

Section 201 of the Communications Satellite Act of 1962, 47 U.S.C. 721(c).

*D. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed policy changes will not create additional burdens on the public.

*E. Federal Rules That Overlap, Duplicate or Conflict With These Rules*  
None.

*F. Description, Potential Impact, and Number of Small Entities Involved*

The proposed policy changes discussed in this Notice of Proposed Rulemaking will enhance service options and price competition for any small businesses involved in the provision of international telecommunications services via U.S.-licensed satellites.

*G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives*

The Notice solicits comment on proposed policy changes necessary to achieve Commission objectives. Any significant alternatives may be set forth in comments to this Notice.

**Comment Dates**

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 8, 1995 and reply comments on or before June 23, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the F.C.C. Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

**Ordering Clauses**

16. Accordingly, *it is ordered* That NOTICE IS HEREBY GIVEN of the proposed regulatory action described above and that COMMENT IS SOUGHT on the proposals in this Notice.

17. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c).

18. For further information on this Notice contact John M. Coles, Attorney, (202) 739-0731.

**List of Subjects in 47 CFR Part 25**

Communications common carriers, Radio, Satellites.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Part 383**

[FHWA Docket No. MC-95-16]

**Commercial Driver's License; Waiver for Pyrotechnics Industry; Request for Comments**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of petition; request for comment.

**SUMMARY:** The FHWA is requesting public comment on a petition submitted by the pyrotechnics industry on March 6, 1995, for relief from the requirements of the commercial driver's license regulations (CDL) (49 CFR Part 383). The FHWA is proposing to authorize waivers for certain drivers transporting fireworks to displays during the period of Independence Day celebrations from the CDL testing and licensing standards. The drivers to be covered by these waivers are part-time drivers who have an otherwise valid driver's license, as well as licenses or permits issued by applicable State or local agencies certifying that they are approved pyrotechnic operators. A waiver issued by a State under this proposal would only authorize the transportation of less than 500 pounds of fireworks classified as DOT Class 1.3G explosives, from June 30 through July 6 of each year, provided that the vehicles operated have gross vehicle weight ratings (GVWR) of less than 10,001 pounds and are operated within 300 miles of the sites of origin. The FHWA requests public comment on whether, if granted, the proposed grant of waiver authority would be contrary to the public interest or diminish the safe operation of commercial motor vehicles.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted to the Federal Highway Administration, Room 4232, Office of Chief Counsel, HCC-10, 400 Seventh Street SW., Washington, DC 20590-0001.

All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Commenters who want to be notified that the FHWA received their comments should include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, HCC-20, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Commercial Driver's License (CDL) regulations, issued pursuant to the Commercial Motor Vehicle Safety Act of 1986 (Title XII, Pub. L. 99-570, 100 Stat. 3207, 3207-170) (49 U.S.C. 31502), are found at 49 CFR Part 383 (1994). Section 383.23 of the regulations sets forth the general rule that no person shall operate a commercial motor vehicle (CMV) unless such person: (1) Has taken and passed a knowledge test and, if applicable, a driving test, which meets Federal standards, and (2) possesses a CDL, which is evidence of having passed the required tests. These Federal standards ensure that drivers of a CMV: (1) Have a single driver's license and a single driving record, (2) are tested for the knowledge and skills needed to drive a vehicle representative of the vehicle that they will be licensed to drive, and (3) are disqualified from driving a CMV when convicted of certain criminal or traffic violations. Drivers operating commercial motor vehicles that haul hazardous materials are also required to take and pass specialized tests for specific endorsements to their licenses.

The term "commercial motor vehicle" is defined to include, a motor vehicle:

(1) With a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a GVWR of more than 10,000 pounds; or

(2) With a GVWR of 26,001 or more pounds; or

(3) Designed to transport 16 or more passengers, including the driver; or

(4) Used in the transportation of quantities of hazardous materials which require the vehicle to be placarded under the Hazardous Materials Transportation Regulations (49 CFR part 172, subpart F). 49 CFR 383.5 (1994).

