



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0131]

Commercial Driver's License Standards: Application for Exemption; Teupen North America, Inc.

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

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

SUMMARY: FMCSA announces its decision to grant an exemption from the commercial driver's license (CDL) regulations to Teupen North America, Inc. (Teupen) for one driver, Mr. Martin Borutta, Lead Engineer for Teupen. Mr. Borutta holds a valid German commercial license and wants to test drive Teupen's new aerial lift design vehicle on U.S. roads to better understand product requirements for safe application in the U.S. market, and verify results. FMCSA believes that the requirements for a German commercial license ensure that operations under the exemption would likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of 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 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.

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: Mr. Richard Clemente, 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 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 and insert the docket number, “FMCSA-2019-0131” 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., 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 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. Request for Exemption

Teupen applied for an exemption for Mr. Martin Borutta from 49 CFR 383.23, which prescribes licensing requirements for drivers operating commercial motor vehicles (CMVs) in interstate or intrastate commerce. He holds a valid German commercial license but is unable to obtain a CDL because he not domiciled in this country. A copy of the exemption application is in the docket referenced at the beginning of this notice.

The exemption would allow this driver to operate CMVs in interstate or intrastate commerce to support Teupen field tests designed to better understand product requirements and ensure the safe operation of their new aerial lift design vehicle in environments in the U.S.

According to Teupen, Mr. Borutta will typically drive for no more than 5 hours per day for one to two days. The test driving will typically be done on interstate highways, and driving will consist of no more than 200 miles per day. He will in all cases be accompanied by a U.S. CDL holder familiar with the routes to be traveled.

Mr. Borutta holds a valid German commercial license, and as explained by Teupen in its exemption request, the requirements for that license ensure that, operating under the exemption, Mr. Borutta would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation. Teupen requests that the exemption cover the maximum allowable period of five years.

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

Teupen notes that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. The Agency granted one of Navistar's drivers a similar exemption [April 15, 2019 (84 FR 15283)]. Since 2015, the Agency has also granted Daimler drivers similar exemptions: [December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)]; July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496); August 17, 2017 (82 FR 39151); and September 10, 2018 (83 FR 45742)]. The Agency has not received any information or reports indicating there have been safety performance problems with individuals holding German commercial licenses who operate CMVs on public roads in the United States.

V. Public Comments

On October 24, 2019, FMCSA published notice of this application and requested public comments (84 FR 57155). One commenter stated: "Concur with request for exemption. Additionally, as this scenario is possibly encountered by military spouses without U.S.

citizenship, recommend review of the regulation to consider possibilities for inclusive language while still maintaining safety standards.”

VI. FMCSA Decision

Based upon the merits of this application, including Mr. Borutta’s extensive driving experience and safety record, FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a). The requirements for a German-issued commercial license ensure that drivers meet or exceed the same level of safety as if these drivers had obtained a U.S. CDL. Mr. Borutta is familiar with the operation of CMVs and will be accompanied at all times by a driver who holds a U.S. CDL and is familiar with the routes to be traveled. FMCSA has determined that the process for obtaining a commercial license in Germany is comparable to that for obtaining a CDL issued by one of the States and adequately assesses the driver’s ability to operate CMVs safely in the United States.

VII. Terms and Conditions for the Exemption

FMCSA grants Teupen driver Martin Borutta an exemption from the CDL requirement in 49 CFR 383.23 to allow him to drive CMVs in this country without a State-issued CDL, subject to the following terms and conditions:

(1) the driver and carrier must comply will all other applicable provisions of the FMCSRs (49 CFR parts 350-399);

(2) the driver must be in possession of the exemption document and a valid German commercial license;

(3) the driver must be employed by and operate the CMV within the scope of their duties for Teupen;

(4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled;

(5) Teupen must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and

(6) Teupen must notify FMCSA in writing if this driver is convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if:

(1) Mr. Borutta fails to comply with the terms and conditions of the exemption;

(2) the exemption results in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

Pursuant to 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 or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: February 19, 2020.

Jim Mullen,
Acting Administrator.