SALE" on the intended inboard sidewall instead of the partial tire identification number (TIN) "M60Y LNER." Therefore, it is Goodyear's belief that the subject tires are not in compliance with the tire labeling requirement found in S5.5.1(a) of FMVSS No. 139.

Goodyear makes the argument that this noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all other applicable FMVSS performance standards, and that the tires were designed, manufactured and tested to the standards and regulations as applicable and they meet all regulatory performance test requirements.

Goodyear also explains its belief that the Tire Identification Number (TIN) and the partial TIN are used to properly identify tires that are involved in a safety campaign. Goodyear stated its belief that the full TIN is molded on the intended outboard sidewall of these tires and consumers could be directed to have both sidewalls inspected for the TIN if any safety campaign would be required for these tires in the future. Goodyear compared this situation to that of any tire involved in a safety campaign that required the 4-digit week and year code to determine if it were involved.

Goodyear also stated that it has corrected the problem that caused these