

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

Motor carrier	Address	DOT #
Walt Disney Entertainment	5700 Maple Road, Lake Buena Vista, FL 32830 ..	148477
Western Enterprises, Inc.	PO 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 Seidlers, Kawkawlin, MI	376857
Young Explosives Corp.	PO Box 18653, Rochester, NY	450304
Zambelli Fireworks MFG, Co., Inc.	PO Box 1463, New Castle, PA 16103	033167

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

Hours of Service (HOS) of Drivers; Granting of Exemption; American Pyrotechnics Association (APA)

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

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant the American Pyrotechnics Association (APA) exemption for 14 member motor carriers from FMCSA’s regulation that drivers of commercial motor vehicles (CMV) may not drive after the 14th hour after coming on duty.

DATES: This exemption is effective during the periods of June 28, 2009, through July 8, 2009, and June 28, 2010, through July 8, 2010, inclusive.

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 grant an exemption from the hours of service (HOS) requirements in 49 CFR 395.3(a)(2) for up to two years 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” (49 CFR 381.305(a)). APA, a trade association representing the domestic fireworks industry, applied for a limited exemption from the HOS rules on behalf of 14 of its member motor carriers for a eleven-day period surrounding Independence Day in 2009,

and a similar period in 2010, as previously announced in the **Federal Register** (74 FR 24066, May 22, 2009). (On May 22, 2009, the Agency also renewed the identical exemption for 61 additional APA-member motor carriers (74 FR 24069)). A copy of this application for exemption is included in the docket referenced at the beginning of this notice, and a list of the 14 APA-member companies being exempted from 49 CFR 395.3(a)(2) is included as an Appendix to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28—July 8, 2009, and June 28—July 8, 2010, inclusive, the companies named in the Appendix, and CMV drivers employed by them, will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day. These CMV drivers hold a commercial driver’s license with hazardous materials endorsement. They are also trained pyrotechnicians. They transport fireworks, and set-up and stage fireworks shows.

The exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour on-duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and observe the 11-hour driving time limit, as well as the 60- and 70-hour on-duty limits.

APA sought this exemption because compliance by its members with the current 14-hour rule would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies, with regard to their Independence Day celebrations. APA maintains that the operational demands of this unique industry minimize the risk of CMV crashes. It also maintains that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by

these motor carriers, and actually improve safety in the storage of hazardous materials.

Public Comment

On May 22, 2009, FMCSA published a notice in the **Federal Register** (74 FR 24066) announcing APA’s application for exemption for these 14 member motor carriers, and requesting public comment. The comment period closed on June 8, 2009. There were no comments filed in response to the May 22, 2009, notice.

FMCSA Decision

The FMCSA decision to grant the request for exemption from 49 CFR 395.3(a)(2) is based on the merits of the application for exemption. The Agency believes that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption. The identical limited exemption has been in effect during Independence Day periods since 2005 for designated APA-member motor carriers conducting these operations. There have been no reported crashes or incidents involving these carriers while operating under the exemption. The drivers employed by the companies, firms, and entities listed in the appendix to this notice are granted relief from the requirements of 49 CFR 395.3(a)(2) under the following terms and conditions:

Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) [the “14-hour rule”] is effective from June 28 (12:01 a.m.) through July 8, 2009 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2010 (11:59 p.m.).

Extent of the Exemption

This exemption is restricted to drivers employed by the companies, firms and entities listed in the Appendix to this notice. The drivers are provided a

limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving after the 14th hour of 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. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and remain subject to the 11-hour driving time limit, the 60- and 70-hour on-duty limits, and all other requirements of 49 CFR part 395.

Preemption

During the period 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 operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

Under the exemption, each APA member company, firm and entity listed in the appendix to this notice must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs, operating under the terms of 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 closest to the accident scene,
- c. Driver's name and 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 total on-duty time period prior to 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. Each motor carrier and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: June 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

APPENDIX TO THE NOTICE OF APPLICATION OF AMERICAN PYROTECHNICS ASSOCIATION (APA) FOR A LIMITED HOS EXEMPTION FOR 14 MOTOR CARRIERS DURING THE 2009 AND 2010 INDEPENDENCE DAY CELEBRATIONS

	Motor carrier	Address		DOT #
1	Alpha-Lee Enterprises, Inc.	4111 FM 2351	Friendswood, TX 77546	1324580
2	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3	Atlas Pyrovision Productions, LLC	P.O. Box 498	Jaffrey, NH 03452	789777
4	Cartwright Fireworks, Inc.	1608 Keely Road	Franklin, PA 16323	882283
5	DDT, LLC—All American Transport, LLC.	4503 E. 460	Pryor, OK 74361	1606354
6	Entertainment Fireworks, Inc.	P.O. Box 7160	Olympia, WA 98507-7160	680942
7	Fireworks Productions of Arizona, Ltd.	17034 S 54th Street	Chandler, AZ 85226	948780
8	Fireworks West Internationale	3200 West 910 North	Logan, UT 84321	245423
9	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
10	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
11	Johnny Rockets Fireworks Display Co.	4410 N. Hamilton	Chicago, IL 60625	1263181
12	Night Magic, Inc.	P.O. Box 294	Kingsbury, IN 46345	557323
13	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
14	Victory Fireworks Inc.	579 Vincent Lane	Ellsworth, WI 54011	539751

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2009-3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2009 rail cost adjustment factor (RCAF) and cost index filed by

the Association of American Railroads. The third quarter 2009 RCAF (Unadjusted) is 0.938. The third quarter 2009 RCAF (Adjusted) is 0.426. The third quarter 2009 RCAF-5 is 0.403.

DATES: *Effective Date:* July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245-0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site <http://www.stb.dot.gov>. Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0235. Assistance for the hearing

impaired is available through FIRS at 1-800-877-8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 12, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Jeffrey Herzig,
Clearance Clerk.

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