



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 Final Disposition; denial of exemption.

SUMMARY: FMCSA announces its decision to deny United Parcel Service, Inc.'s (UPS) application for exemption from two provisions in the entry-level driver training (ELDT) final rule published on December 8, 2016. UPS requests a five-year exemption from the following provisions in the ELDT final rule: the requirement that a driver training instructor hold a Commercial Driver's License (CDL) and have two years' experience driving a commercial motor vehicle (CMV), as set forth in the definitions of "behind-the-wheel (BTW) instructor" and "theory instructor;" and the requirement to register each training location in order to obtain a unique Training Provider Registry (TPR) number applicable to that location. FMCSA has analyzed the exemption application and the public comments and determined that the applicant has not demonstrated that it would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the requested exemptions.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: 202-366-4325; E-mail: 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

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-2019-0139 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document 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 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 the 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’s decision 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 specify the effective period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

United Parcel Service, Inc. (UPS) 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 hold a commercial driver's license (CDL) and have two years' experience driving a CMV, as set forth in the definitions of "behind-the-wheel (BTW) instructor" and "theory instructor" in 49 CFR 380.605; and (2) the requirement in 49 CFR 380.703(a)(7) that training providers with multiple training locations must register each training location in order to receive a unique Training Provider Registry (TPR) number applicable to that location.

UPS states that its driver training school (DTS) trains its employees to become driver instructors. Their DTS instructors have, on average, 20 years of UPS experience, hold a CDL of the same or higher class, and have all endorsements necessary to operate a CMV for which training is provided; have completed the DTS instructor certification 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 UPS worksites. All UPS driver instructors must recertify every 90 days to demonstrate the same skill level shown for their original DTS certification.

UPS states that, were it to comply with these instructor qualification requirements, it would not be able to use at least 25% of its current certified driver instructors, because they do not have the requisite two years of CMV driving experience. According to UPS, in the next two years that number would likely increase to 50% due to its changing workforce. UPS expects 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 instructor 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 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.

Secondly, UPS requests an exemption from the requirement in 49 CFR 380.703(a)(7), that training providers with multiple training locations must register each training location to receive a unique TPR number applicable to that location. UPS states that new driver training may occur at as many as 1,800 separate locations a year. In each location, instructors who have been trained 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, and UPS is operating a single training program in multiple locations. UPS states that this exemption is necessary 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. Having separate TPR numbers for multiple locations offering essentially the same training could create internal confusion for UPS, drivers, and the Agency. UPS estimates that the cost to register 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. Public Comments

On June 19, 2019, FMCSA published notice of the UPS application for exemption and requested public comment [84 FR 28623]. The Agency received 112 comments, 58 supporting the exemptions and 51 opposing them. Three other commenters had no position either for or

against the application and provided no substantive comments. Four organizations opposed the exemptions: the Owner-Operator Independent Drivers Association (OOIDA); the Commercial Vehicle Training Association (CVTA); Trucker Nation; and the United States Transportation Alliance.

OOIDA strongly opposed both portions of the UPS request, stating that “the ELDT rule sets forth a process for registering training providers that will hold schools and instructors accountable for their performance. If these standards are maintained and enforced, highway safety will unquestionably improve. OOIDA further opposed exempting UPS from the requirement to separately register each training location for a unique TPR number, commenting: “The Agency also saw no rationale under which motor carrier-operated training schools should be permitted to opt out of the TPR registration requirements based on their size or safety record.”

CVTA does not believe that UPS should be exempted from the current two-year instructor requirements, nor does it believe that the company should be exempted from registering each individual location where it provides training. While CVTA agrees that the skills needed to effectively teach, versus the skills acquired by driving for two years, are different, they believe the regulation should be uniformly followed by anyone training pre-CDL students. It is CVTA’s belief that, by granting the exemptions, the FMCSA would be setting a bad precedent, and opening the floodgates for exemption requests from other training providers.

TruckerNation also opposed both portions of the exemption request, stating that the concerns raised by UPS have been addressed through negotiated rulemaking and the public comment process. TruckerNation asserted that approving this exemption request would contradict the sound decisions previously made in the ELDT final rule and ultimately undermine the goals of ELDT.

Fifty-eight individuals supported the UPS application. Most supported only the first part of the exemption request – i.e., the requirement in 49 CFR 380.713 that a driver training instructor hold a CDL and have two years' CMV driving experience and, as set forth in the definitions of BTW instructor and theory instructor in 49 CFR 380.605. Most of these commenters cited the excellence of the UPS training program and the company's overall safety record. Many commenters also noted that UPS requires continuous instructor recertification throughout the year, regardless of how long they have held a CDL.

V. Method to Ensure an Equivalent Level of Safety

UPS states that its “train the trainer” program within its DTS will 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 to new drivers than someone who has had two years of CMV 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. As to the training provider 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 were granted.

In support of UPS's request for exemption from the requirement to register each training location separately, the company cites the uniformity of its driver instructor training and the fact that “a common FMCSR-compliant curriculum has been developed at the corporate level.” On

that basis, UPS concludes that the objectives of location-specific registration would be satisfied by a single UPS registration.

VI. FMCSA Response and Decision

FMCSA has evaluated the UPS application and the public comments submitted and hereby denies the requested exemptions. The UPS application does not provide an analysis of the safety impacts the requested exemptions from the ELDT regulations may cause, as required by 49 CFR 381.310(c)(4), and does not explain how the exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulations, as required by 49 CFR 381.310(c)(5).

The requirement that a driver training instructor hold a CDL, and have either two years' experience driving a CMV of the same or higher class, or two years' experience as a BTW CMV instructor, is necessary to establish a sufficient minimum qualification standard for BTW instructors. In the Agency's judgment, the rigorous instructor training provided by UPS, while laudable, is not a substitute for CMV driving experience. UPS therefore fails to provide an alternative to the instructor requirements likely to ensure an equivalent level of safety, and the request for exemption is hereby denied.

The Agency also denies UPS's request for an exemption from the requirement, as set forth in 49 CFR 380.703(a)(7), that training providers with more than one campus or training location must electronically register each training location to receive a unique TPR number applicable to that location. Qualified training providers are a cornerstone of meaningful ELDT.

FMCSA's ability to readily identify the separate physical locations at which ELDT occurs is a reasonable prerequisite to effective oversight of UPS's training operations. The Agency needs to know the training location where an individual received ELDT, for example, so that if State-administered skills or knowledge test pass/fail rates appear to be outside the norm for drivers trained at a specific location, FMCSA can follow-up appropriately. In addition, UPS did not explain how a single UPS representative can be directly responsible for managing and administering ELDT at all 1800 locations. It is reasonable to require that the individual actually administering the ELDT program at a given location attest, under penalty of perjury, to compliance with specific training requirements. Further, UPS does not indicate whether the same type of ELDT is conducted at each of its 1800 locations – e.g., do some locations offer only BTW training or only knowledge training? Is specialized knowledge training, such as on hazardous materials, offered at every UPS training location? The types of ELDT offered at each training location is “key information” as defined in 380.719(a)(3)(i), and is necessary for effective regulatory oversight. For example, the extent of training offered at a specific location may impact how FMCSA allocates its audit or investigation resources. UPS's application does not explain how dispensing with the location-specific TPR registration requirement would likely achieve an equivalent level of safety. Therefore, the UPS request for exemption from the TPR registration requirement is hereby denied.

Issued on: November 26, 2019.

Jim Mullen,

Acting Administrator.

[FR Doc. 2019-26183 Filed: 12/6/2019 8:45 am; Publication Date: 12/9/2019]