



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0086]

Hours of Service of Drivers: Extreme Logistics, LLC, Application for Exemption

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 Extreme Logistics, LLC (Extreme Logistics) an exemption from the requirement that all driving be completed within 14 hours of the beginning of the work shift. This exemption allows the applicant to exclude off-duty and sleeper-berth time, of any length, from the calculation of the 14-hour driving window. This exemption is applicable June 28 – July 8, each year for several days prior to and several days following Independence Day celebrations. FMCSA has determined that the terms and conditions of the exemption will likely ensure 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 THE DATE OF 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: 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 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-2019-0086 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

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 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 be likely to 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 granting 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 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

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying commercial motor vehicle (CMV) driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Extreme Logistics, LLC (USDOT 1971328) (Applicant) is a fireworks display company that employs CMV drivers who hold commercial driver's licenses (CDLs) with hazardous materials endorsements. The applicant requested an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) so that its drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. This means that driving during a work shift would not be prohibited until the individual had

accumulated 14 hours of on-duty time, rather than after the 14th hour of coming on duty. The applicant states that complying with the existing 14-hour rule means that most shows would require two CDL drivers, significantly increasing the cost of the fireworks display.

The applicant asserts 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.

V. Public Comments

On April 18, 2019, the Agency published a notice (84 FR 16324) requesting public comment on Extreme Logistics' exemption application. The Agency received one comment from Mr. Michael Millard. Mr. Millard said that there were seven Extreme Logistic LLCs and five Extreme Logistics, making it impossible for the public to review the applicant's data by its business name. The Agency acknowledges that identifying the company through a name search would be challenging. However, the application and the notice included the company's unique USDOT identification number.

VI. FMCSA Decision and Safety Analysis

FMCSA has determined that granting an exemption to Extreme Logistics, LLC, will likely achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. The Agency has concluded that the annual 11-day exemption requested by Extreme Logistics is not likely to decrease safety.

Based on the Agency's experience evaluating exemption requests from fireworks companies responsible for Independence Day celebrations, pyrotechnicians rarely drive the full

11 hours allowed by the current regulations. However, in preparing for these celebrations they may need to be on duty more than 14 consecutive hours and to drive at the end of that tour of duty. Without an exemption, these pyrotechnician/drivers would be stranded, often with a CMV partially loaded with fireworks, at the site of a forthcoming shoot; conversely, the fireworks company could employ a second CDL holder, operating on a later schedule, to return the vehicle to a secure location within the 14-hour limit. The first option poses certain risks to public safety and the second would significantly increase the costs and logistical complexity of a shoot.

The operational demands of this unique industry appear to minimize the risk of CMV crashes. In the few days before the Independence Day celebrations, drivers spend their driving time transporting fireworks relatively short distances, from the nearest distribution point to the site of the shoot. Most of their on-duty time after arriving at the site, however, is devoted to the intricate and potentially dangerous task of installing, wiring, and double-checking fireworks displays.

Generally, pyrotechnicians drive to the site of the shoot in the early morning and return late in the evening, thus avoiding much of the heavy traffic typical of the holiday. After setting up the fireworks display in daylight, to reduce the risks of mistakes, the pyrotechnician/drivers typically have several hours off duty in the late afternoon and early evening, just before the shoot. This enables them to rest or nap, reducing or eliminating the fatigue caused by the day's activities, and making their return trip after the shoot, safer than would otherwise be expected.

In addition to driving at off-peak hours and having an opportunity for substantial rest periods during their tours of duty, pyrotechnicians who drive back to a hotel or motel in the

15th or 16th hours after coming on duty will be required to take 10 consecutive hours off duty, like other drivers. An opportunity for 8 consecutive hours of sleep should eliminate the possibility of cumulative fatigue the next day.

Although FMCSA believes the 14-hour limit helps to reduce the risks of drivers operating while fatigued, the current HOS regulations allow short-haul drivers, who are not required to possess a CDL, a 16-hour driving window once a week, providing certain conditions are met. The Agency believes that the requisite level of safety will be ensured by the limited amount of driving that takes place during any given work shift, combined with the frequent breaks from the time on task (driving) and continued compliance with the requirement for 10 consecutive hours off duty at the end of the work shift.

Furthermore, FMCSA conducted a comprehensive review of the motor carrier's 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. Extreme Logistics possesses an active USDOT registration, minimum required levels of financial responsibility, and is not subject to an "imminent hazard" or other out-of-service order.

Finally, the carrier is not under investigation by the Pipeline and Hazardous Materials Safety Administration, the Agency within the Department responsible for the Federal Hazardous Materials Regulations. The applicant has a "satisfactory" safety rating and a valid Hazardous Materials Safety Permit from FMCSA.

In consideration of the above, FMCSA grants Extreme Logistics an exemption from the 14-hour rule covering June 28 through July 8, each year from 2020 to 2024.

VII. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from 12:01 a.m. June 28 through 11:59 p.m. on July 8 local time, each year through 2024 for the drivers employed by the applicant.

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 the drivers employed by Extreme Logistics. The conditions of this exemption are as follows:

- Drivers must not drive more than 11 hours after accumulating 14 hours of on-duty time;
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period;
- Extreme Logistics must maintain USDOT registration, a Hazardous Materials Safety Permit (if required), and minimum levels of public liability insurance, and must not be subject to an "imminent hazard" or other out-of-service (OOS) order issued by FMCSA; and
- Each driver covered by the exemption must be in possession of the exemption document and maintain a valid CDL with required endorsements, not be subject to an OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

The carrier 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).

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 applicant must 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 be emailed to MCPSD@DOT.GOV and include the following information:

- a. Name of the Exemption: “Extreme Logistics”;
- 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,
Acting Administrator.

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