

CDL waiver to part-time drivers involved in fireworks displays. This petition was submitted on March 6, 1995. Petitioner asserted that the requested waiver would only be available to part-time employees who drive small vehicles containing limited quantities of fireworks over short distances within a period of seven days. All permanent fireworks employees will continue to be required to possess CDLs as part of their basic job qualifications. Moreover, all part-time employees falling within this proposed waiver would have been required to complete fireworks specific training pursuant to 49 CFR 172.704.

Petitioner argued that the waiver is necessary because the fireworks industry has faced serious problems in delivering small fireworks displays to customers located in remote areas since implementation of the CDL rule in 1992. In order to respond to thousands of requests by Fourth of July celebrants, such as small townships, the companies must rely on part-time drivers who not only drive to the display sites, but also handle and discharge the fireworks. Most such technicians work full-time at other jobs, but return each year to the fireworks industry because of their interest in fireworks displays and the opportunity to earn extra money. Petitioner claimed that these individuals would not go through the trouble and expense of obtaining a CDL, which required preparation for irrelevant endorsement examinations that cover all hazardous materials, in part because they do not receive sufficient compensation to make the effort worthwhile. Moreover, these are not professional commercial drivers transporting hazardous materials, but persons who derive their livelihood from other professions, typically school teachers, and are involved in the fireworks business for several days every year. Due to the extensive use of such seasonal employees by the fireworks industry to meet the peak demands of the Fourth of July season, Petitioner asserted that the proposed waiver would alleviate the need for those employees to obtain a CDL, while still requiring that they meet extensive Federal safety and local licensing requirements specific to the transport and handling of fireworks.

In addition, Petitioner asserted that the transportation of fireworks for displays in small communities is provided by vehicles, generally having a GVWR of less than 10,001 pounds, for which a CDL would not be required but for the hazardous nature of the cargo. The vehicles are largely pickup trucks

and vans for which no special vehicle operation skills are required.

#### **Proposed Waiver**

In order to provide relief to the pyrotechnics industry, the FHWA proposed to authorize a limited waiver to be granted by States, at their discretion, from the CDL testing and licensing standards, without jeopardizing Federal funds. The proposed waiver authority would have been available to drivers 21 years of age who hold a valid operator's license, and drive solely on a part-time basis for the pyrotechnics industry. The term "part-time driver," as used in the notice, referred to drivers working for the pyrotechnics industry for no more than 7 consecutive days per year (June 30 through July 6) and involved in the transportation of fireworks to be used in pyrotechnics displays. Drivers would also have been required to hold the appropriate license and approval as a pyrotechnic operator issued by State or local authority having jurisdiction in accordance with State law and to carry documentation certifying that he/she has received fireworks-specific transportation safety training pursuant to 49 CFR 172.704. A waiver would not have been available to drivers convicted of a "serious traffic violation" as defined in 49 CFR 383.5, in any type of motor vehicle during the preceding 12 month period.

A waiver from the CDL requirements would only have been valid for the period from June 30 through July 6; would have authorized the transportation of only 500 or less pounds of fireworks classified as DOT Class 1.3G explosives; and would have been limited to the operation of Group C vehicles (GVWR of less than 10,001 pounds), as defined in 49 CFR 383.91.

Waivers would have been granted for vehicle operation within a 300-mile radius from the driver's work reporting location. Neighboring States would have discretion to recognize such waivers provided the driver and the vehicle were operating within the 300-mile radius. The final decision on whether to implement a waiver program would have rested with the individual States.

#### **Docket Comments**

The FHWA received over 450 responses to its request for public comment. The agency received over 400 letters from part-time drivers for the pyrotechnics industry who would presumably qualify for the waiver as described in the notice of petition. These comments were in support of the agency's proposal. For the most part, these comments were form letters

requiring only that the writers fill in the blanks with information regarding what State they were licensed in, how many years they had been driving for the pyrotechnics industry, and what their full-time occupation was. These letters failed to provide any specific information or data that the agency should consider when determining whether or not the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs.

The FHWA also received 20 letters from pyrotechnic fireworks companies. These letters also were, for the most part, form letters that voiced strong support for the proposed waiver, but failed to respond to the agency's specific inquiry whether the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs. These letters, and one from an industry association, the Pyrotechnics Guild International, reiterated the oppressiveness of the Federal regulation on their industry and the high cost to part-time drivers of obtaining a CDL, but failed to provide any empirical evidence establishing the actual safety of the proposed waiver.

The West Virginia Department of Transportation stated that the waiver would not significantly affect highway safety, noting that the vehicles covered are small trucks and vans that do not require special training to operate. However, they did express concern over the waiver of drug and alcohol testing requirements.

Commenters opposed to the waiver included nine State Departments of Transportation, Motor Vehicles, Police, the American Trucking Associations, Inc., and the National Association of Independent Insurers.

The Michigan Department of State Police, Motor Carrier Division, Hazardous Materials Section, opposed the waiver of these drivers for several reasons. They objected to the waiver from the requirements for alcohol and controlled-substances testing, and stated that the fact that these individuals were part-time drivers of hazardous materials was all the more reason to require them to meet the CDL standards. The States of Indiana and Wisconsin reiterated this comment. The Michigan Department of State Police also pointed out that the size of the vehicle is not the key issue, but rather the load that is being transported. "Explosion from a load of fireworks is the same, from a response point of view, whether in a pick-up truck or a tractor-trailer."

The Maryland Motor Vehicle Administration (MMVA), in its opposing comments, noted that the time