

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0165; Notice 2]

Medical Coaches, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

Medical Coaches, Inc. (Medical Coaches), has determined that certain model year 1996-2008 trailers did not fully comply with paragraph S5.3 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120 *Tire Selection and Rims for Motor Vehicles With a GVWR of More Than 4,536 Kilograms (10,000 Pounds)*. Medical Coaches 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) and the rule implementing those provisions at 49 CFR Part 556, Medical Coaches 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. Notice of receipt of the petition was published, with a 30-day public comment period, on November 17, 2008 in the **Federal Register** (73 FR 67924). No comments were received. To view the petition and all supporting documents, log on to the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2008-0165."

For further information on this decision, contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-0645, facsimile (202) 366-7097. Affected are approximately 310 trailers manufactured between March 14, 1996 and May 19, 2008.

Paragraph S5.3 of FMVSS No. 120 requires in pertinent part:

S5.3 Each vehicle shall show the information specified in S5.3.1 and S5.3.2 and, in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this paragraph. This information shall appear either—

(a) After each GAWR listed on the certification label required by Sec. 567.4 or Sec. 567.5 of this chapter; or at the option of the manufacturer,

(b) On the tire information label affixed to the vehicle in the manner, location, and form described in Sec. 567.4(b) through (f) of this

chapter as appropriate of each GVWR-GAWR combination listed on the certification label * * *.

Truck Example—Suitable Tire-Rim Choice

GVWR: 7,840 KG (17,289 LB)
 GAWR: FRONT—2,850 KG (6,280 LB) WITH 7.50-20(D) TIRES, 20x6.00 RIMS AT 520 KPA (75 PSI) COLD SINGLE
 GAWR: REAR—4,990 KG (11,000 LB) WITH 7.50-20(D) TIRES, 20x6.00 RIMS, AT 450 KPA (65 PSI) COLD DUAL
 GVWR: 13,280 KG (29,279 LB)
 GAWR: FRONT—4,826 KG (10,640 LB) WITH 10.00-20(F) TIRES, 20x7.50 RIMS, AT 620 KPA (90 PSI) COLD SINGLE
 GAWR: REAR—8,454 KG (18,639 LB) WITH 10.00-20(F) TIRES, 20x2.70 RIMS, AT 550 KPA (80 PSI) COLD DUAL

In its petition, Medical Coaches explained that, as of March 14, 1996, its tire and rim label information was not in full compliance with FMVSS No. 120. The combined certification/tire information labels affixed to Medical Coaches' trailers pursuant to 49 CFR Part 567 *Certification* and FMVSS No. 120 failed to comply with S5.3 of FMVSS No. 120 because metric measurements were omitted. The labels contained the correct English unit information.

Medical Coaches also stated that the combined certification/tire information labels on all trailers it manufactured since 2006 did not comply with the requirements of 49 CFR Part 567 due to the omission of metric units for gross vehicle weight rating (GVWR) and gross axle weight ratings (GAWR). The labels contained the correct English unit information.

Medical Coaches learned of its noncompliance after submitting sample labels to the National Truck Equipment Association (NTEA) for review as part of their Member Verification Program (MVP).

In summary, trailers manufactured by Medical Coaches, Inc., from March 1996 until May 19, 2008 did not comply with FMVSS No. 120 requirements for metric equivalents for tire pressure on the certification labels. Trailers manufactured by Medical Coaches from September 1, 2006 until May 19, 2008 did not comply with the requirements for metric equivalents for GVWR and GAWR on the certification labels.

Medical Coaches supported its application for inconsequential noncompliance with the following statements:

The certification label did contain the correct information in English units and displayed this information in the correct format.

The omission of the metric units is highly unlikely to have any effect whatsoever on motor vehicle safety since the correct English

units were included and because of the small number of trailers involved.

The metric requirements of 49 CFR 571.120 and 49 CFR 567 were not mandated for safety reasons.

Several inconsequential noncompliance requests have been granted by NHTSA in the past for the omission of metric units on certification labels. These petitions involved thousands of trailers, well over the 310 involved in this petition.

Medical Coaches has not received any complaints from customers on the omission of the metric data from the certification labels and is not aware of accidents or injuries caused by these omissions.

Medical Coaches has purchased a certification label printing program from the NTEA that assures certification label compliance from now and into the future.

Additionally, Medical Coaches states that it does not question the need and usefulness of detailing metric units on certification labels. Medical Coaches' error of omission, while regrettable, was corrected as soon as the nonconformance was realized and believes that it is now in full compliance with assurances for the future.

Medical Coaches believes the metric equivalents on certification labels, while mandated, have little affect on vehicle safety and respectfully requests that NHTSA grant a petition.

NHTSA Decision

Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100-418) makes it the United States policy that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the **Federal Register** (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996. On February 14, 2005, NHTSA published in the **Federal Register** (70 FR 7430) the final rule *Vehicles Built in Two or More Stages* that included the use of combined Metric/English measurements for GVWR and GAWR on certification labels. The effective date for this final rule was September 1, 2006.

