

## I. Public Participation

### A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA–2018–0319 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, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

### B. 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## II. Background

On November 14, 2018, FMCSA published a FR notice (83 FR 56896) announcing receipt of applications from four individuals treated with ICDs and requested comments from the public. These four individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on December 14, 2018, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(4). A summary of each applicant’s medical history related to their ICD exemption request was discussed in the November 14, 2018, **Federal Register** notice and will not be repeated in this notice.

In reaching the decision to deny these exemption requests, the Agency considered information from the Cardiovascular Medical Advisory

Criteria, an April 2007 Evidence Report titled “Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, and a December 2014 focused research report titled “Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.” Copies of the reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [Appendix A to Part 391—Medical Advisory Criteria, section D, paragraph 4]. The advisory criteria for 49 CFR 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.

The Agency’s decision regarding these exemption applications is based on an individualized assessment of each applicant’s medical information provided by the applicant, available medical and scientific data concerning ICD’s, and public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the April 2007 Evidence Report on Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, April 2007.<sup>1</sup> A focused research report on Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed completed for the FMCSA in December of 2014 indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and

upholds the findings of the April 2007 report.

## V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following four applicants have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(4):

Herman L. Bolton (LA)  
Robert A. Crawley (MD)  
Paul J. Hill (SD)  
Johnny L. Walls (AL)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. The list published today summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: February 1, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–01991 Filed 2–11–19; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

### Hours of Service (HOS) of Drivers; American Pyrotechnics Assn. (APA); Request To Add New Members to Current APA Exemption

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

**ACTION:** Notice of final disposition.

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**SUMMARY:** FMCSA announces its decision to grant an exemption to three additional member companies of the American Pyrotechnics Association (APA)—Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skysooter Displays, Inc.—from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. During the 2017 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA advised FMCSA of the

<sup>1</sup> Now available at [http://ntl.bts.gov/lib/30000/30100/30123/Final\\_CVD\\_Evidence\\_Report\\_v2.pdf](http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf).

discontinuance of the exemption for one carrier; with the addition of the three new members the total increases to 53. The exemption granted to the three carriers will terminate at the same time as the other 50 exempted carriers. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** These exemptions from 49 CFR 395.3(a)(2) are effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020.

**ADDRESSES:**

*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 on-line Federal Docket Management System (FDMS) 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:* 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Email: [LaTonya.Mimms@dot.gov](mailto:LaTonya.Mimms@dot.gov). If you have questions on 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](http://www.regulations.gov) and insert the docket number, "FMCSA-2007-28043" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed 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, DC 20590, between 9 a.m. and 5 p.m., E.T., 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)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

**III. APA Application for Exemption**

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying CMV from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. During the 2017 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA has requested additional exemptions for Artisan Pyrotechnics Inc., DOT# 1898096, Montana Display Fireworks, Inc., DOT# 1030231, and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., DOT# 2149202, and the discontinuance of an exemption for Island Fireworks, DOT# 414583, increasing the total to 53. Like the other 50 member companies, the three new companies would be subject to all the terms and conditions of the multi-year APA exemption that terminates on July 8, 2020. Although this is less than the 5-year exemption period authorized by 49 U.S.C.

31315(b)(2), FMCSA believes that the interests of the APA members and the Agency would best be served by harmonizing, as far as possible, the expiration dates of all such fireworks-related exemptions. On June 21, 2018, FMCSA granted waivers to these three APA members to allow them to participate in the 2018 Independence Day celebration.

The initial APA application for relief from the 14-hour rule was submitted in 2004; a copy is in the docket. That application fully describes the nature of the pyrotechnic operations of CMV drivers during a typical Independence Day period.

As stated in the 2004 request, the CMV drivers employed by APA member companies are trained pyro-technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an additional exemption for the three new member companies because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies. To meet the demand for fireworks without the exemption, APA states that its member companies would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and that many Americans would be denied this important component of the celebration of Independence Day.

On June 21, 2018, FMCSA granted waivers to APA on behalf of Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., to allow these carriers to participate in the 2018 Independence Day celebration. The waiver also allowed the Agency time to complete the exemption process.

**IV. Method To Ensure an Equivalent or Greater Level of Safety**

The APA believes that the exemption would not adversely affect the safety of the fireworks transportation provided by this motor carrier. According to APA, its member-companies have operated under this Independence Day exemption for the past 10 years without a reported motor carrier safety incident. Moreover, it asserts that, without the

extra 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. As a condition of holding the exemption, each motor carrier will be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemption.

In its exemption request, APA asserts that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before July 4, 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 event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

#### V. Public Comments

On June 8, 2018, FMCSA published notice of this application and requested public comments (83 FR 26742). The only comment submitted was not relevant to this notice.

