

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: July 21, 2006.

**Salvador Deocampo,**

*District Engineer.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-22936]

#### Hours of Service of Drivers; Application for Exemption; Landstar System, 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 Landstar System, Inc. (Landstar) for an exemption from the commercial motor vehicle (CMV) drivers' hours-of-service regulations for its drivers when transporting high-security cargo that requires constant attendance. The HOS regulation requires that CMV drivers using the sleeper-berth exception remain in the sleeper berth for at least 8 consecutive hours during one of the 2 rest periods used to accumulate the equivalent of 10 hours off duty. Landstar states that, for team-driver operations, this prevents the driver in the sleeper berth from attending to the cargo while the other driver takes a restroom break, and conflicts with requirements for all persons to exit the vehicle for a security inspection when entering certain military installations. FMCSA requests public comment on the Landstar application for exemption.

**DATES:** Comments must be received on or before August 30, 2006.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2005-22936 by any of the following methods:

- *Web site:* <http://dmses.dot.gov/submit/>. Follow the instructions for submitting comments to the DOT Docket Management System (DMS) Web 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:* 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@fmcsa.dot.gov](mailto:MCPSD@fmcsa.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)) provides authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, the 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) that requires the Agency 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 for public comment on the request and to inspect information relevant to the application, including 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

The hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers in 49 CFR part 395 apply to motor carriers and drivers operating CMVs in interstate commerce, as defined in 49 CFR 390.5. Landstar transports sensitive cargo for the U.S. Department of Defense (DOD). Landstar states this high-risk cargo must be attended at all times as required by the Federal Motor Carrier Safety Regulations (49 CFR 397.5) and DOD regulations.

Landstar states that, during team-driver operations, the sleeper-berth requirements for at least 8 consecutive hours sleeper-berth use (49 CFR 395.1(g)(ii)(A)(1)) would not allow the first operator (driving) to stop for a comfort break because the second operator (in the sleeper) would not be allowed to attend the vehicle without interrupting his or her 8 consecutive hours in the sleeper berth.

Landstar also states that security procedures at military installations require both drivers to exit the vehicle for a security inspection when the vehicle enters the installation. For team drivers using the sleeper-berth HOS exception, the second operator would have to interrupt his or her 8 hours of

sleeper-berth time to accommodate these military security procedures.

According to Landstar, both scenarios would interrupt the driver's 8 hours of consecutive sleeper berth use, making it operationally impossible for them to comply with FMCSA and DOD rules and regulations.

Landstar suggests that the sensitive military shipments should be considered as a national security risk. Landstar's concerns are: "Will operators comply with FMCSA and take a comfort break without waking their partner and risk leaving a high risk load unattended? Or will operators comply with DOD/SDDC rules and wake the second seat operator to monitor the load, while breaking his 8 hours of rest?" Landstar states that operators must choose between the two options. Landstar further states that, as the current rules are written, an operator transporting "security clearance, high risk freight" cannot comply with both the DOD and the FMCSA regulations.

A copy of the Landstar's exemption application is available for review in the docket.

#### Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Landstar'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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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-24231]

#### Hours of Service of Drivers: Application for Exemption; FedEx Ground Package System, 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 FedEx Ground Package System, Inc. (FedEx) requesting an exemption from the on-duty time definition under the Federal drivers hours-of-service (HOS) regulations for drivers who operate commercial motor vehicles (CMVs). If granted, the exemption would allow FedEx's home-delivery drivers to operate property-carrying CMVs to and from their residence, without being considered "on duty." FedEx states the subject property is normally a package or packages which were expected to be delivered during the workday but, for one reason or another, could not be delivered that day. Thus, the drivers would operate laden CMVs from the point where the final home delivery was made for that workday to their residence, and from their residence the following workday to a FedEx terminal. FedEx believes its drivers would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. FMCSA requests public comment on the FedEx application for exemption.

**DATES:** Comments must be received on or before August 30, 2006.

**ADDRESSES:** You may submit comments identified by FMCSA Docket Number FMCSA-2005-24231 by any of the following methods:

- *Web Site:* <http://dmses.dot.gov/submit>. Follow the instructions for submitting comments to 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.
- *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 Management System (DMS) 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@fmcsa.dot.gov](mailto:MCPSD@fmcsa.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), which amended 49 U.S.C. 31315 and 31136(e), provided authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, FMCSA's predecessor published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA issued a final rule (69 FR 51589) which requires FMCSA to publish a notice of each exemption request in the **Federal Register** (49 CFR 315(a)). The agency must provide an opportunity for public comment on the request and to inspect the information relevant to the application, including