



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0111]

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

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

ACTION: Notice of final disposition; grant of applications for exemptions.

SUMMARY: FMCSA announces its decision to grant exemptions to Illumination Fireworks, LLC and ACE Pyro, LLC (the applicants) from the requirement that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The exemptions will apply solely to the operation of 50 CMV drivers employed by the applicants in conjunction with staging fireworks shows celebrating Independence Day during the periods June 28 - July 8, 2014, inclusive. During this period, the CMV drivers employed by the applicants will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will 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 Agency has determined that the terms and conditions of the limited 1-year exemptions will ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemptions.

DATES: The exemptions are effective during the periods of June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.).

FOR FURTHER INFORMATION 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.

SUPPLEMENTARY INFORMATION:

Background

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. 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

Illumination Fireworks, LLC (USDOT 2326703) and ACE Pyro, LLC (USDOT 1352892) are fireworks display companies that employ CMV drivers who hold commercial driver's licenses 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 seek exemptions from the 14-hour rule in 49 CFR 395.3(a)(2) so that drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. The applicants state that the basis for their request is the existing FMCSA exemption granted to the American Pyrotechnics Association (APA) under Docket No. FMCSA-2007-28043, which exempts comparable fireworks companies from the 14-hour rule.

The applicants further state they are seeking HOS exemptions for the 2014 and 2015 Independence Day periods because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulations means 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 because firework drivers would be unable to return to their home base after 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 carriers' home base.

Method to Ensure an Equivalent or Greater Level of Safety

As a condition for maintaining the exemptions, each motor carrier would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR

390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been in an accident. As additional support for the requested exemptions, the applicants contend that the nature and duties of APA CMV operators is exactly the same as the CMV operators it employs and they feel strongly that there will not be any decline in safety.

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 2013 Independence Day season, the furthest Illumination Fireworks or ACE Pyro CMV traveled from its home base was 150 miles, which involves a very small amount of driving compared to the distance traveled by companies covered by the APA exemption. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours of duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

A copy of the application for the exemptions is available for review in the docket for this notice.

Public Comments

On May 13, 2014, FMCSA published notice of this application, and asked for public comment (79 FR 27364). Three comments were received to the public docket. Mr. Thomas Ingraldi did not oppose or support the exemption. He stated that:

“The overall log rules are not the problem. Only one rule hampers production and serves no purpose. This rule was to create circadian rhythms in drivers and failed miserably. That rule is the 14 hour clock. Remove that one rule and production increases because we can drive and sleep as our body needs not as the clock dictates.”

Another respondent, S. Johnson opposed the exemption and stated, “There is NO reason the celebrations cannot be performed within the current driving and on duty regulations. No worker should perform over 14 hours per day. If additional hours are required, a second crew should be hired.”

The Advocates for Highway and Auto Safety (Advocates) also opposed the exemption. Advocates contends that its arguments against the granting of the present exemption are almost identical to those provided in prior comments regarding similar applications for exemption filed by the American Pyrotechnics Association (APA). Because the present application relies almost entirely upon the APA exemption application process as a foundation for its application, Advocates sees no need to restate the arguments in their entirety.

Advocates further stated its concern with the safety record of ACE Pyro LLC’s referring to the carrier’s driver, vehicle, and hazardous materials out-of-service rates which have been above National averages. Advocates requested FMCSA exclude ACE

Pyro LLC from the exemption if the agency decides to grant the exemption based on its questionable safety record. 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 the applicants exemption request, FMCSA ensured that the motor carriers involved have a current USDOT registration, Hazardous Materials Safety Permit (if required), minimum required levels of insurance, and are not subject to any “imminent hazard” or other OOS orders. The Agency conducted a comprehensive investigation of the safety performance history of each applicant during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System (MCMIS) safety records, including inspection and accident reports submitted to FMCSA by State agencies, for each applicant motor carrier. The Agency also requested and received a records review of each carrier from the Pipeline and Hazardous Materials Safety Administration (PHMSA). Upon completion of this comprehensive review, the Agency concludes that the applicants 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 exemptions covering the operations of 50 CMV drivers employed by the applicants. However, the Agency limits the exemption to 2014 given the concerns expressed by the Advocates.

Terms and Conditions of the Exemption

Period of the Exemption

The exemptions from the requirements of 49 CFR 395.3(a)(2) are effective during the period of June 28 (12:01 a.m.) through July 8, 2014 (11:59 p.m.), inclusive.

Extent of the Exemptions

The drivers employed by the applicants are provided 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 exemptions may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemptions are 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 exemptions are 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 exemptions are 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 exemptions 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 periods the exemptions are 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

Exempt motor carriers 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 under this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- c. Driver's name and driver's license number,
- d. 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 two motor carriers and 50 drivers covered by the exemptions 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 exemptions. The FMCSA will immediately revoke the exemptions for failure to comply with its terms and conditions.

Issued on: June 20, 2014.

Anne S. Ferro,
Administrator.

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