



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0140]

Hours of Service of Drivers: Application for Exemption; American Pyrotechnics Association

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

SUMMARY: FMCSA announces that the American Pyrotechnics Association (APA) has requested an exemption from the hours-of-service (HOS) regulations that require a motor carrier to install and require each of its drivers use an electronic logging device (ELD) to record the driver's HOS. APA requests the exemption for APA member-companies currently holding an exemption from the HOS 14-hour rule during the Independence Day celebration season. If granted, these member-companies would continue to utilize paper records of duty status (RODS) in lieu of utilizing an ELD during the designated Independence Day periods. APA believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would continue to remain subject to the HOS regulations as well as the requirements to maintain paper RODS. FMCSA requests public comment on APA's application for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0140 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- 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.

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 Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division;

Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. 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-2018-0140), 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 comments online, go to www.regulations.gov and put the docket number, "FMCSA-2018-0140" 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.

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 (FMCSRs). 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. Request for Exemption

The APA reports that it is a national safety and trade association of the U.S.

fireworks industry, representing manufacturers, importers, distributors, wholesalers, retailers, suppliers and professional display companies. APA has over 250 member companies. Along with their subsidiaries, APA's member-companies are responsible for nearly ninety percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

According to its application, APA seeks a limited exemption from the ELD requirements for member-companies currently holding an HOS exemption from the 14-hour rule to continue to maintain paper RODs in lieu of utilizing ELDs. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2014. On May 16, 2016, the current exemption for APA members was extended to July 8, 2020, pursuant to section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act (81 FR 28115).

APA asserts that granting this exemption is appropriate because there is no basis to believe that continuing to allow paper record keeping for this limited subset of the regulated community, and for a limited period of time, would impact operational safety in any regard. In addition, due to the unique nature of the fireworks industry, requiring the use of ELDs for this limited seasonal delivery period would impose a substantial financial burden on members because it would require them to purchase/lease systems for use for only a short period every year.

APA explained that members rely upon intermittent casual drivers periodically throughout the year and particularly during the busy Independence Day season when industry depends upon short-term rental trucks. The fireworks industry is unique in that it rents or leases approximately 90% of its vehicles throughout the year for less than 30 days at a time. However, most rental companies require a minimum rental period of 14 to

21 days when APA member companies may only use the trucks in commerce for up to 11 days. The mix of vehicles rented includes pick-up trucks, cargo vans, city vans and straight trucks less than 26,000 GVW. The industry relies heavily upon short-term rental trucks to transport and deliver 98% of the 16,000 Independence Day fireworks displays nationwide. If granted, the exemption would run concurrent with APA's HOS exemption and would expire on July 8, 2020. This exemption would only apply when the carriers designated in the APA HOS exemption, including revisions, are operating within the specified Independence Day periods.

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

Issued on: April 17, 2018

Larry W. Minor
Associate Administrator for Policy

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