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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

Hours of Service (HOS) of Drivers; Renewal of American Pyrotechnics Association (APA) Exemption From the 14-Hour Rule During Independence Day Celebrations

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

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

SUMMARY: FMCSA announces its decision to renew the exemption of the American Pyrotechnics Association (APA) from FMCSA's regulation that drivers of commercial motor vehicles (CMVs) may not drive after the 14th hour after coming on duty. The exemption for 61 motor carriers and approximately 3,000 CMV drivers is applicable during the periods June 28–July 8, 2009, and June 28–July 8, 2010, inclusive. Drivers who operate CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. FMCSA believes that with the terms and conditions in place, APA members will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

DATES: This renewed exemption is effective during the periods of June 28, 2009, through July 8, 2009, inclusive, and June 28, 2010, through July 8, 2010, inclusive. The exemption expires on July 9, 2010. Comments must be received on or before June 8, 2009.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number 2007-28043 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Online instructions for submitting comments.
- *Telefax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-

140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the Online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: You may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit <http://DocketInfo.dot.gov>.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You may obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. 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 Online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325, e-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the hours of service (HOS) requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level

that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. FMCSA has evaluated the APA application for a renewal on its merits and decided to renew the exemption for the 61 companies requested for a two-year period. The list of APA member companies covered by the exemption from 49 CFR 395.3(a)(2) is included as an Appendix to this Notice.

APA Application for Exemption Renewal

The HOS rules in 49 CFR 395.3(a)(2) prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. APA, a trade association representing the domestic fireworks industry, has applied for renewal of an exemption from this subsection. A copy of the request for renewal is included in the docket referenced at the beginning of this notice. A copy of APA's original request for exemption, submitted in December 2004, is also in the docket.

As stated in APA's 2004 request for exemption, the CMV drivers employed by APA members are trained pyrotechnicians, and hold a commercial driver's license (CDL) with hazardous materials (HM) endorsement. They transport fireworks and equipment by CMV on a very demanding schedule during a brief Fourth of July period, often to remote locations. After they arrive, the APA drivers set up and stage fireworks shows.

In 2007, FMCSA granted this exemption to certain APA members for property-carrying CMV transportation associated with the Independence Day fireworks displays in 2007 and 2008. The exemption was limited to the period from June 28 to July 6, inclusive, in 2007 and 2008 (72 FR 28755, May 22, 2007).

APA is seeking renewal of this exemption for the 2009 and 2010 Independence Day periods because compliance with the current 14-hour rule by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies. To meet the demand for fireworks under the current HOS rules, APA member companies would be required to hire a second driver for most trips. The result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of APA's customers—and that many Americans would be denied this important component of the celebration of Independence Day.

APA is requesting that the renewed exemption extend 4 days after Independence Day in 2009 and 2010, instead of the 2 days as in past years. This is to take into consideration that Independence Day is on a weekend in 2009 and 2010, which causes some communities to schedule their fireworks displays on different dates. This also provides for "rain dates" that may be scheduled.

Method To Ensure an Equivalent or Greater Level of Safety

APA believes that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to the APA, its member motor carriers have operated under this exemption for four previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period 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.

In its original exemption request, APA argued that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, 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 shoot. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. After the shoot, they drive the CMV to the point of origin. This occurs late in the evening, and thus avoids heavy traffic. Before beginning another duty day, these drivers must take 10 consecutive hours off-duty, the same as other CMV drivers. FMCSA believes that these APA operations, conducted under the terms and conditions of this limited exemption, will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) is effective June 28 through July 8, 2009, inclusive, and from June 28 through July 8, 2010, inclusive. The exemption expires on July 9, 2010.

Extent of the Exemption

This exemption is restricted to drivers employed by the 61 companies, firms and entities listed in the appendix to this notice. The drivers are entitled to a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation currently prohibits a driver from driving 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 a 14-hour period. 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 drivers must comply with all other requirements of 49 CFR part 395.

Preemption

During the periods the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption.

FMCSA Notification

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

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- c. Driver's name and driver's license number,
- d. Vehicle number and State license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

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. 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.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on APA's request for a renewal of its exemption from the requirements of 49 CFR 395.3(a)(2). FMCSA will review all comments received and determine whether the renewal of the exemption is consistent with the requirements of 49 U.S.C. 31315 and 31136(e). Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

FMCSA believes the requirements for a renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and subsequently evaluating comments submitted by interested parties.

