

APPENDIX TO NOTICE OF RENEWAL OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FROM THE 14-HOUR HOS RULE DURING 2011 AND 2012 INDEPENDENCE DAY CELEBRATIONS—Continued

Motor carrier	Address 1	Address 2	DOT No.
38. Rainbow Fireworks, Inc .....	76 Plum Ave .....	Inman, KS 67546 .....	1139643
39. RES Specialty Pyrotechnics .....	21595 286th St .....	Belle Plaine, MN 56011 .....	523981
40. Rich Brothers Company .....	700 S Marion Rd .....	Sioux Falls, SD 57106 .....	001356
41. Rozzi's Famous Fireworks, Inc .....	11605 North Lebanon Rd .....	Loveland, OH 45140 .....	0483686
42. Skyworks, Ltd .....	13513 W. Carrier Rd .....	Carrier, OK 73727 .....	1421047
43. Spielbauer Fireworks Co, Inc .....	220 Roselawn Blvd .....	Green Bay, WI 54301 .....	046479
44. Stonebraker-Rocky Mountain Fireworks Co. ....	5650 Lowell Blvd, Unit E .....	Denver, CO 80221 .....	0029845
45. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc. ....	2235 Vermont Route 14 South .....	East Montpelier, VT 05651 .....	310632
46. Wald & Co., Inc .....	PO Box 319 .....	Greenwood, MO 64034-0319 .....	087079
47. Walt Disney Parks and Resorts US Inc. ....	Box 10000 .....	Lake Buena Vista, FL 32830 .....	1025131
48. Western Enterprises, Inc .....	PO Box 160 .....	Carrier, OK 73727 .....	203517
49. Winco Fireworks Int. LLC .....	1992 NW Hwy 50 .....	Lone Jack, MO .....	259688
50. Wolverine Fireworks Display, Inc .....	205 W Seidlers .....	Kawkawlin, MI .....	376857
51. Victory Fireworks Inc .....	579 Vincent Lane .....	Ellsworth, WI 54011 .....	539751
52. Young Explosives Corp .....	P.O. Box 18653 .....	Rochester, NY .....	450304
53. 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 application for exemption from the American Pyrotechnics Association (APA) on behalf of 9 member motor carriers seeking relief from FMCSA's hours-of-service (HOS) regulation that prohibits driving of commercial motor vehicles (CMV) after the 14th hour after the driver comes on duty [49 CFR 395.3(a)(2)].

**DATES:** This exemption is effective during the periods of June 28, 2011, through July 8, 2011, and June 28, 2012, through July 8, 2012, inclusive.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the 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 U.S.C. 31315(b)(1)).

The initial APA application for waiver or exemption relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA-member motor carriers during a typical Independence Day period. The CMV drivers are trained pyrotechnicians and hold commercial driver's licenses with hazardous materials endorsements. They transport fireworks and related equipment by CMV on a very demanding schedule, often to remote locations. After they arrive, the APA drivers are responsible for set-up and staging of the fireworks shows.

Previously, the Agency had granted a waiver to APA for a similar exemption for the 2004 Independence Day period, and two-year exemptions for the 2005-2006 and 2007-2008 periods. In 2009, FMCSA granted the same limited exemption to 14 new APA-member motor carriers (74 FR 29266, June 19, 2009) and renewed 61 exemptions of APA-member motor carriers (74 FR 29264, June 19, 2009) for their CMV transportation of fireworks for Independence Day displays in 2009 and 2010.

APA is currently seeking relief for 9 APA-member companies from FMCSA's

HOS regulation for the 2011 and 2012 Independence Day periods. A list of the 9 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, 2011, and June 28—July 8, 2012, 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.

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 with the current 14-hour rule by its members during these two 11-day periods would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as the APA companies. To meet the demand for fireworks under the current HOS rules, APA asserts that its 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 its members' customers—and would deny many Americans this

important component of their Independence Day celebration.

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 will actually improve safety in the storage of hazardous materials.

**Public Comment**

On May 24, 2011, FMCSA published a notice in the **Federal Register** (76 FR 30232) announcing APA’s application for exemption for these 9 member motor carriers, and requesting public comment. The comment period closed on June 14, 2011. As of June 20, no comments were filed in response to the May 24 notice.

**FMCSA Decision**

In considering this application for exemption, the Agency reviewed its records for any unfavorable safety information regarding the applicants’ motor carrier operations. The Agency also reviewed records of the Pipeline and Hazardous Materials Safety Administration (PHMSA), which has jurisdiction over certain aspects of the transportation of hazardous materials, as specified in the Hazardous Materials Regulations (HMR)(49 CFR Parts 105–185). FMCSA and PHMSA records contained no significant unfavorable safety information regarding these 9 motor carriers.

The FMCSA decision to grant the request for exemption from 49 CFR 395.3(a)(2) is based on the merits of the application. The Agency believes that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that, at a minimum, is equivalent to 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 accidents 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, 2011 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2012 (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 motor carrier, 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 APA member-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 22, 2011.

**Anne S. Ferro,**  
*Administrator.*

**Appendix to the Notice of Application of American Pyrotechnics Association (APA)**

**For a Limited HOS Exemption for 9 Motor Carriers During the 2011 and 2012 Independence Day Celebrations**

Motor carrier	Address	DOT No.
1. AM Pyrotechnics, LLC .....	2429 East 535th Rd., Buffalo, MO 65622 .....	1034961
2. Arthur Rozzi Pyrotechnics .....	6607 Red Hawk Ct., Maineville, OH 45039 .....	2008107
3. East Coast Pyrotechnics, Inc .....	4652 Catawba River Rd., Catawba, SC 29704 .....	545033
4. Fireworks Extravaganza .....	58 Maple Lane, Otisville, NY 10963 .....	2064141
5. Hi-Tech FX, LLC .....	1135 Ave. I, Fort Madison, IA 52627 .....	1549055
6. North Central Industries, Inc .....	1500 E. Washington, Muncie, IN 47305 .....	00165755
7. Pyro Spectaculars North, Inc .....	5301 Lang Avenue, McClellan, CA 95652 .....	1671438
8. Pyrotechnic Display, Inc .....	8450 W. St. Francis Rd., Frankfort, IL 60423 .....	1929883
9. Western Display Fireworks, Ltd .....	10946 S. New Era Rd., Canby, OR 97013 .....	498941

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2011-0093]

#### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt twenty-one individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective June 28, 2011. The exemptions expire on June 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine Papp, Chief, Medical Programs, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or 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., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) 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>.

#### Background

On April 18, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-one individuals and requested comments from the public (76 FR 21792). The public comment period closed on May 18, 2011, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-one applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century". The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-one applicants have had ITDM over a range of 1 to 36 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure requiring the assistance of another person or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable

insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 18, 2011, **Federal Register** notice and will not be repeated in this notice.

#### Discussion of Comment

FMCSA did not receive any comments in this proceeding.

#### Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce. To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

#### Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and that includes the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a