### CDL Waivers

Section 12013 of the Commercial Motor Vehicle Safety Act of 1986 (the Act) authorizes the Secretary of Transportation to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations if the Secretary determines that the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. The regulatory procedures governing the issuance of waivers are found at 49 CFR 383.7 (1994).

The FHWA has granted a CDL waiver to military personnel operating military vehicles and has authorized the States to waive certain farmers, firefighters and operators of emergency equipment in implementing the CDL regulations. See 53 FR 37313, September 26, 1988. In addition, the agency also authorized the States to waive, at their option, employees of farm-related service industries (custom harvesters, retail outlets and suppliers, agri-chemical businesses, and livestock feeders) from the CDL knowledge and skill testing requirements, and issue these employees restricted CDLs for a seasonal period or periods not to exceed a total of 180 days in any 12-month period, subject to certain conditions. See 57 FR 13650, April 17, 1992.

### Petition

The American Pyrotechnics Association, a non-profit group representing the pyrotechnics industry, has petitioned the FHWA to reconsider its previous determinations,<sup>1</sup> and grant a CDL waiver to part-time drivers involved in fireworks displays. Petitioner asserts 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 have obtained CDLs as part of their job requirements. Moreover, all part-time employees falling within this proposed waiver would be required to complete fireworks-specific training pursuant to 49 CFR 172.700 *et seq.*

Petitioner argues that the waiver is necessary because, since implementation of the CDL rule in 1992, the fireworks industry has faced serious problems in delivering small fireworks

displays to customers located in remote areas. 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 claims that these individuals would not go through the trouble and expense of obtaining a CDL, which would require 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 asserts 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, 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. Consequently, the Petitioner has narrowed the waiver request to include only the following:

1. Part-time drivers, to be defined as drivers over 21 years of age working no more than seven days per year in the pyrotechnics industry;
2. Drivers must be operating under the appropriate license or approval as a pyrotechnic operator issued by State or local authority having jurisdiction in accordance with State fireworks law;
3. Drivers will operate within a 300 mile radius of the driver's work reporting location;
4. Vehicles must have a GVWR less than 10,001 pounds;
5. Vehicles must be carrying 500 or less pounds of Class 1.3G explosives;
6. Driver must carry documentation certifying that he/she has received fireworks-specific transportation safety

training required under 49 CFR Part 172, subpart H; and

7. Driver must carry a certificate indicating that his/her driving record has been investigated by the fireworks company offering the fireworks for transportation, and the driver has not been found guilty of a "serious traffic violation" as defined in 49 CFR Part 383 during the preceding 12 months.

Copies of this and previous petitions filed by the American Pyrotechnics Association and other members of the pyrotechnics industry are being included in the docket established by this notice and may be examined by the public.

### Proposed Waiver

In order to provide relief to the pyrotechnics industry, the FHWA is proposing to authorize limited waivers to be granted by States, at their discretion, from the CDL testing and licensing standards, without jeopardizing Federal funds. These waivers could be granted to certain part-time drivers involved in the transportation of fireworks to pyrotechnic display sites, and would relieve those drivers from the requirement to obtain a hazardous materials endorsement and consequently from any requirement to obtain a CDL.

The proposed waiver authority would be subject to the following conditions:

(1) Drivers covered—Applicants must be 21 years of age and 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 herein, refers 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. Applicants must also hold a State or local permit or license issued by State or local authority having jurisdiction in accordance with State fireworks law and must carry documentation certifying that he/she has received fireworks-specific transportation safety training pursuant to 49 CFR 172.700 *et seq.* The State or local permit or license and the certificate of training will substitute for an otherwise required CDL during the period of the waiver, in order to allow State enforcement of the CDL requirements.

(2) Duration—Waivers from the CDL requirements would only be valid for the period from June 30 through July 6.

(3) Materials—Waivers would authorize the transportation of only 500 or less pounds of fireworks classified as DOT Class 1.3G explosives.

<sup>1</sup> The FHWA had denied a petition for a CDL waiver filed by the American Pyrotechnics Association. In *Matter of American Pyrotechnics Association*, Petition No. 91-03, May 3, 1991. See also, Administrator Larson's letter dated July 5, 1991, denying the American Pyrotechnics Association's request for reconsideration.

