

FILE

21.71-TR.CVF

XTE, INC.

16725 DOYLE ROAD

HEMLOCK, MI 48626

989-233-1130

KJERRY1042@XTEINC.COM

January 19, 2021

PUBLIC UTILITIES COMMISSION OF OHIO

ATTEN: DOCKETING DIVISION

180 E. BROAD STREET, 11TH FLOOR

COLUMBUS, OHIO 43215-3793

RE: "REQUEST FOR ADMINISTRATIVE HEARING"

CASE NO. OH0228000648C

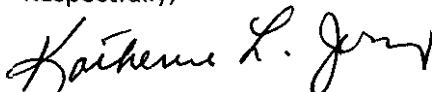
TO WHOM IT MAY CONCERN:

I WISH TO SUBMIT A "REQUEST FOR ADMINISTRATION HEARING" IN REGARDS TO THE NOTICE OF PRELIMINARY DETERMINATION IN THE ABOVE MENTIONED CASE NUMBER. I WAS IN MIS-UNDERSTANDING OF MY INTITAL PHONE CONFERENCE CALL WITH MR. THOMAS PERSINGER ON DECEMBER 01, 2020. I UNDERSTOOD THAT THERE WAS NOT A MONETARY FINE, IN WHICH THERE ISN'T, BUT I DIDN'T REALIZE THIS WAS GOING TO EFFECT THE COMPLIANCE RECORD. IT IS VERY HARD TO MAKE A LIVING IN THE TRANSPORTATION INDUSTRY AND FEED A FAMILY WITHOUT ANY VIOLATIONS TO COMPLIANCE SCORES, THIS WILL ONLY MAKE IT MORE DIFFICULT AND EFFECT CHANCES OF BEING HIRED AND INSURANCE COSTS, TO POSSIBLY CAUSE ONE TO GO OUT OF BUSINESS AND NOT BE ABLE TO SUPPORT A FAMILY.

I WISH TO HAVE MY VIOLATIONS REMOVED PER THE CASE NO. OH0228000648C BASED UPON THE EMERGENCY DECLARATION NO. 2020-002 AND THE EXTENSION OF THE MODIFIED EXPANDED EMERGENCY DECLARATION NO. 2020-002 UNDER 49 CFR 390.25 AS THE COMMODITY BEING TRANSPORTED AT THE TIME OF OCCURANCE WAS MILK, PROVIDING DIRCT ASSISTANCE IN SUPPORT OF THE EMERGENCY RELIEF EFFORTS RELATED TO COVID-19.

CONTACT INFORMATION AND FURTHER COMMUNICATION: Katherine L. Jerry 16725 Doyle Rd Hemlock, MI 48626 989-233-1130.

Respectfully,



Katherine L. Jerry

XTE, INC.

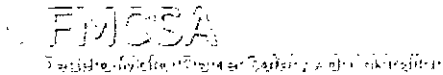
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2021 JAN 22 PM 12:18
PUCO

 An official website of the United States government [Here's how you know](#) ▼

The latest information on the Coronavirus Disease 2019 (COVID-19) is available on coronavirus.gov.

United States Department of Transportation



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Contact Us

For information on FMCSA
Emergency Declarations
1200 New Jersey Avenue
SE
Washington, DC 20590
United States

Email:

FMCSADeclaration@dot.gov

Phone: 877-831-2250

Extension of the Modified Expanded Emergency Declaration No. 2020-002 Under 49 CFR § 390.25

Extension of the Modified Expanded Emergency Declaration 2020-002 final.docx

Federal Motor Carrier Safety Administration
September 11, 2020

EXTENSION OF THE MODIFIED EXPANDED EMERGENCY DECLARATION No. 2020-002 UNDER 49 CFR § 390.25

THE FIFTY UNITED STATES OF AMERICA AND THE DISTRICT OF COLUMBIA

The Federal Motor Carrier Safety Administration (FMCSA) hereby declares that the continuing national emergency warrants the extension of Emergency Declaration No. 2020-002. This extension continues the exemption granted from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSRs) for the fifty States and the District of Columbia as set forth below. This notice extends the exemption through December 31, 2020, subject to the restrictions and limitations set forth in this Extension.

