Description of Relief Sought/ Disposition: To allow Carver to continue to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 10/14/99, Exemption No. 6229B.*

Docket No.: 29611.

Petitioner: Kent State University Flight Operations.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/ Disposition: To allow the Kent State University Flying Club and the Kent State University Intercollegiate Flight Team to conduct local sightseeing flights for Homecoming activities on October 16, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/15/99, Exemption No. 7038.*

Docket No.: 29414.

Petitioner: North American Airlines.

Section of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit pilots of North American Airlines (NAA) to act as pilots in supplemental operations conducted under part 121 after reaching their 60th birthday. *Denial, 9/3/99, Exemption No. 7037.*

Docket No.: 29748.

Petitioner: Gortner Pilots Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J of part 121.

Description of Relief Sought/ Disposition: To allow GPA to conduct local sightseeing flights at Greater Gortner Airport for the Greater Gortner Airport Fly-In and Open House on October 17, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/7/99, Exemption No. 7031.*

Docket No.: 28918.

Petitioner: Cherry-Air, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Cherry-Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 10/8/99, Exemption No. 7036.*

Docket No.: 29778

Petitioner: Raytheon Systems Company.

Section of the FAR Affected: 14 CFR 25.815.

Description of Relief Sought/ Disposition: To exempt Raytheon from 25.815 to the extent necessary to allow a movement of passenger seats into the required aisle space under certain circumstances on the Boeing Model 737–700 IGW airplane defined in the Raytheon DAS Project P–581. *Partial Grant, 10/7/99, Exemption No. 7028.*

Docket No.: 29655.

Petitioner: Rolls-Royce plc.

Section of the FAR Affected: 14 CFR 34.21(d)(1)(iv).

Description of Relief Sought/ Disposition: To allow Rolls-Royce to manufacture up to 150 RB211–535E4/E4B engines with current combustor configurations after the effective compliance date of December 31, 1999, for reduced NO_X standards. *Grant, 10/15/99, Exemption No. 7042.*

[FR Doc. 99–33402 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–6579]

Hours-of-Service of Drivers; Exemption Application from Van Wyk Freight Lines, Inc.

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of application for exemption and proposal to deny exemption; request for comments.

SUMMARY: The OMCS is announcing its proposal to deny the application of Van Wyk Freight Lines, Inc. (Van Wyk) for an exemption from the records of duty status (log book) provisions of the hours-of-service regulations. Van Wyk indicated that its drivers meet all of the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs) and that it satisfies three of the five conditions for using the OMCS' 100 air-mile radius driver exception to the requirement for log books. Van Wyk's drivers exceed the 100 air-mile distance, and the 12 hours on-duty limitations in the exception. Van Wyk believes its computerized payroll records, and compliance with the remaining conditions listed in the 100 air-mile radius driver exception would achieve a level of safety comparable to that provided under the exception. The OMCS proposes to deny the exemption because Van Wyk did not explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the 100-air mile radius exception to the log book requirements. Also, Van Wyk did not describe the impacts (*e.g.,* inability to test innovative safety management control systems, *etc.*) it could experience if the exemption is not granted by the OMCS. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before January 26, 2000.

ADDRESSES: Submit written, signed comments with the docket number appearing at the top of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009, Office of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that are submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590-0001, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act ''to carry out the functions and operations of the

Office of Motor Carriers within the Federal Highway Administration'' (Pub. L. 106–69, October 9, 1999, 113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA. For the time being, all phone numbers and addresses are unchanged.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the exemption.

Section 4007 requires the OMCS to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the OMCS must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process the requests for waivers and applications for exemptions.

As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the OMCS. On October 29, 1999 (64 FR 58355), the OMCS issued a final rule amending the heading for chapter III of title 49 of the Code of Federal Regulations to reflect the organizational changes.

Van Wyk's Application for an Exemption

Van Wyk applied for an exemption from 49 CFR 395.8, which provides requirements concerning drivers' records of duty status or ''log books.'' A copy of the application is in the docket identified at the beginning of this notice. Generally, motor carriers must require each of their CMV drivers to record his/her duty status for each 24-hour period using the methods prescribed in the regulations. The regulation provides motor carriers with two options: manually recording the duty status in a log book, or using an automatic on-board recording device. Section 395.1(e) of the hours-of-service regulations provides an exemption to the requirements of § 395.8 for certain drivers operating CMVs within a 100 air-mile radius of the normal work reporting location. The 100 air-mile radius exemption is applicable if:

(1) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(2) At least 8 consecutive hours off-duty separate each 12 hours on duty;

(3) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off-duty; and,

(4) The motor carrier that employs the driver maintains and retains for a period of six months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on-duty each day;

(iii) The time the driver is released from duty each day; and,

(iv) The total time for the preceding seven days in accordance with § 385.8(j)(2) [1] for drivers used for the first time or intermittently.

