



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0287]

Driver Qualification Files: Application for Exemption; Knight-Swift Transportation Holdings, Inc.

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

ACTION: Notice of final disposition; granting of application of exemption.

SUMMARY: FMCSA announces its decision to grant, with conditions, Knight-Swift Transportation Holdings, Inc.'s (Knight-Swift) application for an exemption from the requirement that motor carriers rely on the motor vehicle record (MVR) of their drivers holding a commercial driver's license (CDL) as proof of the driver's medical qualifications when the driver undergoes a new medical exam during the initial period of employment as a condition of employment. Knight-Swift would rely on the medical long form for newly hired drivers and then rely on the MVR when the subsequent annual review of the driving record is performed. FMCSA analyzed the exemption application and public comments and determined that the applicant would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The exemption expires November 4, 2025.

ADDRESSES:

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 Federal Docket Management System (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, 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: Ms. Pearlie Robinson, 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

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-2018-0347 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. 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 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 Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption and the regulatory provision or provisions from which the exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Knight-Swift has adopted a company policy of requiring all newly hired drivers to undergo a complete medical examination. Knight-Swift explains that it believes this policy combats medical fraud and ensures that the driver is medically qualified at the time of hiring. This medical examination upon hiring is not required by the FMCSRs (unless the driver's current medical certificate has expired) but it triggers the requirement of 49 CFR 391.51(b)(7)(ii) that Knight-Swift obtain the results of that examination from the SDLA in the form of an updated MVR. Knight-Swift objects to the cost and inconvenience of obtaining the MVR a second time when it recently obtained the MVR pursuant to hiring as required by 49 CFR 391.23(a)(1). It asserts that it is pointless to obtain "information that in most cases we have already verified within the previous few days." Knight-Swift seeks an exemption from the requirement to obtain a new MVR when the medical examination triggering the requirement was of a newly hired Knight-Swift driver.

Knight-Swift provided data to support their exemption application and this data is included in the docket for this application. The provided data included a sample pool of 5,722 newly hired Knight-Swift drivers with valid 2-year medical cards. After undergoing Knight-Swift's hiring process, 19% of the sample pool drivers were downgraded to a 1-year certification and 2.1% were disqualified. Knight-Swift did not indicate whether it knew if these drivers (those holding a CDL) provided the new certification to the SDLAs issuing their licenses.

IV. Method to Ensure an Equivalent Level of Safety

To ensure an equivalent level of safety, Knight-Swift proposes to include in the driver qualification file the newly hired driver's medical examination report in lieu of obtaining a second MVR.

V. Public Comments

On December 23, 2019, FMCSA published notice of Knight-Swift's application and requested comments (84 FR 68287). Three comments were received from individuals and all opposed granting the exemption. Michael Millard, made the following statement: "To extend the exemption to such a large base of drivers would basically nullify the need for any carrier to pull Commercial Driver's Licensing Information System (CDLIS) with the medical status on the driver's CDLIS report potentially resulting in multiple carriers following suit." Art Meyer made the following opposing argument "I would highly recommend that this exemption not go through as I am a fleet manager and it never ceases to amaze me that the driver has not certified his medical card with the State and is thus driving on a downgraded D.L. We all should have to follow the rules no matter how big or how small a company we are and to file to [*sic*] not have to follow the rules tells me why we see so many Swift wrecks on the highways and social media that we do." Lastly, Jean Publiee argued that Knight-Swift should not be granted an exemption and emphasized that full documentation of a driver should be required.

VI. FMCSA Decision

The FMCSA believes Knight-Swift's exemption application has merit and with necessary terms and conditions, will allow the applicant to achieve a level of safety equivalent to what is required under the current safety regulations, provided Knight-Swift complies with the imposed terms and conditions. Under current regulations, CMV drivers

required to have a commercial driver's license (CDL) or a commercial learner's permit (CLP) are required to provide the SDLA with the original or a copy of the medical examiner's certificate (MEC) (49 CFR 383.71(h)(1) and (3)). This includes an initial MEC and "each *subsequently issued* medical examiner's certificate". SDLAs are required to post this information to the driver's CDLIS driver record within 10 calendar days (49 CFR 383.73(o)(1)). If the driver does not provide an MEC to the SDLA, either at the time of a licensing transaction, when the MEC provided expires or is voided, or after obtaining a subsequently issued MEC, then the SDLA must within 10 calendar days change the driver's status in the CDLIS driver record to "not certified" (49 CFR 383.73(o)(2)). If this status change occurs, the driver is no longer physically qualified to operate a CMV that requires a CDL or CLP (49 CFR 391.41(a)(2)). The SDLA must notify the CDL or CLP holder of the status as "not certified" and begin the process of downgrading the license, to be completed within 60 days (49 CFR 383.73(o)(4)).

