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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0394]

Driver Qualification Files: Application for Exemption; Atlantic and Pacific Freightways, Inc.

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

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

SUMMARY: FMCSA announces that Atlantic and Pacific Freightways, Inc. (A&P) has applied for an exemption from 49 CFR 391.51(b)(7)(ii) requiring motor carriers to obtain an updated motor vehicle record (MVR) of any driver holding a commercial driver's license (CDL) when he or she undergoes a new medical examination. A&P is requesting the exemption of behalf of all motor carriers that are required to obtain an MVR under this rule. FMCSA requests public comments on the application for exemption.

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

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2015-0394 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line 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, Washington, DC, between 9 a.m. and 5 p.m., ET, 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. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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, contact Mr. Robert Schultz, Transportation Specialist, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone:

202-366-4325; email 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-2015-0394), 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-2015-0394" 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.

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-2015-0394” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the 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, and 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 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 reason for the grant 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 also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) was designed to improve highway safety by ensuring that truck and bus drivers are qualified to drive a commercial motor vehicle (CMV).¹ CMVSA mandated that the Federal government establish minimum requirements for issuance of a commercial driver's license (CDL) to be issued by the States. It provided for removal of driving privileges from unsafe and unqualified drivers. The CMVSA also mandated the creation of the Commercial Driver's Licensing Information System (CDLIS), a cooperative exchange of the 50 States and the District of Columbia. CDLIS documents the issuance of a CDL by a State and all subsequent actions by a State driver licensing agency (SDLA) relative to that CDL, such as suspension, downgrade or removal of all driving privileges. Thus, each CDL driver has a single motor vehicle record (MVR). Federal and State law enforcement officials access CDLIS electronically at roadside to verify the licensing status of CMV drivers.

The FMCSRs (49 CFR part 350 et seq.) require operators of CMVs to be medically examined and found physically qualified to perform their job-related duties (49

¹ The CMVSA definition of "commercial motor vehicle" was adopted verbatim by 49 CFR 383.5: "Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or (2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or (3) Small Vehicle (Group C)—(i) that does not meet Group A or B requirements; (ii) Is designed to transport 16 or more passengers, including the driver; or (iii) Is of any size and is used in the transportation of certain hazardous materials (49 CFR 383.5)."

CFR 391.41(a)(1)(i)). CMV drivers must be re-examined every two years (49 CFR 391.45(b)(1)) or more frequently for medical reasons. Only medical examiners (MEs) approved by FMCSA and listed on the Agency's National Registry of Certified Medical Examiners may perform medical examinations of CDL drivers (49 CFR 391.42).

ME's must transmit the result of each driver medical examination they conduct to FMCSA electronically (391.41(g)(5)(i)(a)). FMCSA transmits the information to CDLIS, and SDLAs are required to extract the information from CDLIS and post on each MVR whether the driver is medically qualified to operate a CMV (49 CFR 383.73(b)(5)). Motor carriers must obtain the revised MVR of its drivers from the State of licensure within 15 days of the date of a medical examination and retain it in the driver's qualification file (49 CFR 391.51(b)(7)(ii)). Some motor carriers retain third-party agents to manage this and other recordkeeping requirements. Some SDLAs will not provide revised MVRs to third-party agents.

IV. Request for Exemption

Applicant A&P retains a third-party agent to obtain revised MVRs of its CMV drivers. It has applied for exemption from the requirement of 49 CFR 391.51(b)(7)(ii) that motor carriers obtain the revised MVR of the driver from the State that licenses the driver

within 15 days of the date of the medical examination. A&P has applied on behalf of all motor carriers who must obtain MVRs of their CDL drivers. A&P suggests that motor carriers be permitted to “have a copy of [the] current MVR from the third party provider and proof the medical certificate has been filed” with the SDLA in lieu of the existing requirement.

A copy of A&P’s application is in the docket of this matter.

Issued on: November 6, 2015.

Larry W. Minor,
Associate Administrator for Policy.

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