



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2015-0489]

Commercial Driver's License Standards: Application for Exemption; State of Idaho, Idaho Transportation Department (ITD)

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

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

SUMMARY: FMCSA announces that the Division of Motor Vehicles, Idaho Transportation Department (ITD), has applied for an exemption from provisions of 49 CFR 383.75(a)(8)(v) that require third-party commercial driver license (CDL) testers to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of CDL applicants. FMCSA requests public comment on IDT's 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 identified by Federal Docket Management System (FDMS) Number FMCSA-2015-0489 by 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 USC 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. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. 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 regarding this application for exemption. Comments should address the safety assessment provided by the applicant.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2015-0489), 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 comments online, go to www.regulations.gov and put the docket number, "FMCSA-2015-0489" 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. An option to upload a file is provided. 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(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations, including the CDL regulations in 49 CFR part 383. See also 49 CFR 381.300(c)(2), 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 U.S.C. 31315(b)(1) and 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 and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Idaho Transportation Department (ITD) is the State of Idaho governmental organization responsible for state transportation infrastructure. The Agency is responsible for overseeing the disbursement of Federal, State, and grant funding for the transportation programs of the State. IDT's CDL program is designed to improve safety

on the highways while meeting Federal requirements for the testing and licensing of commercial drivers.

Idaho is a geographically large state with a relatively small population. To adequately serve their constituents, the ITD oversees a third-party tester program consisting of approximately 60 CDL examiners. ITD utilizes contractors as the third-party examiners, so these examiners are not considered government employees, who would not need to be bonded.

The IDT has applied for an exemption from the regulations in 49 CFR 383.75(a)(8)(v) that require third-party testers to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of CDL applicants. The ITD requests the exemption because this regulation creates a financial hardship for testing examiners who must be bonded but conduct only a few tests monthly and the State of Idaho has had no instances of fraud in their third-party testing organizations. IDT believes that the exemption, if granted, would achieve a level of safety that is equivalent to or greater than the level of safety provided by complying with the regulation.

According to IDT, most of their examiners work in small cities and towns scattered throughout the State of Idaho. Many of these examiners only conduct one or two CDL tests per month. The cost of requiring these examiners to be bonded creates a financial hardship for the examiners who earn just \$60 per test. This regulation results in some badly-needed examiners potentially dropping out of the CDL testing arena. The State of Idaho is self-insured, in that Idaho state employee staff members are qualified

and available to re-test any applicants who may be found to have given a CDL “tainted” by some type of fraud. This would be done at no cost to the applicants.

In support of their request, the ITD indicates that it uses, and has used for over a year now, the Commercial Skills Test Information Management System (CSTIMS) to monitor CDL skills test examiners and to improve safety. This internet-based tool provides a consistent way to track the scheduling and entry of test results for CDL skills tests by jurisdiction and third-party examiners. CSTIMS enforces jurisdiction-defined rules to manage CDL skills testing and will alert jurisdictions when circumstances are encountered that may require investigation to determine if fraud may have occurred. CSTIMS also produces reports that can be reviewed for patterns of potential fraud, and surveys are also sent to all individuals tested to help monitor Idaho’s testing program and detect fraud.

IV. Method to Ensure an Equivalent or Greater Level of Safety

ITD states that granting this exemption will result in a level of safety that is equal to or greater than the level of safety of the rule without the exemption. According to the application for exemption, Idaho has had no instances of fraud in its third-party testing organizations. ITD requests, therefore, that FMCSA approve this request based on the alternate measures they have put in place supporting the spirit and purpose of 49 CFR 383.75(a)(8)(v) and, in its view, provide an equivalent or greater level of safety.

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

Issued on: February 26, 2016

Larry W. Minor
Associate Administrator for Policy

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