



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2019-0139]**

**Entry-Level Driver Training: United Parcel Service, Inc. (UPS); 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 for exemption from United Parcel Service, Inc. (UPS) from two provisions in the entry-level driver training (ELDT) final rule published on December 8, 2016. These provisions are the following:

1) the requirement that a driver training instructor have two years' experience and have held a Commercial Driver's License (CDL) for two years as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor; and 2) the requirement to register each training location for a unique Training Provider Registry (TPR) number.

FMCSA requests public comment on the applicant's request for exemption.

**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-2019-0139 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:** Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at 202-366-4325 or by e-mail at [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on

viewing or submitting material to the docket, contact Docket Services at (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-2019-0139), 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-2019-0139" 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 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 Agency must publish its decision 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 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**

An exemption application has been submitted by United Parcel Service, Inc. (UPS). The applicant seeks an exemption from the following two provisions in the entry-level driver training (ELDT) final rule: (1) the requirement in 49 CFR 380.713 that a driver training instructor have two years' experience and have held a commercial driver's license (CDL) for two years as set forth in the definitions of behind-the-wheel (BTW)

instructor and theory instructor in 49 CFR 380.605(b); and (2) the requirement in 49 CFR 380.703(a)(7) to register each training location for a unique Training Provider Registry (TPR) number.

According to UPS, it has a driver training school (DTS) that trains its employees to become driver instructors. UPS describes its DTS as a success, as the school has trained hundreds of driver instructors, many of whom did not have previous CDL experience. UPS DTS instructors have, on average, 20 years of UPS experience, hold a CDL of the same (or higher) class and with all endorsements necessary to operate a CMV for which training is provided, have completed the DTS program, have maintained their DTS certification through quarterly additional training, and are employed by UPS as supervisors or managers. The DTS conducts an 8-week program designed to train supervisors and managers in UPS' long-haul operations to deliver driver training to drivers at their "home" worksites. The curriculum covers all the topics set forth in Part 380 Appendix A for the new ELDT rule. The UPS instructor trainees are assessed in progress reviews at days 5, 10, and 15, and a current DTS instructor monitors the quality of the training and trainee progress. According to UPS, the DTS program produces highly qualified driver instructors. Additionally, all UPS driver instructors are required to be recertified every 90 days to demonstrate the same skill level shown for their original DTS certification. UPS further performs internal quality assessments to validate that instructor skillsets are maintained throughout the organization.

UPS requests that it be exempted from the ELDT driver instructor qualification requirements. According to UPS, under the new ELDT regulations no one could be an instructor at the time these regulations go into effect unless he/she had obtained a CDL and had begun driving by February 7, 2018. UPS states that if it must comply with the

instructor qualification requirements in the ELDT rule, it would not be able to use 25% of its current certified driver instructors, at minimum. Looking ahead two more years, that number would likely increase to 50% due to its changing workforce. UPS sees an increase in growth through volume demand, as well as an aging workforce that will lead to retiring CDL drivers and certified driver instructors. Without an exemption from the [ELDT] trainer requirements, UPS's inability to use its current driver instructors will impede substantially its ability to meet the demand for new drivers. UPS adds that the exemption is needed to meet Union contractual requirements, as under its collective bargaining agreement with the International Brotherhood of Teamsters (Teamsters), six current UPS employees must be provided with a promotion opportunity for every new hire.

The second part of UPS's application for exemption requests an exemption from the requirement in 49 CFR 380.703(a)(7), to register each training location for a unique Training Provider Registry (TPR) number. According to UPS, training for new drivers takes place in many locations. In each location, instructors who have been trained in the same way pursuant to UPS' DTS program will use a common FMCSR-compliant curriculum developed at a corporate level. UPS's Director of Driver Training is responsible for UPS's firm-wide training program. UPS is operating a single training program in multiple locations. UPS states that it needs this exemption due to the significant administrative burden that would result if it had to register every UPS location at which a new driver could be trained. In addition, having separate TPR numbers for multiple locations offering essentially the same training could create internal confusion for UPS, drivers, and the Agency. UPS new driver training may occur at as many as 1,800 separate locations a year. UPS estimates that the cost to

register all of these locations would be substantial, and that it would incur additional costs to keep track of the various registrations, file updates, and new driver registrations.

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

UPS offers its “train the trainer” program within its DTS to assure an equivalent level of safety. According to UPS, its DTS produces highly skilled instructors who know how to drive tractor-trailers and how to teach others to operate tractor-trailers in a safe manner. UPS believes that graduates of its DTS training program are better prepared to impart knowledge and skills on new drivers than someone who has had two years of driving experience. According to UPS, experience over time has shown that their instructors produce expertly trained, safe entry-level drivers. All DTS certified driver instructors are re-certified every 90 days and UPS conducts periodic (minimum annual) internal quality assessments of the DTS program. In regards to the registration requirements, UPS assures that the registration requirements will be fulfilled by a single registration for UPS’ driver training program managed by UPS, if the exemption granted. UPS’ requested exemption is for 5 years from the ELDT provisions 49 CFR 380.713 and 49 CFR 380.703(a)(7).

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

Issued on: June 12, 2019.

**Larry W. Minor,**

*Associate Administrator of Policy.*

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