Emergency Declaration No. 2020-002 was issued following the declaration of a national emergency by the President pursuant to 42 U.S.C. § 5191(b) in response to the Coronavirus Disease 2019 (COVID-19), the public health emergency declared by the Health and Human Services Secretary, and the immediate risk COVID-19 presents to public health and welfare. Emergency Declaration No. 2020-002 was previously set to expire on September 14, 2020. FMCSA is continuing the exemption because the presidentially declared national emergency remains in place, and because a continued exemption is needed to support direct emergency assistance for some supply chains. FMCSA is extending the modified expanded Emergency Declaration No. 2020-002 and associated regulatory relief in accordance with 49 CFR § 390.25. This extension addresses national emergency conditions that create a need for immediate transportation of essential supplies, and provides necessary relief from the FMCSRs for motor carriers and drivers.

By execution of this extension of Emergency Declaration No. 2020-002, motor carriers and drivers providing direct assistance in support of relief efforts related to the COVID-19 public health emergency are granted emergency relief from Parts 390 through 399 of the FMCSRs, except as restricted herein.

Direct assistance means transportation and other relief services provided by a motor carrier or its driver (s) incident to the immediate restoration of essential services (such as medical care) or essential supplies related to COVID-19 during the emergency.

The extension of Emergency Declaration No. 2020-002 provides regulatory relief for commercial motor vehicle operations providing direct assistance in support of emergency relief efforts related to COVID-19 and is limited to transportation of (1) livestock and livestock feed; (2) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (3) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; and (4) food, paper products and other groceries for emergency restocking of distribution centers or stores. Direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this emergency declaration. In its modification of Emergency Declaration No. 2020-002 effective June 15, 2020, FMCSA concluded that there was no longer a need for emergency relief with respect to the other categories of supplies, equipment, and persons covered by the May 13 extension and expansion of Emergency Declaration No. 2020-002, and modified the Emergency Declaration to remove those categories. Effective August 15, 2020, FMCSA reinstated emergency relief for emergency restocking of food, paper products and other groceries at distribution centers or stores. This extension continues the relief granted in Emergency Declaration 2020-002 as modified on June 15, 2020 and August 15, 2020.

Emergency Declaration Restrictions & Limitations

By execution of this extension of the modified expanded Emergency Declaration No. 2020-002, motor carriers and drivers providing direct assistance to the national emergency are **not granted** emergency relief from, and must continue to comply with, the following Federal Motor Carrier Safety Regulations and conditions:

1. 49 CFR § 392.2 related to the operation of a commercial motor vehicle in accordance with State laws and regulations, including compliance with applicable speed limits and other traffic restrictions.
2. 49 CFR § 392.3 related to the operation of a commercial motor vehicle while a driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the motor vehicle.
3. Motor carriers shall not require or allow fatigued drivers to operate a commercial motor vehicle. A driver who informs a carrier that he/she needs immediate rest shall be given at least ten consecutive hours before the driver is required to return to service.
4. 49 CFR §§ 392.80 and 392.82 related to the prohibitions on texting while driving and using a hand-held mobile telephone while driving.
5. A motor carrier whose driver is involved in a crash while operating under this emergency declaration must report any recordable crash within 24 hours, by phone or in writing, to the FMCSA Division Office where the motor carrier is domiciled. The carrier must report the date, time, location, driver, vehicle identification, and brief description of the crash.
6. Nothing in the Emergency Declaration or this Extension shall be construed as an exemption from the controlled substance and alcohol uses and testing requirements (49 CFR Part 382), the commercial driver's license requirements (49 CFR Part 383), the financial responsibility (insurance) requirements (49 CFR Part 387), the hazardous material regulations (49 CFR Parts 100-180), applicable size and weight requirements, or any other portion of the regulations not specifically exempted under 49 CFR § 390.23.
7. Motor carriers or drivers currently subject to an out-of-service order are not eligible for the relief granted by this declaration until they have met the applicable conditions for its rescission and the order has been rescinded by FMCSA in writing.
8. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to COVID-19 or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 CFR § 390.23(b)). Upon termination of direct assistance to emergency relief efforts related to COVID-19, the motor carrier and driver are subject to the requirements of 49 CFR Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required when the total time a driver operates conducting emergency relief efforts, or a combination of emergency relief and normal operations, equals 14 hours.

In accordance with 49 CFR § 390.25, this extension of Emergency Declaration No. 2020-002 is effective at 12:00 A.M. (ET), September 15, 2020 and shall remain in effect until 11:59 P.M. (ET), December 31, 2020, or until the revocation of the Presidentially declared COVID-19 national emergency, whichever is sooner.

Wiley Deck
Deputy Administrator

¹This Declaration extension and other FMCSA documents related to the COVID-19 national emergency are posted at [fmcsa.dot.gov/COVID-19](https://www.fmcsa.dot.gov/COVID-19).