Interested parties or organizations possessing information that would otherwise show that any or all of these APA member companies are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company or companies and drivers in question.

Issued on: May 18, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

**APPENDIX TO NOTICE OF RENEWAL OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FROM THE 14-HOUR
HOS RULE DURING 2009 AND 2010 INDEPENDENCE DAY CELEBRATIONS**

Motor carrier	Address	DOT No.
Alonzo Fireworks Display, Inc	12 County Rd 75, Mechanicsville, NY 12118	420639
American Promotional Events, Inc.—West/TNT Fireworks	555 North Gilbert Street, Fullerton, CA 92833	564520
American Promotional Events, Inc.—East Coast/TNT Fireworks	4511 Helton Drive, Florence, AL 35630	0121384
American Promotional Events—Northwest/TNT Fireworks	2120 Milwaukee Way, Tacoma, WA 98421	013086
Arrowhead Fireworks Co., Inc	3625 Normanna Rd., Duluth, MN 55803	125673
Atlas Enterprises Inc	6601 Nine Mile Azle Rd., Fort Worth, TX 76135	0116910
Atomic Fireworks	3660 W. Sunshine, Springfield, MO	130200
Atomic Fireworks	999 Sumter Highway, Bishopville, SC	446835
Atomic Fireworks	P.O. Box 190, South Pittsburg, TN	095166
B.J. Alan Company	555 Martin Luther King, Jr Blvd., Youngstown, OH 44502	262140
Central States Fireworks, Inc	18034 Kincaid Street, Athens, IL 62613	1022659
Colonial Fireworks Company	5225 Telegraph Road, Toledo, OH 43612	177274
Falcon Fireworks	3411 Courthouse Road, Guyton, GA 31312	1037954
Fireworks & Stage FX America	P.O. Box 488, Lakeside, CA 92040	908304
Fireworks by Grucci, Inc	1 Grucci Lane, Brookhaven, NY 11719	324490
Fireworks Productions, Inc	P.O. Box 294, Maryland Line, MD	464796
Garden State Fireworks, Inc	383 Carlton Road, Millington, NJ 07946	435878
Galaxy Fireworks, Inc	204 E. MLK Jr Blvd., Tampa, FL 33603	809731
Gateway Fireworks Displays	P.O. Box 39327, St Louis, MO 63139	1325301
Global Pyrotechnics Solutions, Inc	10476 Sunset Drive, Dittmer, MO 63023	1183902
Hamburg Fireworks Display, Inc	4300 Logan Lancaster Rd., Lancaster, OH	395079
Ingram Enterprises dba Fireworks over America	6597 W. Independence Drive, Springfield, MO 65802	0268419
International Fireworks Mfg. Co	242 Sycamore Road, Douglasville, PA 19518	385065
Island Fireworks Company	N735 825th St., Hager City, WI 54014	414583
J&M Displays, Inc	18064 170th Ave., Yarmouth, IA 52660	377461
Jake's Fireworks/Fireworks Spectacular	2311 A West 4th St., Pittsburg, KS 66762	449599
July 4 Ever	382 Rock Cut Rd., Walden, NY 12586	803442
Kellner's Fireworks, Inc	478 Old Rte 8, Harrisville, PA	481553
Lantis Fireworks and Lasers	P.O. Box 491, Draper, UT 84202	195428
Lantis Fireworks, Inc	130 Sodrac Dr., N Sioux City, SD 57049	534052
Legion Fireworks Co., Inc	10 Legion Lane, Wappingers Falls, NY 12590	554391
Lew's Fireworks, Inc	45788 U.S. Hwy 212, Watertown, SD 57201	333792
Mad Bomber/Planet Productions	P.O. Box 294, Kingsbury, IN 46345	777176
Melrose Display Company	7620 Little Mount Rd., Taylorsville, KY 40071	434586
Melrose North Pyrotechnics	9405 River Rd., SE., Clear Lake, MN 55319	434586
Melrose Pyrotechnics, Inc	P.O. Box 302, Kingsbury, IN 46345	434586
Melrose South Pyrotechnics	4652 Catawga River Rd., Catawga, SC 29704	545033
Montana Display, Inc	9480 Inspiration Drive, Missoula, MT 59808	1030231
Precocious Pyrotechnics, Inc	4420 278th Ave., NW., Belgrade, MN 56312	435931
Pyro Engineering Inc., dba/Bay Fireworks	110 Route 110, Suite 102, Huntington Station, NY 11746	530262
Pyro Shows, Inc	701 W. Central Ave., LaFollette, TN 37766	456818
Pyro Spectaculars, Inc	3196 N. Locust Ave., Rialto, CA 92376	029329
Pyrotechnics by Presutti, Inc	P.O. Box 42, St Clairsville, OH 43950	51974
Pyrotecnico	302 Wilson Rd., New Castle, PA 16105	526749
Pyrotecnico of Louisiana, LLC	60 West Ct., Mandeville, LA 70471	548303
RES Specialty Pyrotechnics	21595 286th St., Belle Plaine, MN 56011	523981
Rich Brothers Company	700 S. Marion Rd., Sioux Falls, SD 57106	001356
Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd., Loveland, OH 45140	0483686
Skyworks, Ltd	13513 W. Carrier Rd., Carrier, OK 73727	1421047
Spielbauer Fireworks Co, Inc	220 Roselawn Blvd., Green Bay, WI 54301	046479
Stonebraker-Rocky Mountain Fireworks Co	5650 Lowell Blvd., Unit E, Denver, CO 80221	0029845
Thunder Fireworks	5207 187th St., E, Tacoma, WA 98446	463284
Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc	2235 Vermont Route 14 South, East Montpelier, VT 05651	310632
Wald & Co., Inc	P.O. Box 319, Greenwood, MO 64034	087079
Walt Disney Entertainment	5700 Maple Road, Lake Buena Vista, FL 32830	148477
Western Enterprises, Inc	P.O. Box 160, Carrier, OK 73727	203517
Western Fireworks, Inc	14592 Ottaway Rd., NE., Aurora, OR 97002	838585
Winco Fireworks Int. LLC	1992 NW Hwy 50, Lone Jack, MO	259688
Wolverine Fireworks Display, Inc	205 W. Seidlars, Kawkawlin, MI	376857
Young Explosives Corp	P.O. Box 18653, Rochester, NY	450304
Zambelli Fireworks MFG Co., Inc	P.O. Box 1463, New Castle, PA 16103	033167

