



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0180]

Hours of Service of Drivers: Application for Exemption from the 14-Hour Rule During Independence Day Celebrations for Illumination Fireworks Partners, LP, and ACE Pyro, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant Illumination Fireworks Partners, LP, and ACE Pyro, LLC (Applicants), an exemption from the requirements that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The exemption will apply solely to the drivers of 60 CMVs employed by the applicants in conjunction with staging fireworks shows in celebration of Independence Day during the period of June 28-July 8, for the next five years (2020-2024) inclusive. 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 will not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and will continue to be subject to the 11-hour driving-time limit, and the 60 and 70-hour on-duty limits. FMCSA has determined that the terms and conditions of the exemption will likely achieve a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**] and expires [**INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER**].

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 U.S. Department of Transportation West Building, 1200 New Jersey Avenue, SE, Washington, D.C., 20590, 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 a day, 365 days a year.

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: 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. If you have questions regarding 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, insert the docket number, “FMCSA-2019-0180 in the “Keyword” box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document 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, D.C. 20590, between 9 a.m. and 5 p.m., ET, 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)) including the reason for the grant or denial; the specific person or class of persons receiving the exemption, if granted; and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the

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

III. Request for Exemption

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 14th hour after coming on duty following 10 consecutive hours off duty. Illumination Fireworks Partners, LP (USDOT 3247742), and ACE Pyro, LLC (USDOT 1352892) (Applicants), are fireworks display companies that employ CMV drivers who hold Commercial Driver's Licenses (CDLs) with hazardous materials endorsements. The drivers transport Division 1.3G and 1.4G fireworks and setup materials for fireworks shows at Independence Day celebrations. The applicants seek an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) to permit their drivers to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. The applicants state that the basis for the request is the existing FMCSA exemption granted to Illumination Fireworks, LLC, and ACE Pyro, LLC, under Docket No. FMCSA-2014-0111. They are seeking the HOS exemption 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 a fireworks display.

The applicants assert that without this exemption safety would decline, as fireworks drivers would be unable to return to their home base following each show, should they have fireworks remaining after a display. Drivers 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.

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

To ensure an equivalent level of safety, the applicants refer to the short distances involved in driving from the distribution point to the site of a fireworks display, no more than 150 miles. Drivers drive to the site of the display in the early morning during light traffic. In addition, drivers have several hours off duty in the late afternoon and early evening on the day of the event. Lastly, the applicants state that they have not been involved in any reportable accidents while operating under terms and conditions of the same exemption granted to the previous owner of the companies.

V. Public Comments

On October 23, 2019, FMCSA published notice of this application and asked for public comment (84 FR 56887). The Agency did not receive any comments.

VI. FMCSA Decision

FMCSA has determined that granting an exemption to Illumination Fireworks Partners, LP, and ACE Pyro, LLC, will likely achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would achieve. FMCSA ensured that these motor carriers possess active USDOT registrations, have minimum required levels of insurance, and were not subject to any “imminent hazard” or other Out-of-Service (OOS) orders. The Agency conducted a comprehensive review of the motor carriers’ safety performance, which included a review of the Motor Carrier Management Information System safety records, and inspection and accident reports submitted to FMCSA by state agencies.

The applicants have “satisfactory” safety ratings and valid Hazardous Materials Safety Permits.

VII. 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 from 2020 through 2024 for the drivers employed by the applicants in this notice.

Terms and Conditions of the Exemption:

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 limited to drivers employed by the applicants. The conditions of this exemption are as follows:

- Drivers must not drive more than 11 hours in the 14-hour period after coming on duty; and
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period.

The carrier 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 adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification:

The applicants must notify FMCSA within five business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this

exemption. The notification must be emailed to MCPSD@DOT.GOV and include the following information:

- a. Name of the Exemption: “Illumination Fireworks Partners or Ace Pyro”;
- 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 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 revoking the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

James A. Mullen,
Deputy Administrator.

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