



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

Hours of Service (HOS) of Drivers; American Pyrotechnics Assn. (APA) Application for Exemption from the 14-Hour Rule; Request to Add New Member to Current APA Exemption

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant an exemption to the American Pyrotechnics Association's (APA) new member-company, Pyro Shows of Alabama, Inc., from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. During the 2016 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA advised FMCSA of the discontinuance of the exemption for one carrier; with the addition of the new member the total remains at 51. The exemption granted to Pyro Shows of Alabama, Inc. will terminate at the same time as the other 50 exempted carriers. 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 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, 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: Mr. Thomas 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

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 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 (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

APA Application for Exemption

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying CMV from driving a commercial motor vehicle (CMV) after the 14th hour after coming on duty following 10 consecutive hours off duty. The APA, a trade association representing the domestic fireworks industry, was granted exemptions for 51 member companies through the annual Independence Day periods ending on July 8, 2020 [81 FR 43701, July 5, 2016]. APA has requested an additional exemption for Pyro Shows of Alabama Inc. (USDOT 2859710) and the discontinuance of an exemption for Pyrotechnico, LLC, also known as Wild Dragon Fireworks (USDOT 548303), maintaining the total at 51. Like the other carriers currently operating under the exemption, Pyro Shows of Alabama's exemption 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. Like the other 50 member-companies, this additional member company would be subject to all of the terms and conditions of the exemption.

The initial APA application for relief from the 14-hour rule was submitted in 2004; a copy is in the docket. That application fully described 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 member companies 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 additional exemption for Pyro Shows of Alabama, Inc. 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 exemptions, 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 50 APA member companies currently exempt (as well as Pyro Shows of Alabama, seeking an exemption for the first time) are listed in an appendix to this notice. Pyro Shows of Alabama is identified with an asterisk. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

Method to Ensure an Equivalent or Greater Level of Safety

The APA believes that the exemption would not adversely affect the safety of the fireworks transportation provided by this motor carrier. 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 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 will be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any 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 asserts 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 CMV drivers.

Public Comments

On May 15, 2017, FMCSA published notice of this application and requested public comments (82 FR 22375). One comment was submitted by an individual who objected to the exemption, stating "Thank you. I am dead set against this especially with one of the last lines of this article, stating it would mean having to hire 2 drivers. Point being? Hire a second driver and quit it."

FMCSA Response

FMCSA has determined that granting an exemption to Pyro Shows of Alabama, Inc. will achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application to add Pyro Shows of Alabama to the current list of carriers operating under the exemption, FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any "imminent hazard" or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers, including Pyro Shows of Alabama, was under an imminent hazard or OOS 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.

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 50 motor carriers already covered by the exemption, and drivers employed by Pyro Shows of Alabama, which is 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 14th 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 is 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. The carriers and drivers must comply with all other 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 are 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 be by email to MCPSD@DOT.GOV and 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 State, number, and class,
- e. Co-Driver’s name and driver’s license State, number, and class,
- f. Vehicle company number and power unit license plate State and number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to MCPSD@DOT.GOV as soon as available.

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 would be subject to FMCSA monitoring while operating under this exemption.

Issued on: June 29, 2017.

Randi F. Hutchinson,
Chief Counsel.

**Appendix to Notice of Application for Approval of Motor Carriers to Utilize
American Pyrotechnics Association's (APA) Exemption from the 14-Hour
Rule during 2017 Independence Day Celebrations**

| | Motor carrier | Street address | City, state, zip code | DOT No. |
|----|---|-------------------------------|------------------------------|----------------|
| 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 Sodrac 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 st Street | LaFollette, TN 37766 | 456818 |
| 29 | *Pyro Shows of Alabama, Inc. | 3325 Poplar Lane | Adamsville, AL 35005 | 2859710 |
| 30 | Pyro Shows of Texas, Inc. | 6601 9 Mile Azle Rd. | Fort Worth, TX 76135 | 2432196 |
| 31 | Pyro Engineering Inc., dba/Bay Fireworks | 400 Broadhollow Rd. Ste #3 | Farminedale, NY 11735 | 530262 |
| 32 | Pyro Spectaculars, Inc. | 3196 N Locust Ave | Rialto, CA 92376 | 029329 |
| 33 | Pyro Spectaculars North, Inc. | 5301 Lang Avenue | McClellan, CA 95652 | 1671438 |
| 34 | Pyrotechnic Display, Inc. | 8450 W. St. Francis Rd. | Frankfort, IL 60423 | 1929883 |
| 35 | Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.) | 302 Wilson Rd. | New Castle, PA 16105 | 526749 |
| 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 |
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|----|---|-----------------------------|---------------------------|--------|
| 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 2016 list of approved carriers

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