



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0111]

Hours of Service of Drivers: Application for Renewal of Illumination Fireworks, LLC and ACE Pyro, LLC Exemptions From the 14-Hour Rule during Independence Day Celebrations

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

ACTION: Notice of applications for renewal of exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Illumination Fireworks, LLC and ACE Pyro, LLC (applicants) for a renewal of their exemption from the requirement that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The applicants requested the exemption for the period of June 28 – July 8, for the next five years (2016-2020) inclusive. The applicants were previously granted an exemption for drivers of 50 CMVs during the Independence Day period of June 28, 2015 – July 8, 2015. The exemption would apply solely to the operation of drivers of 50 CMVs employed by the applicants in conjunction with staging fireworks shows celebrating Independence Day during the proposed periods. During these periods, the CMV drivers employed by the applicants would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The applicants maintain that the terms and conditions of the limited exemption would ensure

a level of safety equivalent to or greater than the level of safety achieved without the exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2014-0111 using any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online 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., between 9 a.m. and 5 p.m., 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, 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 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 FDMS 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. 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-2014-0111), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 e-mail 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 www.regulations.gov and put the docket number, “FMCSA-2014-0111” 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 grant or not grant this application based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2014-0111” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and 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.

II. Legal Basis

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)).

III. Application for Exemptions

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. The applicants represent two fireworks display companies that were previously granted exemptions during the Independence Day period of June 28 – July 8, 2015. The applicants' initial exemption application for relief from the 14-hour rule was submitted in 2014; a copy of the application is in the docket identified at the beginning of this notice. That 2014 application describes fully the nature of the operations of the CMV drivers employed by the applicant during a typical Independence Day period.

The applicants request a renewal of its exemption for the period of June 28 – July 8, for the next five years (2016-2020) inclusive. Section 5206(a)(2) of the "Fixing America's Surface Transportation Act" (FAST Act) [Pub. L. 114-94, 129 Stat. 1312, Dec. 4, 2015], effective October 1, 2015, permits exemptions for no longer than five years from their dates of inception.

As stated in the applicants' request, CMV drivers employed by the applicants hold commercial driver's licenses (CDL) with hazardous materials endorsements to transport Division 1.3G and 1.4G fireworks in conjunction with the setup of firework shows for Independence Day. The applicants state that they seek HOS exemptions for the 2016-2020 Independence Day periods because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulation means that most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty-period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

IV. Method to Ensure an Equivalent or Greater Level of Safety

As a condition for maintaining the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been involved in a crash.

In the exemption request, the applicants assert that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display and normally do so in the early morning when traffic is light. The applicants noted that during the 2015 Independence Day season, the farthest Illumination Fireworks traveled from its home base was 150 miles. At the site, they spend considerable time installing, wiring, and checking the safety of fireworks displays, followed by several hours of duty in the late afternoon and early evening prior to the event. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

V. Terms and Conditions of the Exemption

Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(2) is proposed to be effective for June 28-July 8, for the next five years (2016-2020 inclusive). The exemption would expire on June 27, 2021 at 11:59 p.m. local time, 5 years from its inception.

Extent of the Exemption

The exemption would be restricted to the 50 drivers employed by the applicants. The drivers would be given a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by the exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemption would be contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty as

extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemption would be further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Other Conditions

The exemption would be contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption would be required to maintain a valid CDL with the appropriate 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 periods the exemption would be in effect, no State would be allowed to enforce any law or regulation that conflicted with or was inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification would have to include the following information:

- a. Exemption Identity: “Illumination Fireworks” or “Ace Pyro”
- b. Name of operating motor carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and driver’s license number and State of issuance,
- f. Vehicle number and State license plate number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- k. The driver’s total driving time and total on-duty time period prior to the accident.

Accidents would be reported via email to MCPSD@DOT.GOV.

Issued on: March 1, 2016.

Larry W. Minor,
Associate Administrator for Policy.

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