



## DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

### Hours of Service (HOS) of Drivers; American Pyrotechnics Association (APA); Granting of Exemption from the 14-Hour Rule

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces the granting of an exemption for 51 member companies of the American Pyrotechnics Association (APA) from the hours-of-service (HOS) regulation prohibiting drivers of commercial motor vehicles (CMVs) from driving after the 14<sup>th</sup> hour after coming on duty. Fifty-one APA members currently hold such exemptions. APA requests discontinuance of the exemption for 4 carriers, and new exemptions for 4 carriers, with the total therefore remaining at 51. The “Fixing America’s Surface Transportation Act” (FAST Act) extended the HOS exemptions in effect on the date of enactment of that Act to 5 years from the date of issuance. Because the FAST Act also authorized new exemptions for a period of up to 5 years, the Agency grants 4-year exemptions to 4 additional fireworks companies, ensuring that all 51 exemptions will terminate on July 8, 2020. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** These exemptions from 49 CFR 395.3(a)(2) are effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020.

**ADDRESSES:**

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://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 Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment 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.

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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, 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](mailto: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**

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number,

“FMCSA-2007-28043” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## **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. 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 the safety analyses and the public comments, 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption, and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the FAST Act amended 49 U.S.C. 31315 to permit FMCSA to grant exemptions for up to 5 years from the date of issuance, instead of the previous two years [section 31315(b)(2)]. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking. Section 5206(b)(2)(A) of the FAST Act also extended all HOS exemptions in effect on the date of enactment to a period of 5 years from the date of issuance. FMCSA announced the extension of the HOS fireworks exemption in a Federal Register notice published on May 9, 2016 [81 FR 28115].

### **III. APA Application for Exemption**

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying CMV from driving after the 14<sup>th</sup> hour after coming on duty following 10 consecutive hours off duty. The APA, a trade association representing the domestic fireworks industry, was granted an exemption for 51 member companies for the 2015 and 2016 Independence Day periods [80 FR 37040, June 29, 2015]. APA has requested new exemptions for four carriers and discontinuance of the exemptions for four carriers<sup>1</sup>, maintaining the total at 51. As mentioned above, the 51 exemptions granted to APA members in 2015 (now reduced to 47 exemptions) were extended, pursuant to section 5206(b)(2)(A) of the FAST Act, through the annual Independence Day periods ending on July 8, 2020. The exemptions for the 4 new APA carriers will also expire on July 8, 2020. Although this is less than the 5-year exemption period authorized by 49 U.S.C. 31315(b)(2), as amended by section 5206(a)(3) of the FAST Act, FMCSA believes that the interests of the APA members and the Agency would best be served by harmonizing, as far as possible, the expiration dates of all such fireworks-related exemptions. It should

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<sup>1</sup> Colonial Fireworks, DOT 177274; Fireworks West Internationale, DOT 245423; USA Halloween Planet Inc. dba USA Fireworks, DOT 725457; Western Fireworks Inc., DOT 838585

also be noted that section 5206(b)(2)(A) of the FAST Act extends HOS exemptions in effect on the date of enactment “for a period of 5 years from the date such exemption was granted” (emphasis added). FMCSA believes that the intent of the statute was to extend the effective period of an exemption from 2 to 5 years, on the assumption that exemptions begin upon issuance and remain in effect (in most cases) for 2 consecutive years. Since the 2015 fireworks exemption involved 2 separate periods, both ending after “the date such exemption was granted,” the Agency believes the FAST Act amendment is best interpreted as extending the end date of the fireworks exemption – namely July 8 of each year – through 2020. Like the other 47 APA companies that operated under the 2015 exemption, the 4 additional companies would be subject to all of the terms and conditions of the exemption.

The original APA application for relief from the 14-hour rule was submitted in 2004; a copy is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers during a typical Independence Day period.

