



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0268]

Household Goods Consumer Protection: Application for Exemption; La Rosa Del Monte Express Inc. (LRDM)

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that La Rosa Del Monte Express, Inc. (LRDM) has requested an exemption for its specialized “Small Residential Shipments” (SRS) from the consumer protection regulations for the transportation of household goods (HHG) in interstate commerce. LRDM requested that its SRS consisting of fewer than 10 items weighing less than 1,000 pounds total be exempted from the HHG regulations. LRDM claims that the need for the exemption is made clear by the statutory Limited Service Exclusion (LSE) for household goods motor carriers. LRDM believes that an SRS exemption is consistent with the purpose of the LSE.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0268 using any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Fax: 1-202-493-2251

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

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 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: For information concerning this notice, please contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Telephone: (614) 942-6477; 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 and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0268), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2016-0268" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

III. Legal Basis

Before operating for hire in interstate commerce, a motor carrier must obtain commercial registration under 49 U.S.C. 13902 and comply with the requirements of § 13902(a)(1). To provide transportation of HHG, a motor carrier must also comply with the requirements of § 13902(a)(2).

However, under 49 U.S.C. 13541(a), the Secretary of Transportation “shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part [part B of subtitle IV of title 49, United States Code, i.e., 49 U.S.C. chapters 131-149], or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary . . . finds that the application of that provision—(1) is not necessary to carry out the transportation policy of section 13101; (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and (3) is in the public interest.”

Nonetheless, “The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damages, insurance, [or] safety fitness . . .” [49 U.S.C. 13541(e)(1)].

The Secretary’s authority to enforce 49 U.S.C. 13902 and 13541 have been delegated to FMCSA by 49 CFR 1.87(a)(5) and 1.87(a)(3), respectively. This notice seeks to clarify the exemption sought by LRDM, in light of the limitations set forth in § 13541(e)(1).

IV. Background

A motor carrier engaged in the interstate transportation of household goods must follow the regulations in 49 CFR part 375. The term “household goods motor carrier” is defined in section 375.103 as a motor carrier that, in the ordinary course of business of providing transportation of household goods, offers some or all of the following additional services: binding and nonbinding estimates; inventorying; protective packing and unpacking of items at personal residences; and loading and unloading at personal residences. However, the term HHG motor carrier excludes any motor carrier providing transportation of HHGs in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier). This is the LSE provision.

V. Request for Exemption

LRDM (US DOT # 25982) is a minority-owned motor carrier with its principal place of business located in Bronx, New York. According to LRDM, for almost 50 years this company has been a leader in providing interstate household goods moving and storage services for primarily minority communities from and between New York, Florida, Connecticut, Illinois, Massachusetts, Pennsylvania, Puerto Rico, and the Dominican Republic.

According to LRDM, in the past several years there has been a need in communities served by LRDM for an efficient, low-cost, no-frills shipment service for SRS consisting primarily of fewer than 10 items weighing a total of no more than 1,000 pounds. Such items include bicycles, refrigerators, washer/dryers and other similar goods. In response to this need, LRDM offers an SRS service that it says combines the

efficiency and economy of freight with the safety and professional service of a traditional HHG move.

LRDM contends that the HHG regulations hinder its efforts to meet the needs of the communities it serves. The regulations do not exempt SRS under the Limited Service Exclusion¹ (LSE) because LRDM takes the time and effort to load and unload these small shipments for its customers. As a result the regulations classify these shipments as large HHG moves.

LRDM seeks the ability to offer its customers an option to ship a limited number of small items at a flat rate that its customers can afford, free from extra costs and burdens associated with HHG regulations. LRDM is requesting that its specialized service be exempt from the HHG requirements under 49 CFR part 375. LRDM asserts that its SRS warrant an exemption from the application of part 375 because such an exemption is in the public interest. It claims that the exemption would further support DOT's transportation policy goals by promoting safe, economical, and efficient transportation by allowing a variety of quality and price options to the public.

To LRDM's knowledge no other carrier/mover, ground, freight, or otherwise, offers a similar service. These shipments are unique and in a class of their own; are too large and/or heavy for ground transportation; and too small to be economical or

¹ The LSE is a statutory provision that pertains to the definition of "household goods motor carrier." Through the LSE, Congress specifically excluded certain motor carriers from the definition of household goods motor carriers, and thus exempted those carriers from household goods regulations when the carrier "*does not load and unload*" the contents of the containers the carrier is shipping. Carriers falling under the LSE are not subject to household goods and consumer protection regulations under FMCSA regulations parts 375 (for household goods, including form requirements), 365 (for motor carrier registration requirements) and 387 (for insurance requirements). *See* 49 U.S.C 13102(12)(C); *see also* 49 CFR 375.103, HHG definition, paragraphs (3) and (4); Limited Service Exclusion for Household Goods Motor Carriers and Related Registration Requirements for Brokers, 78 Fed. Reg.19568 (Apr. 1, 2013).

affordable to be shipped as freight or through a portable storage container covered under the LSE.

LRDM explains that its customers cannot turn to traditional ground carriers because the SRS shipments far exceed those services' 150 pound maximum weight for any one parcel. Nor can its customers turn to less-than-truckload (LTL) freight services which are prohibitively expensive due to mileage and other freight charges. LTL carriers also require sophisticated packing with items securely fastened to a pallet or skid.

LRDM advises that customers cannot turn to the portable storage container service options. According to LRDM, those services, although excluded from HHG moving regulations under the LSE, are not made for SRS and are prohibitively expensive. For example, the cost of shipping an average sized refrigerator from New York to Miami would cost between \$600 - \$1,000 by traditional freight service (not including the cost and time to properly pack and secure the refrigerator on a pallet) and over \$1,800 by a portable storage container service. However, in comparison, if LRDM was not required to burden its customers with the "excessive costs" and "unreasonable forms" associated with HHG regulations intended for much larger moves, LRDM would be able to offer shipment of the same merchandise for a flat fee in the range of \$125 - \$500.

LRDM contends that the intent of the LSE was to give consumers "access to low-cost transportation services as an alternative to traditional, full-service, moving companies." The intent of its exemption application is exactly the same; to give consumers access to an efficient and affordable shipping option for SRS.

LRDM states that the HHG regulations were not meant to regulate SRS. LRDM believes the HHG regulations, as they are currently applied to smaller shipments, are

unnecessary and unreasonable. Rather than being a means of protecting the public from carrier abuses, HHG regulations burden LRDM's customers with excessive costs and unreasonably lengthy and confusing forms that undermine DOT's transportation policy goals.

LRDM advises that the forms require LRDM to spend time and resources assisting its customers traverse the maze of paperwork required by the HHG regulations no matter how small the shipment. These resources could be used to make SRS shipments more affordable and more efficient.

A copy of LRDM's application for the exemption is available for review in the docket for this notice.

Issued on: August 18, 2016

Larry W. Minor
Associate Administrator for Policy

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