Last updated: Friday, September 11, 2020

U.S. DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

1200 NEW JERSEY AVENUE, SE

WASHINGTON, DC 20590

1-800-832-5660

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389	<u>RULEMAKING</u> <u>PROCEDURES</u>	View Part 389
390	<u>FEDERAL MOTOR</u> <u>CARRIER SAFETY</u> <u>REGULATIONS;</u> <u>GENERAL</u>	View Part 390
391	<u>QUALIFICATIONS OF</u> <u>DRIVERS AND</u> <u>LONGER</u> <u>COMBINATION</u> <u>VEHICLE (LCV)</u> <u>DRIVER</u> <u>INSTRUCTORS</u>	View Part 391
392	<u>DRIVING OF</u> <u>COMMERCIAL MOTOR</u> <u>VEHICLES</u>	View Part 392
393	<u>PARTS AND</u> <u>ACCESSORIES</u> <u>NECESSARY FOR</u> <u>SAFE OPERATION</u>	View Part 393
395	<u>HOURS OF SERVICE</u> <u>OF DRIVERS</u>	View Part 395
396	<u>INSPECTION,</u> <u>REPAIR, AND</u> <u>MAINTENANCE</u>	View Part 396
397	<u>TRANSPORTATION</u> <u>OF HAZARDOUS</u> <u>MATERIALS;</u> <u>DRIVING AND</u> <u>PARKING RULES</u>	View Part 397
398	<u>TRANSPORTATION</u> <u>OF MIGRANT</u> <u>WORKERS</u>	View Part 398
399	<u>EMPLOYEE SAFETY</u> <u>AND HEALTH</u> <u>STANDARDS</u>	View Part 399



Public Utilities Commission

M. Beth Trombold, Acting Chair

Commissioners

Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

December 23, 2020

KATHERINE JERRY
16725 DOYLE ROAD, HEMLOCK
HEMLOCK, MI 48626

RE: **NOTICE OF PRELIMINARY DETERMINATION**
Case No. OH0228000648C

Dear Sir or Madam:

On 10/18/2020, a vehicle operated by XTE INC, and driven by, WHELTON, JOHN G was inspected within the state of Ohio. As a result of discovery of the following violation(s) of the Commission's rules, Staff of the Commission timely notified XTE INC pursuant to rule 4901:2-7-07, Ohio Administrative Code (OAC), that it intended to assess a civil forfeiture against XTE INC in the following amount:

<u>CODE</u>	<u>GROUP</u>	<u>VIOLATION</u>	<u>FORFEITURE</u>
395.15 G	Group 1	Onboard recording device info not available	\$ 0.00
392.2FT	Group 0	State or International Fuel Tax (IFTA) Violation	\$ 0.00
393.25B	Group 3	Lamps are not visible as required	\$ 0.00
396.17C	Group 0	Operating a CMV without proof of a periodic inspection	\$ 0.00
<u>Original Amount Due:</u>			\$0.00

A conference was conducted pursuant to Rule 4901:2-10, OAC, at which XTE INC had a full opportunity to present reasons why the violation(s) did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by the Staff.

As a result of the conference, staff has made a preliminary determination that the commission should assess a civil forfeiture against XTE INC in the following amount:

<u>CODE</u>	<u>GROUP</u>	<u>VIOLATION</u>	<u>FORFEITURE</u>
395.15 G	Group 1	Onboard recording device info not available	\$ 0.00
392.2FT	Group 0	State or International Fuel Tax (IFTA) Violation	\$ 0.00



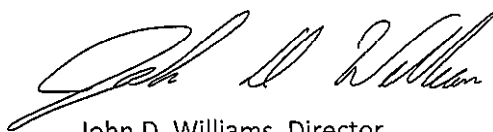
393.25B	Group 3	Lamps are not visible as required	\$ 0.00
396.17C	Group 0	Operating a CMV without proof of a periodic inspection	\$ 0.00
<u>New Amount Due:</u>			\$0.00

Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for an Administrative Hearing.

Failure to comply with either option above shall constitute a waiver of your right to further contest the violation(s) and will conclusively establish the occurrence of the violation(s). Such failure shall also constitute a waiver of your right to further contest liability to the State of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney General's Office for collection. In addition, your Ohio operating authority and/or commercial driving privileges may be sanctioned as permitted by law.

Please consult the enclosed instruction sheet for additional information regarding this "Notice of Preliminary Determination."