Van Wyk believes that its motor carrier operations meet most of the conditions in the 100 air-mile radius exception and that the differences—Van Wyk's drivers exceed the 100 air-mile distance, and the drivers sometimes remain on duty for 15 consecutive hours—should not preclude the company from obtaining relief from the log book requirement. Van Wyk indicated that its drivers normally work a 10-hour day, take at least an 8-hour break between each tour of duty; return to the same point of origin at the end of each shift; do not exceed 10 hours of driving time on any given shift, and do not work on Saturday and Sunday. The company keeps track of drivers' hours through an electronic time clock that indicates the start time, number of hours on-duty, and the time the driver gets off work each day. The company can also show the last 12 months of ''activity'' through computerized payroll records.

Basis for Proposal to Deny the Exemption

The OMCS has carefully reviewed Van Wyk's application and does not believe that it would be appropriate to grant an exemption solely on the basis that the applicant meets most of the conditions of an existing exception developed through notice-and-comment rulemaking procedures.

On April 3, 1980 (45 FR 22042), as part of the FHWA's effort to reduce the paperwork burden on the drivers and motor carriers while retaining adequate controls over the hours-of-service, the agency published the final rule creating an exception to the log book requirements for drivers who operate commercial motor vehicles within a 100 air-mile radius of the place where the driver reports for work. The preamble to the final rule included a discussion of commenters' concerns about various aspects of the rulemaking. The FHWA received 112 responses to the notice of

[1] Section 395.8(j)(2) requires that motor carriers, when using a driver for the first time or intermittently, must obtain from the driver a signed statement giving the total time on duty during the immediately preceding seven days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

proposed rulemaking published on October 13, 1977 (42 FR 55109). The agency indicated that eight respondents opposed the proposal as written. Fifty-eight respondents supported the proposal as written. Thirty respondents submitted conditionally favorable responses predicated on variations of one or more elements of the proposal and 16 comments were considered beyond the scope of the proposal. The agency stated:

Those respondents who submitted conditionally favorable responses objected to particular elements that would require:

1. The [driver] to prepare a log every day if the driver operates beyond the 100-mile radius more than one day per month;

2. The driver to return (within 12 hours) to the place the driver reported for work; and,

3. Time records related to those exempt operations to be retained at the carrier's principal place of business unless permission is obtained to retain the records at another location.

It is agreed that the one day per month limitation may be overly restrictive. The requirement that the motor carrier prepare and retain true and accurate time records, coupled with the 12-hour limitation, ensures that adequate records are available to determine driver compliance with the hours-of-service regulations.

Therefore, the proposed exemption is being modified to require log preparation on a daily basis by drivers who operate beyond the 100-mile radius more than one time in any 7 consecutive day period. If a driver operates beyond the 100-mile radius more than one time in any 7 consecutive days, a pattern of operation would be established that would require preparation of a log every day. If a motor carrier demonstrates that the driver will no longer be required to operate beyond the 100-mile radius, the exemption could then be reinstated for that particular driver. This action is in harmony with the present interpretation covering operations beyond the 50-mile radius (42 FR 60078). [2]

Many of the commenters who favored the proposal, in general, objected to the 12-hour limitation. Those commenters indicated that there are certain places such as piers, oil refineries, steel mills, etc., where waiting times of 6–7 hours occur frequently and a driver would not exceed the 10-hour driving rule, but because of the delays could exceed the 12-hour limit proposed in the 100-mile exemption rule and on those days not be entitled to the exemption. On the other hand, other commenters pointed out that the 12-hour limitation was fair considering the benefits to be gained by not having to prepare a log.

Another argument raised by certain commenters against the 12-hour limit was that some drivers may now be operating within the 50-mile radius exemption who, under the 100-mile radius exemption, would now have to prepare a log. However, since FHWA is expanding the area of operation four-fold, a limitation is necessary to ensure that the hours-of-service are not violated. This limitation applies only if one wants to take advantage of the 100-mile log exemption. The exemption does not alter or should not be confused with the present hours-of-service limitations set forth in section 395.3 of the Federal Motor Carrier Safety Regulations (FMCSRs). It should be clearly understood that once a driver exceeds that 12-hour limitation, the 100-mile exemption would no longer be applicable for that day and the hours-of-service for that day would have to be recorded on a driver's log. [45 FR 22042, 22043; April 3, 1980]