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Decision by FHWA and Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces the availability of a Record of Decision by FHWA pursuant to the requirements of the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508). In addition, this Notice announces actions taken by FHWA and other Federal agencies that are final with in the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposed expansion of the Blue Water Bridge Port of Entry in Port Huron, Michigan. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 771 and 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal Agency actions on the highway project will be barred unless the claim is filed on or before November 18, 2009 (180 days from the publication date of this notice in the **Federal Register**). If the Federal law that authorizes that judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. David Williams, Environmental Program Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; phone: (517) 702-1820, Fax: (517) 377-1804; and e-mail: David.Williams@FHWA.DOT.gov. Mr. Ryan Rizzo, Major Project Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; phone: (517) 702-1833, Fax: (517) 377-1844; E-mail: Ryan.Rizzo@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following plaza expansion project in the State of Michigan: Blue Water Bridge Study, St. Clair County, Michigan. The

Selected Alternative is the City West Alternative that will: increase the size of the U.S. Port of Entry plaza bringing most of the elevated plaza down to street level; meet all plaza operational and traffic circulation needs through the year 2030; relocate Pine Grove Avenue (M-25) to the west around the new plaza; replace and expand the Black River Bridge, the Water Street Interchange, and the Lapeer Connector interchange; resurface and expand 2.5 miles of the existing I-94/I-69 freeway; and relocate the Michigan Welcome Center to vacant land north of I-94/I-69 approximately one mile west of its current location. The Selected Alternative is located within the City of Port Huron and the Charter Township of Port Huron, St. Clair County, Michigan. The plaza portion of the project lies primarily between Hancock Street on the north, 10th Avenue to the east, and relocated Pine Grove Avenue to the south and west.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement for the project approved on March 20, 2009, in the FHWA Record of Decision (ROD) issued on May 12, 2009, and in other project records. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Michigan Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at: http://www.michigan.gov/mdot/0,1607,7-151-9621_11058_36266-,00.html or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321-4351]; Federal-Aid Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)].

6. *Social and Economics:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indians Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Act [7 U.S.C. 4201-4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251-1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451-1465]; Land and Water Conservation Fund [16 U.S.C. 4601-4604]; Safe Drinking Water Act [42 U.S.C. 300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [42 U.S.C. 401-406]; TEA-21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001-4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9501-9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99-499]; Resource Conservation and Recovery Act [42 U.S.C. 6901-6992(k)].

9. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplains Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13112, Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: May 18, 2009.

James J. Steele,

Michigan Division Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2009-0067]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.