

a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

### III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 26 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 67 FR 76439; 68 FR 10298; 68 FR 10301; 68 FR 13360; 68 FR 19596; 69 FR 33997; 69 FR 61292; 69 FR 64806; 70 FR 2701; 70 FR 2705; 70 FR 7543; 70 FR 12265; 70 FR 16886; 70 FR 16887; 72 FR 184; 72 FR 5489; 72 FR 11425; 72 FR 11426; 72 FR 12666; 72 FR 18726; 72 FR 25831; 74 FR 7097; 74 FR 8842; 74 FR 11988; 74 FR 11991; 74 FR 15584; 74 FR 15586; 74 FR 21427; 74 FR 21796; 75 FR 77942; 76 FR 5425; 76 FR 21796; 76 FR 25762; 78 FR 22596). Each of these 26 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

### IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

#### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2000-8398; FMCSA-

2002-13411; FMCSA-2003-14223; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2007-27333; FMCSA-2008-0398; FMCSA-2009-0054; FMCSA-2010-0385), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, "FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2003-14223; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2007-27333; FMCSA-2008-0398; FMCSA-2009-0054; FMCSA-2010-0385" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

#### Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and in the search box insert the docket number, "FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2003-14223; FMCSA-2004-17984; FMCSA-2004-19477; FMCSA-2005-20027; FMCSA-2007-27333; FMCSA-2008-0398; FMCSA-2009-0054; FMCSA-2010-0385" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: March 19, 2015.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2015-07049 Filed 3-26-15; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0071]

#### Hours of Service of Drivers: McKee Foods Transportation, LLC, Application for Exemption

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

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant an exemption to McKee Foods Transportation, LLC (MFT) from certain provisions of the Agency's hours-of-service (HOS) regulations. MFT proposed that its team drivers 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 use of an SB for 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. The exemption will allow MFT's team drivers to take the equivalent of 10 consecutive hours off duty by splitting SB time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours.

**DATES:** This exemption is effective March 27, 2015 and expires on March 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Pearl Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

**Docket:** For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through

Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

#### SUPPLEMENTARY INFORMATION:

##### Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety 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 that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### Request for Exemption

MFT is a private carrier that sells fresh snack food products under the Little Debbie, Sunbelt, and Drake's brands. MFT delivers products in interstate commerce to 48 states and parts of Canada from three manufacturing distribution centers and one stand-alone distribution center. MFT employs approximately 650 drivers, using more than 300 tractor-trailer combinations. MFT's average driver is on duty approximately 35–45 hours per week with the majority of the on-duty time split between driving and unloading the trailer. A typical trip averages six stops. Some of the trips make backhauls—both private and for-hire. The average round trip is about 1,000 miles. A team usually delivers two trailer loads per week, with time at home between most trips.

MFT states that it operates on a routine weekly cycle. Each workweek contains a regular subset of daily cycles dispatching and returning long-, medium- and short-range trips. MFT

advises that it has a constant flow of outbound and inbound trucks that allow it to continuously ship fresh-baked goods and return with backhauls of raw materials and other for-hire loads. The routine cycles allow most of the drivers to have regular schedules. Many of MFT's drivers are off duty at least 48 consecutive hours every week while many others are off duty at least 72 consecutive hours. MFT's tractors are equipped with double-bunk sleepers in the event both drivers need or want to rest at the same time. Drivers are allowed to make their own decisions about when and where to take short rest breaks based on their personal needs and preferences in conformance with current regulatory requirements. MFT advises that it takes driver safety, health and wellness seriously, and hires well-qualified drivers who go through a comprehensive orientation/new hire training program. MFT's trucks are equipped with automatic on-board recording devices (AOBRDs) that produce electronic records of duty status.

MFT requested an exemption from the current regulations for its delivery shipments and backhaul activity operations to eliminate the requirement that SB time include a period of at least 8 but less than 10 consecutive hours in the SB and a separate period of at least 2 but less than 10 consecutive hours either in the SB or off duty, or any combination thereof (49 CFR 395.1(g)(1)(ii)(A)(1)). MFT proposed that these team drivers be allowed to split SB time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. The exemption would be limited to team drivers.

