

Background

Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary. In selecting States for the five available slots in the pilot program, Congress gave priority to the selection of the States of Alaska, California, Ohio, Oklahoma, and Texas.

On February 12, 2007, the FHWA published a final rule at 72 FR 6464 establishing requirements concerning the information required to be contained in an application by the State for the pilot program. These regulations, contained in 23 CFR Part 773, required the States of Alaska, California, Ohio, Oklahoma, and Texas to submit a statement of interest to the FHWA by May 14, 2007, in order to retain their priority status. If any of these States failed to submit a statement of interest to the FHWA by May 14, or decline to participate, another State may be selected. In response to this requirement, the FHWA has received statements of interest from California, Oklahoma, and Alaska indicating that they wish to participate in the pilot program. FHWA received letters from Ohio and Texas declining the opportunity to participate in the pilot program. Accordingly, the FHWA currently has two open slots for other State departments of transportation (State DOT). These slots will be awarded on a competitive basis based on such factors as legislative authority to waive the State's sovereign immunity, financial and personnel capabilities to assume responsibilities, and description of plan and processes for carrying out assumed roles and responsibilities. If any State DOT has an interest in applying for this program, that State DOT should contact the FHWA Division Administrator in that State and should begin working with the FHWA in developing its application in accordance with the regulations found at 23 CFR Part 773.

Authority: Section 6005 of Pub. L. 109-59; 23 U.S.C. 315 and 327; 49 CFR 1.48

Issued on: June 28, 2007.

J. Richard Capka,

Federal Highway Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28479]

Definition of Commercial Motor Vehicle: The EI Group, Inc., Application for Exemption

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

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

SUMMARY: The FMCSA announces that it has received an application from The EI Group, Inc. (EI) seeking an exemption from classifying a specific motor vehicle as a commercial motor vehicle (CMV), for purposes of driver licensing requirements. Under the exemption, EI employees would not be required to comply with commercial driver's license requirements when operating a specifically-listed truck and trailer in combination, in interstate commerce. EI is requesting the exemption on behalf of all EI employees, and those contracted by EI, who operate its CMVs. EI states that approximately three EI drivers will be allowed to operate the subject equipment under the requested exemption. FMCSA requests public comment on EI's application for exemption.

DATES: Comments must be received on or before August 8, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket No. FMCSA-2007-28479 using any of the following methods:

- **Web Site:** Go to <http://dmses.dot.gov/submit>. Follow the instructions for submitting comments on the DOT electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- **Hand Delivery:** Room W12-140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to <http://dmses.dot.gov>

at any time or Room W12-140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; Telephone: 202-366-4009. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved absent the exemption (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

EI is requesting an exemption from the definition of a commercial motor vehicle (CMV) in 49 CFR 383.5:

Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

EI currently owns a truck-trailer combination used to provide audiometric (hearing) testing services at industrial and commercial sites. The truck, a 2006 Ford F450, has a gross vehicle weight rating (GVWR) of 16,000 pounds. The trailer, a 2007 Cimarron, has a GVWR of 14,000 pounds. Together these units have a combined GVWR of 30,000 pounds. EI states these units are never operated in a configuration that would exceed a gross vehicle weight (GVW) of 26,000 pounds. According to EI:

a. The truck has a fifth wheel coupling device and no bed or other means of carrying cargo when coupled to the trailer;

b. The trailer is configured with test booths, furniture and electronic test equipment, and operating parameters are never varied in a way that would substantially alter the actual weight of the trailer;

c. Company procedures prohibit the transportation of persons or cargo in the testing trailer when it is in motion; and

d. The combination of units has been weighed in full operating configuration and does not exceed 22,000 pounds.

Under current regulations this combination vehicle must be operated by a driver holding a commercial driver's license (CDL) and must meet all other applicable Federal Motor Carrier Safety Regulations (FMCSR). EI currently employs three drivers who may be required to drive this vehicle. These drivers do not have a CDL and are unable to legally operate this vehicle combination over public highways. EI currently employs a contract driver with a CDL to drive the vehicle. The persons covered by the exemption would include all drivers of the vehicle who are employed or contracted by EI.

EI states that public safety would not be impacted by granting this exemption. EI advises that it operates two other testing vehicles. One is a single unit truck with a GVWR of 24,500 pounds. The second is a truck-trailer combination with a combined GVWR of

24,500 pounds. According to EI, these vehicles are operated by EI drivers under strict supervision. EI states the subject vehicle would also be operated at a GVW less than 26,000 pounds and, therefore, would not pose a hazard that is unique or different from those inherent in operating the other two vehicles currently owned and operated by EI. EI states it would continue to monitor drivers, require them to undergo regular DOT physical examinations, and maintain all other aspects of the EI driver safety program.

EI advises that if FMCSA does not grant the exemption:

A. Current EI drivers not holding or unable to obtain a CDL could not operate the subject vehicle combination, reducing flexibility in scheduling and possibly affecting their continued employment;

B. EI would need to hire or contract new CDL drivers, at a higher rate, to operate this vehicle combination; and

C. EI would be subject to additional overhead and administrative requirements of maintaining a full CDL driver program as required by the FMCSRs.

A copy of EI's application for exemption, along with supporting documentation, is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment on EI's application for exemption from 49 CFR 383.5. FMCSA will consider all comments received by close of business on August 8, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 29, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-32 (Sub-No. 53X); STB Docket No. AB-355 (Sub-No. 5X)]

Boston and Maine Corporation—Abandonment Exemption—in Essex County, MA; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Essex County, MA

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) jointly have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon, and for ST to discontinue service over, approximately 1.47 miles of railroad known as the Georgetown Branch, extending from milepost 4.66 to milepost 6.13 in Haverhill, Essex County, MA. The line traverses United States Postal Service Zip Code 01830.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on August 8, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent