



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2014-0111]**

**Hours of Service of Drivers: Application for Renewal of Illumination Fireworks, LLC and ACE Pyro LLC Exemptions From the 14-Hour Rule during Independence Day Celebrations**

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

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

**SUMMARY:** FMCSA announces that it has received an application from Illumination Fireworks, LLC and ACE Pyro, LLC (applicants) for a renewal of their exemption from the requirement that drivers of commercial motor vehicles (CMVs) must not drive following the 14<sup>th</sup> hour after coming on duty. The applicants were granted an exemption previously for drivers of 50 CMVs during the Independence Day period of June 28, 2014 – July 8, 2014. The exemption would apply solely to the operation of drivers of 50 CMVs employed by the applicants in conjunction with staging fireworks shows celebrating Independence Day during the period of June 28 - July 8, 2015. During this period, the CMV drivers employed by the applicants would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The applicants maintain that the terms and conditions of the limited exemption would ensure a level of safety equivalent to or greater than the level of safety achieved without the exemption.

**DATES:** If granted, this exemption would be effective during the period of June 28, 2015, through July 8, 2015. The exemption would expire on July 8, 2015, at 11:59 p.m. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2014-0111 using any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, 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 Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

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 online Federal document management system 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 acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**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:**

##### **Background**

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 safety analyses and public comments submitted, 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **Application for Exemptions**

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty following 10 consecutive hours off duty. The applicants represent two fireworks display companies that were granted exemptions previously during the Independence Day period of June 28 – July 8, 2014. The applicants' initial exemption application for relief from the 14-hour rule was submitted in 2014; a copy of the application is in the docket identified at the beginning of this notice. That 2014 application describes fully the nature of the operations of the CMV drivers employed by the applicant during a typical Independence Day period.

As stated in the applicants' request, CMV drivers employed by the applicant hold commercial driver's licenses (CDL) with hazardous materials endorsements to transport Division 1.3G and 1.4G fireworks in conjunction with the setup of firework

shows for Independence Day. The applicants state that they seek HOS exemptions for the 2015 Independence Day period because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulation means that most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty-period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

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

As a condition for maintaining the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been involved in a crash.

In the exemption request, the applicants assert 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. The applicants noted that during the 2014 Independence Day season, the farthest Illumination Fireworks traveled from its home base was 150 miles. At the site, they spend considerable time installing, wiring, and checking the safety of fireworks displays, followed by several hours of duty in the late

afternoon and early evening prior to the event. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

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

### Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(2) are proposed to be effective during the period of June 28 through July 8, 2015, inclusive.

The exemption would expire on July 8, 2015, at 11:59 p.m. local time.

### Extent of the Exemption

The exemption would be restricted to the 50 drivers employed by the applicants. The drivers would be given a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation 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 the exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemption would be 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 exemption. The exemption would be further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. 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).

### Other Conditions

The exemption would be contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid CDL with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

#### Preemption

During the periods the exemption would be in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

#### FMCSA Accident Notification

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accident (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:

- Date of the accident,
- City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- Driver’s name and driver’s license number;
- Vehicle number and State license number;
- Number of individuals suffering physical injury;
- Number of fatalities;

- The police-reported cause of the accident;
- Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Accidents must be reported via email to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV).

### Termination

FMCSA does not believe the two motor carriers and 50 drivers covered by the 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.

**Issued on:** October 1, 2014

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Larry W. Minor  
Associate Administrator for Policy

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