The purpose of labeling requirements in paragraph S5.3 of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that vehicles are equipped with tires of appropriate size and load rating, and rims of appropriate size and type designation.

After review of Medical Coaches' petition, the agency has determined that the failure to include metric measurement units for GVWR and GAWR on the subject combined certification/tire information is a violation of 49 CFR Part 567 which draws its authority from 49 U.S.C. 30115 *Certification of Compliance*. A

violation of 49 U.S.C. 30115 does not impose notification or remedy because it is not a noncompliance with an FMVSS. Consequently, that portion of its inconsequentiality petition is moot.

However, the failure to provide metric units on the subject combined certification/tire information labels as required by FMVSS No. 120 is a noncompliance that is violation of Chapter 301.

While NHTSA strongly encourages manufacturers to include both English and Metric units on all certification and tire information labels, we do not believe that in this particular situation that the omission of metric units is likely to have any affect on motor vehicle safety. The agency agrees with Medical Coaches that the present label on these trailers is likely to achieve the safety purposes of the required information. First, all the correct English unit information required by FMVSS No. 120 is provided on the combined certification/tire information label. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format.

In consideration of the foregoing, NHTSA has decided that Medical Coaches has met its burden of persuasion that the failure to include metric units on the combined certification/tire information labels on the subject vehicles, as required by paragraph S5.3 of FMVSS No. 120, is inconsequential to motor vehicle safety. Accordingly, Medical Coaches' application is granted, and it is exempted from providing the notification of noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. All products manufactured or sold on and after May 9, 2008, must comply fully with the requirements of FMVSS No. 120.

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

Issued on: July 13, 2009.

Daniel C. Smith

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Request for Applications for the Federal Motor Carrier Safety Administration Medical Review Board

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

ACTION: Request for applications for the Medical Review Board.

SUMMARY: FMCSA solicits applications from interested physicians to serve on the Agency's Medical Review Board (MRB). The MRB, authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), provides scientific advice to the Secretary of Transportation (the Secretary) and the FMCSA Administrator on medical issues relating to the physical qualification standards for commercial motor vehicle (CMV) drivers. In 2006, the Secretary appointed five physicians for 2-year terms to serve on the MRB. In 2008, the Secretary reappointed the physicians to the MRB, with the chairperson currently serving a 2-year term, and the other four members serving staggered 1-year terms. In 2009, the Secretary appointed two new members to a 2-year term, and reappointed two of the current members to a 1-year term to ensure the MRB continued to operate with five active members. The term of the chairman and two members will expire in 2010. Therefore, in 2010, the Secretary will appoint three new MRB members to fill the vacancies created when the three current members' terms expire. In addition, the Secretary will appoint alternates to serve if one or more of the appointed MRB members is unable to complete his/her term. The appointment of alternates ensures that the MRB will operate continuously with five active members.

DATES: Applications must be received by August 17, 2009. FMCSA will periodically call for applications as deemed necessary.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, 202-366-4001, FMCSA, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

FMCSA has current statutory authority under 49 U.S.C. 31502 and

31136 to determine the physical qualifications of interstate CMV drivers. The physical qualifications regulations for commercial motor vehicle (CMV) drivers in interstate commerce are found in 49 CFR 391.41. Section 391.43 contains instructions to medical examiners for performing physical examinations of CMV drivers. FMCSA medical standards and guidelines are critical medical program components in accomplishing FMCSA's mission to reduce crashes, injuries, and fatalities involving large trucks and buses.

In 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59). Section 4116 (a) of SAFETEA-LU (codified at 49 U.S.C. 31149) required FMCSA to establish the MRB to provide scientific advice on matters related to CMV driver health and safety. The Charter for the MRB was originally approved and filed with the General Services Administration on September 20, 2005 [FR 70 57642], and renewed on November 2, 2007.

The MRB promotes CMV safety by providing science-based medical expertise on the medical qualification of CMV drivers, reviewing and revising medical standards, and interpreting medical research. These activities address the appropriateness and viability of the medical standards in the Federal Motor Carrier Safety Regulations, the framework that relates driver health to safe CMV operation. The MRB assesses and provides recommendations to FMCSA about regulations that may need to be changed or updated. FMCSA's MRB provides information, advice, and recommendations to the Secretary of Transportation and the FMCSA Administrator on the development and implementation of science-based physical qualification standards applicable to interstate CMV drivers, and implementation of a national registry of medical examiners. The MRB does not hold regulatory development responsibilities, manage programs, or make decisions affecting such programs. The MRB provides a forum for the development, consideration, and communication of information from a knowledgeable, scientific perspective. The MRB began operations in February 2006, with formal deliberations beginning in August 2006. The MRB meets 3-4 times each year and has issued many recommendations on cardiovascular diseases, seizure disorders, musculoskeletal diseases, and other topics pertinent to the certified driver medical examination.