



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0062]

Marking of Commercial Motor Vehicles; Application for an Exemption - Adirondack Trailways, Pine Hill Trailways, and New York Trailways

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

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

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Adirondack Transit Lines, Inc. (dba Adirondack Trailways), Pine Hill-Kingston Bus Corp. (dba Pine Hill Trailways), and Passenger Bus Corp. (dba New York Trailways) an exemption from FMCSA's commercial motor vehicle (CMV) marking rules under certain circumstances involving the exchange of equipment and/or drivers. FMCSA has determined that the terms and conditions of the exemption likely ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires May 28, 2025.

ADDRESSES:

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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

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: Ms. La Tonya Mimms, 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

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-2020-0062” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

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 provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would be likely to 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 reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is granted. The notice must specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Under 49 CFR 390.21, commercial motor vehicles must display the legal name or single trade name of the motor carrier operating the vehicle and the USDOT identification number assigned to that motor carrier. For motor carriers operating interchanged passenger carrying vehicles, the requirements of section 390.21(b)(3) are satisfied if the vehicle is marked with a single placard, sign, or other device affixed to the right (curb) side of the vehicle on or near the front passenger door. The placard, sign, or device must display the legal name or a

single trade name of the motor carrier operating the CMV and the motor carrier's USDOT number, preceded by the words "Operated by."

Adirondack Trailways, Pine Hill Trailways, and New York Trailways combined operate approximately 130 motorcoaches using about 124 drivers in intercity bus service. The three commonly owned passenger services interchange buses and drivers frequently each year. Additionally, Adirondack Trailways is party to longstanding agreements for through service with various carriers and for revenue pooling with Greyhound Lines, Inc. The applicants explained that the frequency with which motorcoaches are involved in interchange arrangements with the three Trailways carriers, Greyhound Lines, and other passenger carriers makes it difficult to comply with section 390.21(b)(3). This is especially the case when the interchanges happen on short notice and in remote locations. Therefore, the companies are seeking an exemption from the CMV marking requirements in 49 CFR 390.21(b)(3).

IV. Public Comments

On January 14, 2020 (85 FR 2229), the Agency published a notice requesting public comment on the exemption request from Adirondack Trailways, Pine Hill Trailways, and New York Trailways. The Agency received three responses to the notice, with comments from two individuals who opposed the exemption application and comments from the American Bus Association (ABA) writing in support of the request.

Mr. Michael Millard said "[b]ased on the legal issues of three carriers sharing one insurance policy and issues regarding drivers employed by multiple carriers I suggest the application [should be] denied and the three carriers do what they already seem to have done. Become one carrier."

An anonymous commenter stated: “In a world where there is great concern about chameleon carriers, these carriers are asking for an exemption from the one tool that FMCSA has to track who is responsible for the safety of the vehicle on the road.”

The ABA believes “This action, coupled with the [carriers’] long-standing safety record and level of service to the passengers in the region, persuades ABA to support the petition for exemption.”

V. FMCSA Decision and Safety Analysis

FMCSA believes it is appropriate to grant the applicants an exemption from 49 CFR 390.21 concerning the CMV marking requirements for interchanged passenger-carrying equipment. The frequency with which vehicles are interchanged between the commonly owned and controlled motor carries of passengers, Greyhound Lines and other authorized motor carriers of passengers creates significant challenges for achieving compliance with 49 CFR 390.21(b)(3). The Agency has determined, as required by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381, that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

The Agency acknowledges the commenters’ concerns. However, the exemption does not provide relief from a rule that could impact the safety performance of the commonly owned companies. The only question is whether the agency should provide an exemption to address the marking requirements when the interchanges between carriers happen frequently, especially on short notice and in remote locations. These carriers still bear full responsibility for compliance with the applicable safety regulations. Furthermore, the granting of the exemption does not leave Federal and State safety enforcement personnel without a means of identifying the carrier

responsible for the operation of a vehicle on a given trip, or a means of conducting compliance assurance activities.

From a safety equivalency perspective, each of the passenger carriers providing transportation services would continue to be subject to all regulations concerning on-road safety performance (e.g., driver licensing and qualifications, controlled substances and alcohol testing, inspection, repair, and maintenance, hours of service, etc.). Each passenger carrier would also continue to meet the financial responsibility requirements and maintain operating authority. The Agency's information technology system provides a means for immediate notification by the insurance carrier if the insurance policy is cancelled, or there is a change in operating authority status.

In addition, each vehicle would display the name and USDOT number assigned to the owner/lessee of the passenger-carrying vehicle, with information about the responsible motor carrier readily available from the driver.

FMCSA does not believe the exemption will compromise safety because the public can easily identify one of the FMCSA-authorized carriers involved in the transportation, while Federal or State enforcement personnel would have immediate access to the identity of the responsible carrier, if the name and USDOT number displayed on the side of the passenger-carrying vehicle is not the operating carrier for the specific trip.

VI. Terms and Conditions of the Exemption

This exemption from 49 CFR 390.21(b)(3) is issued to Adirondack Transit Lines, Inc. (dba Adirondack Trailways), Pine Hill-Kingston Bus Corp. (dba Pine Hill Trailways), and Passenger Bus Corp. (dba New York Trailways). The conditions of this exemption are as follows:

1. Passenger-carrying commercial vehicles display the name and USDOT number of the owner/lessee;
2. A document is signed by at least one of the authorized carriers involved in the movement of the vehicle that provides (in electronic or paper format):
 - a. The registered name of each party to the agreement;
 - b. The USDOT number for each party to the agreement;
3. The passenger carrier named on the driver's record of duty status is the responsible motor carrier;
4. The owner/lessee and the responsible motor carrier cooperate with all Federal, State and local enforcement officials to provide the identity of the operators of the passenger carrying vehicle.

The carrier and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Adirondack Trailways, Pine Hill Trailways, and New York Trailways must notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the

operation of any of their CMVs while under this exemption. The notification must be emailed to MCPSD@DOT.GOV and include the following information:

- a. Name of the Exemption: “Adirondack Trailways, Pine Hill Trailways, and New York Trailways”;
- b. The USDOT number of the operating carrier;
- c. Date of the accident;
- d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;
- e. Driver’s name and driver’s license State, number, and class;
- f. Co-Driver’s name and driver’s license State, number, and class;
- g. Vehicle company number and power unit license plate State and number;
- h. Number of individuals suffering physical injury;
- i. Number of fatalities;
- j. The police-reported cause of the accident;
- k. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- l. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to MCPSD@DOT.GOV as soon as available.

Termination

The FMCSA does not believe the carriers covered by this 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 revoking the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

James A. Mullen,
Deputy Administrator.

[FR Doc. 2020-11740 Filed: 5/29/2020 8:45 am; Publication Date: 6/1/2020]