The preamble to the 1980 final rule thus demonstrates that the FHWA fully considered industry concerns about the time limit for returning to the work-reporting location. Van Wyk has not provided any new information to support increasing either the time or the distance restrictions in the current exception. Expanding both would enable Van Wyk to dispatch drivers a distance of almost 300 statute miles from the work reporting location (if the driver averages approximately 60 miles per hour for 5 hours), perform non-driving tasks for almost 5 hours, and then return to the work-reporting location with no readily apparent means of ensuring that the driver does not exceed 10 hours driving time. The drivers could operate almost anywhere in a geographic area of approximately 282,600 square miles (using a radius (R) of 300 miles from the work reporting location, and the formula Area = 3.14 X (R)2) and not be required to present a log book to their supervisors documenting their total driving time, or to enforcement officials in any of the jurisdictions in which the vehicle operates. By contrast, the current exemption limits the geographic area to 41,527 square miles (using a radius of 115 statute miles [3] and the previous formula) and requires the driver to return to the terminal within 12 hours.

The OMCS believes that allowing Van Wyk to operate its vehicles in an area of approximately 282,600 square miles without requiring log books would make it difficult both for the motor carrier and enforcement officials to ensure compliance with the maximum driving time regulations. Since Van Wyk has requested that its drivers be allowed up to 15 hours to return to the work reporting location, enforcement officials who encounter Van Wyk drivers would have difficulty determining whether the driver has exceeded the 10-hour rule. The driver would not have a log book so the inspector would not be able to determine the time the driver started working, the total amount of driving time before the driver was stopped, the amount of time the driver spent performing non-driving tasks, or the time the driver was supposed to return to the work reporting location. If there were proof of the time the driver started working, the enforcement official would still be unable to determine the total driving time, and time spent on non-driving tasks.

Generally, if the enforcement official contacted the motor carrier, it is unlikely that the carrier could state with certainty the driver's total driving time for the day and the time spent on non-driving tasks. This is especially the case if the carrier had no practicable means of verifying the driver's whereabouts at any given time during the day. The increase in the 12-hour return-to-terminal time limit would provide drivers with three additional hours away from the work reporting location with no apparent safeguards to ensure that the driver adhered to the driving time limitations. The current rule, by contrast, requires that the driver return to the work reporting location within 12 hours. This means the 10-hour rule could be exceeded by substantially less than two hours, considering a 30-minute lunch break for the driver, loading and unloading time, etc.

Irrespective of Van Wyk's intentions, the OMCS does not believe that a motor carrier should be allowed to put itself into a situation in which it could not effectively monitor its drivers' compliance with the maximum driving time restriction. Van Wyk has not indicated how, or even whether, it intends to carefully review drivers' assignments (e.g., look at the specific

[2] On November 26, 1982 (47 FR 53383) the FHWA published a final rule revising the requirements for recording a driver's duty status. Section 395.9 concerning drivers' multi-day logs, which included the log preparation requirements for drivers who operate beyond the 100-mile radius more than once in any 7 consecutive day period, was removed and reserved. The FHWA has since published regulatory guidance about drivers who fail to meet the provisions of the 100 air-mile radius exemption. (62 FR 16370, 16421; April 4, 1997).

[3] The term ''air mile'' is internationally defined as a ''nautical mile'' which is equivalent to 6,076 feet or 1,852 meters. Therefore, 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers (62 FR 16370, 16421; April 4, 1997).

locations the driver is dispatched to during the work day, the amount of time required to travel from location to location, the amount of time spent at each location, etc.) to supplement the electronic time records, which typically would only prove when the driver reported for work and when the driver was released from work. Therefore, the OMCS does not believe it is likely that Van Wyk could ensure a level of safety that is equivalent to, or greater than, the level of safety provided by complying with the hours-of-service regulations.

On November 5, 1996 (61 FR 57252), the FHWA published an advance notice of proposed rulemaking (ANPRM) on all aspects of the hours-of-service regulations. The agency indicated that it was nearing the completion of several research projects and was seeking the results of other relevant research, including research, operational tests, or pilot regulatory programs conducted anywhere in the world, that could be used in developing a revised regulatory scheme for CMV drivers' hours-of-service. The OMCS has reviewed all the research reports submitted by commenters to the rulemaking docket, and scientific information obtained through other sources, and is not aware of any data that would support creating a regulatory relief program that, if abused, would enable a person to drive a CMV up to 13 hours, and perhaps even longer. Copies of all known research reports, as well as all comments submitted in response to the ANRPM, are available in FHWA Docket No. FHWA–97–2350.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption application from Van Wyk. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the OMCS may deny the exemption at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: December 21, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–33474 Filed 12–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 192X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Anderson and Woodford Counties, KY

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 0.7–LL, at Lawrenceburg, and milepost 3.5–LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The line traverses United States Postal Service Zip Codes 40342 and 40383.

NSR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 26, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 6, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 18, 2000, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 3, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 27, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 16, 1999.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).