(4) Vehicles—Waivers would be limited to the operation of Group C vehicles, as defined in 49 CFR 383.91, provided that the vehicle operated has a GVWR of less than 10,001 pounds.

(5) Area—Waivers would be granted to operate the vehicles described above within a 300-mile radius from the driver's work reporting location. Neighboring States may recognize such waivers provided the driver and the vehicle are operating within the 300-mile radius.

(6) Convictions—Waivers would only be granted to drivers who have not been 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.

The Petitioner claims that the conditions and restrictions imposed on the grant of waiver authority will ensure that the safe operation of CMVs is not diminished. Drivers participating in the waiver program would be part-time non-professional drivers, operating vehicles that would not be considered CMVs except for the nature of the cargo. These drivers would be required to have a good driving record and would be licensed, knowledgeable and trained in the handling of the hazardous materials to be carried. It also appears that the waiver restrictions related to driver documentation, duration, and area of operation (mileage) will ensure that implementation, regulation and enforcement of the waivers' requirements by the States is not unduly burdensome. Moreover, the final decision on whether to implement a waiver program will rest with the States.

#### Request for Public Comment

The FHWA is requesting specific views, information, and data that it 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. Commenters are strongly encouraged to provide any additional facts or views pertaining to the proposed waiver.

(Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 31502; 49 U.S.C. 31136; 49 CFR 1.48; 49 CFR 383.7; 23 U.S.C. 315)

Issued on: May 4, 1995.

**Rodney E. Slater,**

*Federal Highway Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 673

[Docket No. 950428123-5123-01; I.D. 042595A]

RIN 0648-AIOO

#### Scallop Fishery off Alaska; Closure of Federal Waters to Protect Scallop Stocks

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement a Fishery Management Plan for the Scallop Fishery Off Alaska (FMP). The FMP would specify the long-term optimum yield (OY) for the scallop fishery in Federal waters off Alaska as a numerical range of 0-1.1 million lbs (0-499 metric tons (mt)) of shucked scallop meats. The only management measure authorized under the FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. The closure of Federal waters would remain effective for up to 1 year and is necessary to prevent overfishing of scallop stocks during the period of time an alternative FMP is prepared that would allow the controlled harvest of scallops in Federal waters. This action is intended to promote the objective of preventing overfishing of the scallop resource that could otherwise result from unregulated fishing for scallops in Federal waters.

**DATES:** Comments must be received by June 19, 1995.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the proposed FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the FMP may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Susan Salveson, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The scallop resource off Alaska has been commercially exploited for almost 30 years. Weathervane scallop stocks off Alaska were first commercially explored

by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lbs (907 mt) of shucked meat. Since then vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960's. Between 1969 and 1991, about 40 percent of the annual scallop harvests came from waters of the State of Alaska (State). Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lbs (544 mt) landed were harvested in State waters, with the remainder harvested in Federal waters off Alaska.

The State has managed the scallop fishery in State and Federal waters, consistent with section 306(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), which indicates that a state may regulate any fishing vessel outside state waters, if the vessel is registered under the laws of that state. The North Pacific Fishery Management Council (Council) had until recently concluded that the scallop management program implemented by the State provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by direct Federal regulation. Therefore, no Federal regulations were implemented to govern the scallop fishery in Federal waters.

The Council currently is considering options for an FMP for the scallop fishery off Alaska that would authorize a moratorium on vessel entry into the fishery. A vessel moratorium cannot be implemented under Alaska State regulations given existing State statutes. At its April, 1994, meeting, the Council requested NMFS initiate rulemaking to implement an FMP for the scallop fishery off Alaska that would establish a vessel moratorium and defer most other routine management measures to the State. The Council was informed that section 306(a)(3) of the Magnuson Act prohibits a state from regulating a fishing vessel in Federal waters, unless the vessel is registered under the laws of that state. As a result, routine management measures deferred to the State under the Council's proposed FMP could not be applied in Federal waters to vessels not registered with the State. The Council recognized the potential problem of unregistered vessels fishing in Federal waters, but noted that all vessels fishing for scallops in Federal waters were registered under the laws of the State. Therefore, the Council recommended that NMFS proceed with