Sincerely,



John D. Williams, Director
Transportation Department

cc: Thomas Persinger





Public Utilities Commission

M. Beth Trombold, Acting Chair, Chairman

Commissioners

Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

XTE INC
16725 DOYLE RD
HEMLOCK, MI 48626-9410

Invoice #: 20-00047519
Date: 12/03/2020
Due Date: 01/02/2021
PIN #: UzGTRXTE
Case #: OH0228000648C

2020

Item #	Type	Description	Amount Due
INVD-0118079	Civil Forfeiture Non HazMat	Onboard recording device info not available	\$ 0.00
INVD-0118080	Civil Forfeiture Non HazMat	State or International Fuel Tax (IFTA) Violation	\$ 0.00
INVD-0118081	Civil Forfeiture Non HazMat	Lamps are not visible as required	\$ 0.00
INVD-0118082	Civil Forfeiture Non HazMat	Operating a CMV without proof of a periodic inspection	\$ 0.00
Payments Received			\$ 0.00
Total Amount Due			\$ 0.00

Please visit <https://www.puco.ohio.gov/sc/mcos/> to make your online payments.

Questions concerning this invoice should be addressed to our call center at 1-800-686-7826.

(Remittance for mailed check payment)

Please make checks payable to: Public Utilities Commission of Ohio
PO BOX 715343
Cincinnati, OH 45271-5343

XTE INC
16725 DOYLE RD
HEMLOCK, MI 48626-9410

Invoice #: 20-00047519
Date: 12/03/2020
Due Date: 01/02/2021



ATTENTION DRIVER

Potential Disqualification

If the roadside inspection leading to this letter identified an alleged violation of one or more of the below noted regulations, your CDL may be disqualified. If the Public Utilities Commission of Ohio (PUCO) finds you committed a violation of any of these regulations, the violation will be treated as a conviction¹ for the purposes of federal and state law and notice of such conviction will be forwarded to the Ohio Bureau of Motor Vehicles (BMV). The BMV may disqualify you from operating a commercial motor vehicle for a minimum of 60 days. Any BMV sanction is in addition to sanctions imposed by the PUCO.

177.804B1	177.804(b)(1)	Failure to comply with 49 CFR Section 392.12 Complying With Safe Clearance Requirements For Highway-Rail Grade Crossings.
177.804B2	177.804(b)(2)	Failure to comply with 49 CFR Section 392.80 Texting While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placarding.
177.804B3	177.804(b)(3)	Failure to comply with 49 CFR Section 392.82 Using a Cell Phone While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placarding.
177.804C	177.804(c)	Failure to comply with 49 CFR Section 392.82 Using a Handheld Mobile Phone While Operating a CMV When Transporting Select Agents or Toxins or HM Requiring Placard.
2-5-07D	392.2	Operating a CMV after Driver or Vehicle declared out of service.
383.23A2	383.23(a)(2)	Operating a CMV without a CDL.
383.51A	383.51(a)	Driving a CMV while disqualified from holding a CDL.
383.51A-NSIN	383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and in the state of driver's license issuance.
383.51A-NSOUT	383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and outside the state of driver's license issuance.
383.51A-SIN	383.51(a)	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.
383.51A-SOUT	383.51(a)	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.
383.91A	383.91(a)	Operating a CMV with improper CDL group.
383.93B1	383.93(b)(1)	No double or triple trailer endorsement on CDL when required.
383.93B2	383.93(b)(2)	No passenger vehicle endorsement on CDL when required.
383.93B3	383.93(b)(3)	No tank vehicle endorsement on CDL when required.
383.93B4	383.93(b)(4)	No hazardous materials endorsement on CDL when required.
383.93B5	383.93(b)(5)	Operating a School Bus without a school bus endorsement as described in 383.93(b)(5).
391.15A	391.15(a)	Driving a CMV while disqualified.
391.15A-NSIN	391.15(a)	Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.
391.15A-NSOUT	391.15(a)	Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.
391.15A-SIN	391.15(a)	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of drivers license issuance.
391.15A-SOUT	391.15(a)	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance.
392.10A1	392.10(a)(1)	Failure to stop at railroad crossing - Bus transporting passengers.
392.10A2	392.10(a)(2)	Failure to stop at railroad crossing - CMV transporting Division 2.3 Chlorine.
392.10A3	392.10(a)(3)	Failure to stop at railroad crossing - CMV requiring display of HM placards.
392.10A4	392.10(a)(4)	Failure to stop at railroad crossing - HM Cargo Tank vehicle.
392.11	392.11	Commercial Vehicle failing to slow down approaching a railroad crossing.
392.12	392.12	No Driver of a Commercial Motor Vehicle Shall Drive Onto a Highway-Rail Grade Crossing Without Having Sufficient Space to Drive Completely Through the Crossing Without Stopping.
392.4A	392.4(a)	Driver on duty and under the influence of, or using a narcotic drug / amphetamine, which renders the driver incapable of safe operation.
392.5A2-UI	392.5(a)(2)	Operating a CMV while under the influence of an intoxicating beverage regardless of its alcohol content.
392.5C2	392.5(c)(2)	Violating OOS order pursuant to 392.5(a)/(b) - Alcohol prohibitions.
392.80A	392.80(a)	Driving a commercial motor vehicle while Texting.
392.82A1	392.82(a)(1)	Using a hand-held mobile telephone while operating a CMV.
395.13D	395.13(d)	Driving after being declared out-of-service for HOS violation(s).
396.9C2	396.9(c)(2)	Operating an out-of-service vehicle.

