



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**Driver Qualifications; Regulatory Guidance Concerning the Use of Computerized Employer Notification Systems for the Annual Inquiry and Review of Driving Records**

**AGENCY:** Federal Motor Carrier Safety Administration

**ACTION:** Notice of regulatory guidance.

**SUMMARY:** FMCSA provides regulatory guidance concerning the use of State-operated employer notification systems (ENS) for the annual inquiry and review of driving records required by 49 CFR 391.25. The guidance explains the use of State-operated ENS that provide motor carriers with a department of motor vehicle report for every State in which the driver held either an operator's license, a commercial driver's license (CDL), or permit when a driver is enrolled in the system. Many State driver licensing agencies (SDLAs) provide ENS that either automatically update requestors (push-system) on license status, crashes and convictions of laws or regulations governing the operation of motor vehicles or allow the requestor to regularly query the record (pull-system) for this information. The use of these systems to check the driving record, at least annually, satisfies the requirement for an annual review of each driver's record. This includes when a third-party is used to accumulate the records for a motor carrier. This revises the Agency guidance issued in 2003 that referenced to a specific third-party vendor.

**DATES:** This guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, E-mail: MCPSD@dot.gov.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation (49 U.S.C. 31136(a)(1) – (5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I, III and IV, relating to commercial motor vehicle programs and safety regulation.

## **BACKGROUND**

On January 13, 2003, FMCSA issued a letter to a company providing regulatory guidance concerning the use of computerized employer notification systems for the annual inquiry and review of driving records required by 49 CFR 391.25. The guidance explained that the use of a specific third-party computerized ENS that provides motor carriers with a department of motor vehicle report for every State in which the driver held either an operator's license, a CDL, or permit when a driver is enrolled in the system, and provides an update anytime the State licensing agency enters new information about license status, crashes and convictions of laws or regulations governing the operation of motor vehicles satisfies the requirement for an annual review of each driver's record. However, the guidance referenced a specific vendor providing such services to the motor carrier industry.

The regulatory guidance issued to the specific company was subsequently posted to FMCSA's website as question #4 to 49 CFR 391.25 (See <http://www.fmcsa.dot.gov/regulations/title49/section/391.25?guidance>). The 2003 guidance reads as follows:

**Question 4:** Does the use of a third-party computerized system that provides motor carriers with a complete department of motor vehicle report for every State

in which the driver held a commercial motor vehicle operator's license or permit when a driver is enrolled in the system, and then automatically provides an update anytime the State licensing agency enters new information on the driving record, satisfy the requirements of [§391.25](#)?

**Guidance:** Yes. Since motor carriers would be provided with a complete department of motor vehicle report for every State in which the driver held a commercial motor vehicle operator's license or permit when a driver is enrolled in the system, and then provided with an update any time the State licensing agency enters new information on the driving record, the requirements of [§391.25\(a\)](#) would be satisfied. When the motor carrier manager reviews the information on the driving record, and the License Monitor system records the identity of the manager who conducted the review, the requirements of [§391.25\(b\)](#) and [\(c\)](#) would be satisfied.

With regard to the requirement that the response from each State agency, and a note identifying the person who performed the review, may be maintained in the driver's qualification files, motor carriers may satisfy the record keeping requirement by using computerized records in accordance with 49 CFR 390.31. Section [390.31] allows all records that do not require signatures to be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data. Therefore, motor carriers using an automated computer system would not be required to maintain paper

copies of the driving records, or a note identifying the person who performed the review, in each individual driver qualification file provided a computer printout can be produced upon demand of a Federal or State enforcement official.

Because the guidance made reference to one vendor, License Monitor, it was not considered helpful by some in the industry for motor carriers using systems other than the one operated by License Monitor. The American Trucking Associations raised the issue with FMCSA and the Agency agrees that the guidance should be revised to provide generic guidance rather than vendor-specific guidance. In addition, since 2003, several SDLAs have implemented ENS systems that provide the driver record information to employers.

#### **FMCSA's Decision**

In consideration of the above, FMCSA has determined that the current regulatory guidance should be revised to make clear that any State-operated ENS may be used to satisfy the requirements of 49 CFR 391.25, even if the information is accumulated by a third party. The FMCSA revises Question 4 to 49 CFR 391.25 to read as follows:

#### **Qualification of Drivers, Annual Inquiry and Review of Driving Record; Regulatory Guidance for 49 CFR 391.25**

**Question 4:** Does the use of an employer notification system that provides motor carriers with a department of motor vehicle report for every State in which the driver held either an operator's license, a commercial driver's license (CDL), or permit when a driver is enrolled in the system and provides information about license status,

crashes and convictions of laws or regulations governing the operation of motor vehicles on the driving record satisfy the requirement for an annual review of each driver's record?

**Guidance:** Yes. Since motor carriers would be provided with a department of motor vehicle report for every State in which the driver held a commercial motor vehicle operator's license or permit when a driver is enrolled in the system and the State licensing agency includes information about crashes and convictions of laws or regulations governing the operation of motor vehicles on the driving record, the requirements of § 391.25(a) would be satisfied. Generally, the requirements of § 391.25(b) and (c) would be satisfied if the employer notification system records the identity of the motor carrier's representative who conducted the review when the carrier's representative reviews the information on the driving record.

The use of an employer notification system would meet the requirements if either the motor carrier automatically receives updates from the State (push-system) or can regularly access the system to check for updates (pull-system), as long as the check occurs at least once per year. In addition, receipt of these reports meets the requirement for the annual check even if it is provided to the motor carrier by a third-party.

With regard to the requirement that the response from each State agency, and a note identifying the person who performed the review, may be maintained in the driver's qualification files, motor carriers may satisfy the recordkeeping requirement by using computerized records in accordance with FMCSA's Regulatory Guidance Concerning Electronic Documents and Signatures, 75 FR 411, January 4, 2011. Therefore, motor

carriers using an automated employer notification computer system would not be required to maintain paper copies of the driving records, or a note identifying the person who performed the review, in each individual driver qualification file provided documentation consistent with FMCSA's January 4, 2011, guidance can be produced upon demand of a Federal or State enforcement official.

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T.F. Scott Darling, III,  
Acting Administrator.

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