#### VI. FMCSA Response

FMCSA has determined that granting an exemption to Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., will achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application to add these three carriers to the current list of carriers operating under the exemption, FMCSA ensured that each motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any "imminent hazard" or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance

history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers, including the 3 new carriers proposed for exemption, was under an imminent hazard or OOS order, had any alerts in the Safety Management System (SMS), or was under investigation by the Pipeline and Hazardous Materials Safety Administration. All had "satisfactory" safety ratings based on compliance reviews, and all had 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 through 2020 for the 53 carriers identified in this notice.

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

The exemption from 49 CFR 395.3(a)(2) will be limited to drivers employed by the 50 motor carriers already covered by the multi-year exemption, and drivers employed by the three additional carriers identified by an asterisk in the appendix table of this notice. Section 395.3(a)(2) prohibits a driver from driving a CMV 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 the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exception. 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 carriers 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, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

##### *FMCSA Notification*

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must be by email to [MCPSD@DOT.GOV](mailto:MCPSD@DOT.GOV) and include the following information:

- a. Name of the Exemption: "APA"
- 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](mailto:MCPSD@DOT.GOV) as soon as available.

##### *Termination*

The 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. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers would be subject to FMCSA monitoring while operating under this exemption.

Issued on: February 1, 2019.

**Raymond P. Martinez,**  
Administrator.

APPENDIX TO NOTICE OF APPLICATION FOR APPROVAL OF MOTOR CARRIERS TO UTILIZE AMERICAN PYROTECHNICS  
ASSOCIATION'S (APA) EXEMPTION FROM THE 14-HOUR RULE DURING INDEPENDENCE DAY CELEBRATIONS

[June 28 through July 8, 2020]

Motor carrier	Street address	City, state, zip code	DOT No.
1. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2. American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
4. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
5. Artisan Pyrotechnics, Inc*	82 Grace Road	Wiggins, MS 39577	1898096
6. Atlas PyroVision Entertainment Group, Inc	136 Old Sharon Rd	Jaffrey, NH 03452	789777
7. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
8. East Coast Pyrotechnics, Inc	4652 Catawba River Rd	Catawba, SC 29704	545033
9. Entertainment Fireworks, Inc	13313 Reeder Road SW	Tenino, WA 98589	680942
10. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
11. Fireworks & Stage FX America	12650 Hwy. 67S, Suite B	Lakeside, CA 92040	908304
12. Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490
13. Flashing Thunder Fireworks dba Legal Aluminum King Mtg.	700 E Van Buren Street	Mitchell, IA 50461	420413
14. J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
15. Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
16. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17. Hamburg Fireworks Display, Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
18. Hawaii Explosives & Pyrotechnics, Inc	17-7850 N Kulani Road	Mountain View, HI 96771	1375918
19. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
20. Homeland Fireworks, Inc	P.O. Box 7	Jamieson, OR 97909	1377525
21. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
22. Lantis Fireworks, Inc	130 Sodrac Dr., Box 229	N Sioux City, SD 57049	534052
23. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
24. Miand Inc. dba Planet Productions (Mad Bomber)	P.O. Box 294, 3999 Hupp Road, R31.	Kingsbury, IN 46345	777176
25. Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.O. Box 322	Hallowell, ME 04347	734974
26. Melrose Pyrotechnics, Inc	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27. Montana Display Fireworks, Inc*	9480 Inspiration Road	Missoula, MT 59808	1030231
28. Precocious Pyrotechnics, Inc	4420-278th Ave. NW	Belgrade, MN 56312	435931
29. Pyro Shows, Inc	115 N 1st Street	LaFollette, TN 37766	456818
30. Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005	2859710
31. Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd	Fort Worth, TX 76135	2432196
32. Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd., Ste. #3	Farmingdale, NY 11735	530262
33. Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
34. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
35. Pyrotechnic Display, Inc	8450 W St. Francis Rd	Frankfort, IL 60423	1929883
36. Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd	New Castle, PA 16105	526749
37. Pyrotecnico FX	6965 Speedway Blvd., Suite 115.	Las Vegas, NV 89115	1610728
38. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
39. RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
40. Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
41. Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
42. Skyworks, Ltd	13513 W Carrier Rd	Carrier, OK 73727	1421047
43. Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd	Wales, MI 48027	2475727
44. Spielbauer Fireworks Co., Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
45. Spirit of 76	6401 West Hwy. 40	Columbia, MO 65202	2138948
46. Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
47. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
48. Western Display Fireworks, Ltd	10946 S New Era Rd	Canby, OR 97013	498941
49. Western Enterprises, Inc	P.O. Box 160	Carrier, OK 73727	203517
50. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
51. Young Explosives Corp	P.O. Box 18653	Rochester, NY 14618	450304
52. Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167
53. ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc*	1014 Slocum Road	Wapwallopen, PA 18660	1030231

\*Not included in 2017-2020 list of approved carriers.