MFT states that the activities of its team drivers involve both driving and offloading product to its customers. The drivers average approximately 53 hours per week on the road away from home. MFT states that approximately 30 percent of this time is spent in the sleeper. MFT contends that the experience of its drivers has demonstrated that sleeping in a moving vehicle is more difficult than in a stopped truck. According to MFT, having the flexibility to switch with a partner allows each driver to take advantage of shorter time periods when they may feel fatigued. MFT further stated, this will result in a more-flexible work pattern, allowing both drivers to perform warehouse functions together (to reduce driver unloading time and improve maneuvering in the warehouse), and improving personal and vehicular safety.

MFT states that it is committed to maintaining its outstanding safety record by focusing on continuous improvement, promoting technologies to enhance safety, conducting thorough inspections and having well-communicated policies in place to address both safety and compliance-related topics. MFT identified some countermeasures it would take to maintain safe operations if the exemption is granted. The safeguards include, but are not limited to:

- Every week, all transportation operations shut down one hour prior to sundown on Friday until one hour after sundown on Saturday, resulting in an automatic minimum 26 hour off-duty home time for all drivers in addition to two or three days home time during the week;
- All tractors are equipped with speed limiters;
- Drivers use AOBRDs to track their duty time and HOS compliance;
- Drive time is reduced from 11 hours to 10 hours. Team drivers are limited to 10 hours of driving prior to completing their required 10 hours total SB.
- Behavior-based event data is monitored from the enhanced AOBRDs to improve safety measures already in place to help reduce the probability of accidents on the road.

MFT believes that by allowing its team drivers to exercise flexibility in their SB requirements, the drivers would experience more quality rest. To support its request for the exemption, MFT cited the results of an FMCSA-sponsored study entitled "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health."<sup>1</sup> The report noted "that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep." (<http://ntl.bts.gov/lib/51000/51200/51254/12-003-Split-Sleep-Investigation-of-the-Effects-of-Split-Sleep-Schedules-on-Commercial-Vehicle-Driver-Safety-and-Health-508.pdf>)

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

##### Public Comments

On May 12, 2014, FMCSA published notice of this application, and asked for public comment (79 FR 27041). Twelve commenters responded. Eight commenters supported the application, three commenters opposed it and one individual commented but did not

<sup>1</sup> Belenky, G., Jackson, M.L., Tompkins, L., Satterfield, B., Bender, A., "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health," FMCSA, Dec. 2012.

indicate whether he supported or opposed the application.

The three comments opposing the exemption were from two individuals and the Advocates for Highway and Auto Safety (Advocates). Mr. Charles McKown said, "I am EXTREMELY opposed." Mr. Michael Millard said, "The request for an exemption from the HOS sets in motion a slippery slope; whereas, if the FMCSA grants the exemption they are indicating the current HOS is not suitable for acquiring the needed rest. If FMCSA grants the exemption they can expect to be hounded by other motor carriers to participate in the exemption or submit a new exemption based on the individual carrier's needs. If the exemption is approved then it creates problems for MCSAP officers performing roadside inspections as the MCSAP officers would have to be trained on how to calculate the HOS sleeper berth provision costing the tax payers thousands if not hundreds of thousands of dollars in training the MCSAP officers."

The Advocates stated that, "The applicant has provided no definitive proof that the proposed alternative HOS, changing the sleeper berth requirements to allow sleeper berth periods to be broken into two periods of no less than 3 hours, would in any way ensure safety or address the agency's concerns regarding acute and cumulative fatigue which was the impetus for the requirement." The Advocates contend that the controls listed by MFT in no way constitute a safety analysis on par with that required by statute. Seven comments supporting the application were submitted by MFT employees.

The American Trucking Associations, Inc. (ATA) also supports the exemption. The ATA said, "ATA strongly supports McKee Foods Transportation, LLC's (MFT) application for exemption from 49 CFR 395.1(g)(1)(ii)(A)(1-2). ATA has long contended that the currently prescribed sleeper berth rules do not introduce enough flexibility into the delicate equation of driver rest, sleep and performance. MFT's application for exemption provides FMCSA with an excellent opportunity to observe the safety and, perhaps health benefits of allowing additional flexibility into sleeper berth utilization and should be granted without delay."

All comments are available for review in the docket for this notice.