As stated in the 2004 request, the CMV drivers employed by APA members are trained pyro-technicians who hold commercial driver’s licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an exemption for an additional four member companies because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) would impose a substantial economic hardship on numerous cities, towns and

municipalities, as well as its member companies. To meet the demand for fireworks without the exemption, APA states that its member companies would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows – beyond the means of many of its members’ customers – and that many Americans would be denied this important component of the celebration of Independence Day. The 47 APA member companies currently exempt, as well as the four carriers seeking an exemption for the first time, are listed in an appendix to this notice. The four new carriers are identified with an asterisk. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

The APA believes that the new exemptions would not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member-companies have operated under this exemption for 10 previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying unused fireworks (HM 1.1G, 1.3G and 1.4G products) in areas less secure than the motor carrier’s home base. As a condition of holding the exemption, each motor carrier would be required to notify FMCSA within five business days of any accident (as defined in 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

In its exemption request, APA asserted that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before July 4, 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. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off 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 drivers of property-carrying CMVs.

## **V. Public Comments**

On May 9, 2016, FMCSA published notice of this application and requested public comments (81 FR 28115). Two comments were submitted, both opposing the exemption. The first was from an individual who objected to the exemption in principle, stating “I find it hypocritical of the FMCSA to consider exemptions to the hours of service regulations for any special interests.” The second comment, from the Advocates for Highway and Auto Safety (Advocates), listed objections to 19 of the 51 carriers. Of these 19, two were among the four carriers proposed to be added to this exemption. In most cases, Advocates pointed out the carrier had out-of-service (OOS) rates well above the national averages. Advocates also described violations that were found during roadside inspections of the carriers. Further, they asserted that FMCSA had not conducted thorough safety-record checks of the carriers because the OOS rates and

inspection violations were not mentioned in the May 9, 2016, **Federal Register** notice (81 FR 28115).

### FMCSA Response

Section 5206(b)(2)(A) of the FAST Act extended HOS exemptions in effect on the date of enactment “for a period of 5 years from the date such exemption was granted.” Therefore, the exemptions of the 47 carriers that were included in the previous exemption period have been statutorily extended until July 8, 2020 [81 FR 28115].

Prior to the time exemption applications are announced in the **Federal Register**, FMCSA checks basic elements of safety records for any factors that would disqualify the carrier, such as being under an Imminent Hazard Order. Other elements of the safety records are checked during the comment period of the notice. The information provided by Advocates for each carrier was also identified by FMCSA during the comment period and has been considered in this final determination for the four new applicant-carriers.

With regard to safety statistics, none of the 51 carriers granted exemptions in 2015 (which were extended by the FAST Act) or the 4 carriers proposed for exemption in 2016, was under an OOS or Imminent Hazard Order, had any alerts in the Safety Management System (SMS), or was under investigation by the Pipeline and Hazardous Materials Safety Administration. All had “satisfactory” safety ratings based on compliance reviews, and all had valid Hazardous Materials Safety Permits. A few “acute critical” violations attributed to 3 of the carriers occurred months after the Independence Day holiday, when the carriers were not operating under the exemption. Because of the small numbers of inspections on record for most of these carriers, the OOS rates cited by

Advocates do not constitute a statistically reliable basis for a comparison with national averages. For example, a carrier having only three inspections, one of which included a driver OOS violation, would have a driver OOS rate of 33% compared to the national average of approximately 5%. Under those circumstances, FMCSA would not consider the apparent high OOS rate to be particularly significant.

Carrier Pyrotecnico LLC, USDOT 548303, was identified as not having a valid registration with FMCSA. However, investigation of the carrier's MCS-150B registration documents indicated that the carrier's officials had mistakenly used the same USDOT number when intending to apply for new registration of a different carrier. The carrier is reportedly undertaking a correction of the records. The Agency considers Pyrotecnico LLC, USDOT 526749, to be registered and included in the exemptions extended by the FAST Act.

In light of the above, FMCSA believes that the fireworks carriers previously granted HOS exemptions remain likely, as before, to achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. Similarly, the Agency has concluded that the 4 APA members applying for the same HOS exemption would likely meet the same standard and has decided to grant them a 4-year exemption from the 14-hour rule.

## **VI. Terms and Conditions of the Exemption**

### Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020 for the 51 carriers identified in this notice.

