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## DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0079]

#### Hours of Service of Drivers: PJ Helicopters, Inc.; Application for Exemption

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

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

**SUMMARY:** FMCSA announces that it has received an application from PJ Helicopters, Inc. (PJH) requesting an exemption from two provisions of the hours-of-service (HOS) regulations for its ground support equipment operators. PJH requested relief from the 14-hour rule and the requirement that drivers have 10 consecutive hours off-duty at the end of the work shift. The exemption would allow PJH's ground support equipment operators a 16-hour window within which to complete all driving, and enable these operators to use an 8-consecutive hour off duty break, combined with at least two other off duty hours during the 16-hour window within which driving would be completed, in lieu of taking 10 consecutive hours off duty. If granted, the exemption would be cover PJH's CMV operators only when they are responding to or returning from an active incident as requested by an officer of a public agency or public utility. PJH believes that granting these exemptions will have no adverse safety impacts while its ground support equipment operators are responding to said incidents. FMCSA requests public comment on PJH's application for exemptions.

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

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2019-0079 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- 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. E.T., 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](http://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](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 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](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:** For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; E-mail: [MCPSD@dot.gov](mailto: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-2019-0079), 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](http://www.regulations.gov) and put the docket number, “FMCSA-2019-0079” 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.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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 safety analyses and public comments submitted, 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 reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period (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 exemption application from PJ Helicopters, Inc. (PJH) states that the company has been serving the utility helicopter industry as an emergency response company for over 45 years. Most of its customers are firefighting agencies, law enforcement agencies, and public utilities. PJH's customers require timely responses and long hours when dealing with emergency-related incidents. PJH's helicopters must be fueled and serviced in a timely fashion by PJH's ground support crews. PJH is requesting an exemption from 49 CFR 395.3(a)(1) and 49 CFR 395.3(a)(2), for all of its ground support equipment operators.

The requested exemption would apply to approximately 32 ground support equipment operators who all possess commercial driver's licenses with applicable endorsements, including the operation of tank vehicle combinations. A ground support equipment operator is an individual specially trained to work around helicopters performing refueling, rigging, reloading and maintenance duties. PJH states in its application that if its ground crew cannot legally support the helicopter for the duration of the requirements, the firefighters, law enforcement and linemen will not have air support and resources at remote locations. This in turn, results in communities being under greater threat from fires, lawless individuals and destabilized electrical grids.

The first exemption, if granted, would allow PJH's ground support equipment operators to drive up until the end of the 16<sup>th</sup> hour after coming on duty instead of 14 hours. PJH states that is an emergency response company contracted to agencies focused

on public safety, and that there currently are no exemption provisions in the Part 395 HOS regulations for private companies that assist in emergency efforts. PJH's Federal and State government contracts specify that ground support equipment operators must be available for a maximum of 14 hours. On a typical day, at 6:00 a.m., the commercial motor vehicle (CMV) is dispatched 100 miles away to a remote landing area. Upon arrival, the unit stays at the dispatched location to support efforts in extinguishing a fire until 8:30 p.m. The unit is then released by the agency to travel to the nearest lodging 1.5 hours away. This would result in the driver arriving at 10:00 p.m., and at this point, the driver is in violation of the "14-hour rule" in 49 CFR 395.3(a)(2). In summary, at the end of the day, when the helicopter is finished flying, a mechanic is required to inspect and repair the aircraft as needed. With a long flight day and these added duties, a PJH mechanic is most certainly going to exceed the "14-hour rule" when finished with maintenance duties and travelling between the helicopter and the place of lodging. Without the requested 16-hour exemption, PJH's ground crew must be released earlier in the day to get back to the place of lodging before reaching the "14-hour rule" limit, which decreases the availability of the aircraft by a minimum of 14 total hours each week.

PJH's second exemption request is intended to work in conjunction with the first request and would enable its ground support equipment operators to have only 8, instead of 10, consecutive hours off duty before coming on duty again. Relating to the scenario detailed above, in complying with the current "14-hour rule," PJH's employees also cannot go on duty to drive until 8:00 a.m. the next morning, at the earliest, after a required 10 consecutive hour rest break. As is typical with these operations, if the helicopter was dispatched at 6:00 a.m. to another fire, which resulted in a 3-hour drive

time, the PJH driver would not arrive until 11:30 a.m. at the earliest. Depending on the helicopter model's fuel capacity and burn rate, the average helicopter can only fly for 2 hours. Due to the driver's duty limitations, the helicopter would be unable to support emergency incidents for at least 3.5 hours until the fuel truck arrives to refuel. If the driver in this example -- a not uncommon one – was able to utilize the proposed exemption request of 8 consecutive hours off duty instead of 10, the helicopter would have been available to fight fires for an additional 2 hours the second day, and the PJH driver would not be in violation of the Federal HOS regulations. As a part of this exemption request, PJH's "ground crew members" would be required to have had 8 uninterrupted hours off duty [instead of 10] before driving again, provided they have had at least 2 hours off duty during that 16-hour period PJH they also requested, and are responding to or returning from an active incident as requested by an officer of a public agency or public utility.

PJH states that the ground crew members' schedules are characterized by daytime hours, low-stress periods of waiting during the workday, and very limited hours of actual driving on public roads. Ground crew members are relieved of any work – and are off duty -- for long periods throughout a typical workday, so, relative to the service provided, allowing 2 more hours of duty time when coming on duty responding to and returning from emergency incidents would, if anything, increase the overall safety of the public.

PJH believes that its application includes simple, alternative HOS options; among them not driving after the 16<sup>th</sup> hour after coming on duty and allowing only 8 hours consecutively off duty before coming on duty again. In addition, the driver must have at least 2 hours off duty during that 16-hour period and be responding to or returning from

an active incident as requested by an officer of a public agency or public utility. PJH's drivers would need to use this exemption, on average, once every two weeks during the months of April through October.

PJH would still be required to use electronic logging devices to help track duty hours, and most of the time they would be subject to Part 395 HOS rules. PJH has proposed conditional rules that are designed to keep the drivers using this exemption from driving fatigued. PJH states that when using this proposed exemption, its drivers would achieve a level safety that meets or exceeds the current regulations. A copy of PJH's application for exemptions is available for review in the docket for this notice.

**Issued on: March 22, 2019.**

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Larry W. Minor,  
Associate Administrator for Policy.

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