#### **FMCSA Response to Public Comments and Agency Decision**

Prior to publishing the **Federal Register** notice announcing the receipt of MFT's exemption request, FMCSA

ensured that MFT has a current USDOT registration, minimum required levels of insurance, and is not subject to any "imminent hazard" or other out-of-service (OOS) orders. The Agency conducted a comprehensive evaluation of the safety performance history of the applicant during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records for MFT, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to Mr. Millard's comments, the Agency does not believe that an exemption from the SB requirement is an indication that the current HOS is not suitable for acquiring needed rest. An exemption in this instance would only provide flexibility of how the 10 hours in the SB are split but does not reduce the 10 hour rest requirement. Split SB periods were allowed prior to 2003; therefore, many MCSAP officers remain familiar with it, and training others can be done economically through existing, continuing training methods.

With regard to the Advocates comments, the Agency believes that the FMCSA-sponsored study entitled "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health"<sup>2</sup> cited by MFT provides a reasonable basis for an exemption of this type, which will enable FMCSA to observe the effects of split sleep in a real world context over a substantial time period.

The Agency is well aware that preventing fatigue is a complex process taking into account numerous factors such as time of day, amount and timing of sleep, time awake and time on task. The Agency believes that the controls identified in MFT's application, including a 26-hour off duty period every week, reduction of daily driving time from 11 hours to 10 hours and monitoring data from AOBDRs, will ensure that safety is not adversely affected.

The FMCSA has evaluated MFT's application, safety record, and the public comments. The Agency believes that MFT will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and grants the requested exemption covering the operations of team drivers employed by MFT.

<sup>2</sup> Belenky, G., Jackson, M.L., Tompkins, L., Satterfield, B., Bender, A., "Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health," FMCSA, Dec. 2012.

#### **Terms and Conditions of the Exemption**

##### *Period of the Exemption*

This exemption from the requirements of 49 CFR 395.1(g)(1)(ii)(A)(1-2) is effective during the period of March 27, 2015 through March 27, 2016. The exemption will expire on March 27, 2016, 11:59 p.m. local time, unless renewed.

##### *Extent of the Exemption*

The team drivers employed by MFT are provided a limited exemption from the SB requirements of 49 CFR 395.1(g)(1)(ii)(A)(1-2) to allow these drivers to split SB time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. Team drivers will use electronic logging devices to track records of duty status; have a minimum 26-hour off-duty period, at home, from Friday night to Saturday night; and, be limited to 10 hours of driving following their required 10 consecutive hours off duty, or the SB equivalent.

##### *Other Conditions*

The exemption is contingent upon MFT maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any "imminent hazard" or other OOS order issued by FMCSA. Each team driver covered by the exemption must maintain a valid CDL with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

##### *Preemption*

During the period this exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemptions with respect to a person or entity operating under the exemptions (49 U.S.C. 31315(d)).

##### *FMCSA Accident Notification*

MFT must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to [MCPSPD@DOT.GOV](mailto:MCPSPD@DOT.GOV), and include the following information:

- Date of the accident,
- City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- Driver's name and driver's license number,
- Vehicle number and State license number,

- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

#### Termination

The FMCSA does not believe the team drivers covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: March 19, 2015.

**T.F. Scott Darling, III,**  
Acting Administrator.

[FR Doc. 2015-07056 Filed 3-26-15; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0370]

#### Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption

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

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

**SUMMARY:** FMCSA has received an application from the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period July 1, 2013, through June 30, 2015, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exemption renewal would allow these exempted drivers to use 30 minutes or more of "attendance time" to meet the HOS rest break requirements providing they do not perform any other work during the break. FMCSA requests public comment

on the DOE's application for renewal of the exemption.

**DATES:** Comments must be received on or before April 27, 2015. The proposed exemption renewal would be effective from June 30, 2015 through June 30, 2017.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0370 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have

questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety 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 that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### Request for Exemption

Certain motor carriers under contract to the U.S. Department of Energy (DOE) transport "security-sensitive radioactive materials." DOE requests a renewal of a limited exemption from the hours-of-service (HOS) regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). Section 395.1(q) states that operators of CMVs carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of "attendance time" to meet the requirement for a rest break. Section 395.1(q) allows drivers who are required by § 397.5 to attend a motor vehicle transporting certain types of explosives but perform no other work, to log at least a half-hour of their "attendance time" toward the break.

DOE contends that shipments of security-sensitive radioactive materials require a team of two drivers and the