### Terms and Conditions of the Exemption

The exemptions from 49 CFR 395.3(a)(2) will be limited to drivers employed by the 47 motor carriers already covered by the exemption, and drivers employed by 4 motor carriers that were not included for the 2015 period. The four carriers are identified by an asterisk in the appendix table of this notice. Section 395.3(a)(2) prohibits a driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is 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 exception. The exemption would be further contingent on each driver having a full 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. Drivers operating under the exemption must carry a copy of this **Federal Register** notice or equivalent signed letter from FMCSA, and provide it to enforcement officers upon request. 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).

### Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may,

but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

#### FMCSA Notification

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must include the following information:

- a. Name of the exemption: “APA,”
- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver’s name and driver’s license number,
- e. Vehicle number and State license number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- j. 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 motor carriers and drivers covered by this exemption 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 exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers are subject to FMCSA monitoring while operating under this exemption.

Issued on: June 27, 2016.

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T.F. Scott Darling, III,  
Acting Administrator.

**Appendix to Notice of  
Application for Approval of Motor  
Carriers to Utilize American  
Pyrotechnics Association's (APA)  
Exemption from the 14-Hour Rule  
during 2016 Independence Day  
Celebrations**

	<b>Motor carrier</b>	<b>Street address</b>	<b>City, state, zip code</b>	<b>DOT No.</b>
1	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2	American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
4	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107
5	Atlas PyroVision Entertainment Group, Inc.	136 Old Sharon Rd.	Jaffrey, NH 03452	789777
6	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
7	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
8	Entertainment Fireworks, Inc.	13313 Reeder Road SW	Tenino, WA 98589	680942
9	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
10	Fireworks & Stage FX America	12650 Hwy 67S, Suite B	Lakeside, CA 92040	908304
11	Fireworks by Grucci, Inc.	20 Pinehurst Drive	Bellport, NY 11713	324490
12	*Flashing Thunder Fireworks dba Legal Aluminum King Mtg.	700 E Van Buren Street	Mitchell, IA 50461	420413
13	J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
14	Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
15	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
16	Hamburg Fireworks Display, Inc.	2240 Horns Mill Road SE	Lancaster, OH	395079
17	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
18	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
19	Homeland Fireworks, Inc.	P.O. Box 7	Jamieson, OR 97909	1377525
20	Island Fireworks Co., Inc.	N1597 County Rd VV	Hager City, WI 54014	414583
21	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
22	Lantis Fireworks, Inc.	130 Sodracs Dr., Box 229	N. Sioux City, SD 57049	534052
23	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY	554391
24	Miand Inc. dba Planet Productions (Mad Bomber)	PO Box 294, 3999 Hupp Road	Kingsbury, IN 46345	777176
25	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.P. Box 322	Hallowell, ME 04347	734974
26	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27	Precocious Pyrotechnics, Inc.	4420-278th Ave NW	Belgrade, MN 56312	435931
28	*Pyro Shows, Inc.	115 N 1 <sup>st</sup> Street	LaFollette, TN 37766	456818
29	Pyro Shows of Texas, Inc.	6601 9 Mile Azle Rd.	Fort Worth, TX 76135	2432196
30	*Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd. Ste #3	Farmindale, NY 11735	530262
31	Pyro Spectaculars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
32	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
33	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
34	Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd.	New Castle, PA 16105	526749
35	Pyrotecnico, LLC	60 West Ct	Mandeville, LA 70471	548303
36	Pyrotecnico FX	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
37	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
38	RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
39	Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd	Loveland, OH 45140	0483686
40	*Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
41	Skyworks, Ltd.	13513 W. Carrier Rd.	Carrier, OK 73727	1421047

42	Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd.	Wales, MI 48027	2475727
43	Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd	Green Bay, WI 54301	046479
44	Spirit of 76	6401 West Hwy 40	Columbia, MO 65202	2138948
45	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
46	Vermont Fireworks Co., Inc./ Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
47	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
48	Western Enterprises, Inc.	PO Box 160	Carrier, OK 73727	203517
49	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
50	Young Explosives Corp.	P.O. Box 18653	Rochester, NY 14618	450304
51	Zambelli Fireworks MFG, Co., Inc.	PO Box 1463	New Castle, PA 16103	033167

\* Not included in 2015 list of approved carriers

[FR Doc. 2016-15797 Filed: 6/29/2016 4:15 pm; Publication Date: 7/5/2016]