¹ Federal regulations define "conviction" as, "... a determination that a person has violated or failed to comply with the law ... by an authorized administrative tribunal, ... the payment of a fine or court cost, ... regardless of whether or not the penalty is rebated, suspended, or probated." 49 CFR 383



INSTRUCTION SHEET

NOTICE OF PRELIMINARY DETERMINATION

Please read these instruction sheets carefully. They contain information about your rights and responsibilities in regard to this "Notice of Preliminary Determination."

You have received a "Notice of Preliminary Determination" as described in 4901:2-7-12, Ohio Administrative Code (OAC). Within 30 days of this notice you must either; 1) pay the assessed civil forfeiture or, 2) submit a written Request for an Administrative Hearing. If you do not pay the forfeiture or request a hearing within 30 days of this notice, your case will be placed in our default process. Additionally, your Ohio operating authority and/or your commercial driving privileges may be sanctioned as permitted by law.

How to pay the forfeiture

Online <https://www.puco.ohio.gov/sc/mcos/>
Enter the case number and PIN located on the enclosed invoice.

Mail Public Utilities Commission of Ohio
Attn: Fiscal Section
180 E. Broad Street, 4th Floor
Columbus, Ohio 43215-3793

Send check/money order (no foreign checks/money orders) made payable to "**Public Utilities Commission of Ohio**". To ensure proper credit, write the case number on the face of the check or money order.

* Payments cannot be completed by telephone

How to make a Request for an Administrative Hearing

If you wish to further contest the violations described in this notice, you should file a "Request for an Administrative Hearing" with the Commission's Docketing Division as described in Rule 4901:2-7-13, OAC.

Your "Request for an Administrative Hearing" must be in writing and must contain the case number found at the top of the "Notice of Preliminary Determination." Also, please include the contact name, address, and telephone number of the person to whom further communications should be directed. The request shall be signed by the Respondent or the Respondent's authorized representative. A copy of the "Notice of Preliminary Determination" must be attached to your request.

Your "Request for an Administrative Hearing" must be mailed or hand-delivered within 30 days of this notice to the following address:

Public Utilities Commission of Ohio
ATTN: Docketing Division
180 E. Broad Street, 11th Floor
Columbus, Ohio 43215-3793

Failure to submit a Request for Administrative Hearing

If you do not serve a timely "Request for an Administrative Hearing" in the manner described above, you will forfeit your right to further contest the violations described in this notice and the occurrence of the violations will be conclusively established. Such failure shall also constitute a waiver of your right to further contest liability to the state of Ohio for the civil forfeiture described in this notice and will result in the forfeiture amount being referred to the Ohio Attorney General's Office for collection. Also, your Ohio operating authority and/or your commercial driving privileges may be sanctioned as permitted by law.

Codes, Violation Groups, and Forfeiture Amounts

"Code" in this notice identifies the rule violated. Numbers in a 100 or 300 series refer to specific sections of the Hazardous Materials Regulations or the Federal Motor Carrier Safety Regulations located in Title 49 of the Code of Federal Regulations (CFR). Some section numbers may have suffixes beyond those appearing in the CFR. These are used for internal data collections purposes. Codes in other formats refer to violations of Ohio's statutes or regulations.

"Violations Group" identifies the assigned numerical group (1-4) for the violation for purposes of calculating the civil forfeiture. Section 4923.99, Ohio Revised Code (ORC) authorizes the Public Utilities Commission of Ohio to assess civil forfeiture up to \$25,000 for each day of each violation. The amount of any forfeiture is dependent upon the nature, gravity, circumstances, and extent of the violation, the offender's degree of culpability for the violation, and the offender's violation history. "Total Amount Due" is the total amount of the civil forfeiture assessed for all violations described in this notice.