In addition, within 30 days after employing a CMV driver, motor carriers are required to obtain the motor vehicle record from the current licensing SDLA and place a copy in the driver's driver qualification file (49 CFR 391.23(a)(1) and (b)). For drivers required to have a CDL or CLP to operate a CMV, the CDLIS motor vehicle record must be obtained and must show that the driver was properly certified as physically qualified (49 CFR 391.23(m)(2) and (3)). The driver's updated MVR showing that he or she was properly certified as physically qualified by submitting the MEC to the SDLA, must be retained in the driver qualification file. This is the requirement for which Knight-Swift is requesting an exemption. A CDL driver who is "without medical certification status information on the CDLIS motor vehicle record is designated 'not-certified' to operate a

CMV in interstate commerce” (49 CFR 391.51(b)(7(ii)). From the MVR, the carrier can verify both that the driver is currently physically qualified and that the driver has a valid CDL that is in effect.

The carrier reviews the MVR as required under the current regulations and the record provides proof that the prospective employee has both a valid CDL and medical certification. The proof of the medical certification comes from the medical certificate issued by a healthcare provider on the National Registry, as long as it has been provided to the SDLA and is entered on the CDLIS driver record.

Knight-Swift has implemented a process through which each newly hired driver must undergo a medical examination by one of its healthcare professionals listed on the National Registry. For all drivers receiving a new medical certificate, the information would be provided to the SDLA for the driver’s State of domicile so that the certificate would then serve as the most up-to-date information captured on the MVR. And because the initial MVR obtained for the newly hired driver no longer reflects the most recent medical examination, the carrier needs an exemption. To provide an equivalent level of safety under the requested exemption, Knight-Swift will be required to obtain from the driver proof that the subsequently issued medical examiner’s certificate issued as a result of the new examination required by Knight-Swift has been provided to the SDLA. Instead of the MVR, Knight-Swift can obtain other proof for inclusion in the driver qualification file, such as a receipt from the SDLA, a certification from the driver that the subsequently issued certificate has been provided to the SDLA, or any other reliable proof that such action has occurred.

The FMCSA believes that under these unique circumstances, allowing Knight-Swift to rely on its records of medical certificates for the first year of employment for newly hired drivers would not compromise safety or enforcement of the medical certification requirements for CDL holders. First, the carrier has reviewed the MVR to ensure that each newly hired driver has a valid CDL and the carrier is aware of convictions for traffic offenses that have been posted to the MVR, if the prospective employees have exhibited safety performance problems. Second, Knight-Swift's review of the MVR indicates the newly hired CDL holders were medically certified prior to seeking employment at the company, and the company is aware of the expiration date of that medical certification. The subsequent medical examination provides an extra level of safety assurance for the company by having its own medical examiner verify that each newly hired driver meets FMCSA's physical qualifications standards. Compliance with the condition for obtaining proof that the subsequently issued medical certificate was provided to the SDLA will also ensure that the driver's CDL remains valid. In the event a driver does not pass the company-mandated physical examination, the driver is not allowed to operate CMVs for Knight-Swift until the medical issue(s) are resolved.

In regards to enforcement of the medical certification requirements by Federal or State personnel, they would continue to review the driving record electronically to identify the most up-to-date medical certificate. After the medical certificate prepared by the Knight-Swift medical examiner has been provided to the SDLA, Federal and State personnel would then be able to obtain the information as the most recent assessment of the driver's medical qualification status and the validity of the CDL or CLP.

The Agency believes Knight-Swift's policy of requiring newly hired drivers to undergo a medical exam, although the drivers have a valid medical exam reflected on their MVR at the time of hire, is likely to achieve an equivalent or greater than level of safety than would be achieved absent such exemption.

VII. Terms and Conditions

FMCSA grants Knight-Swift an exemption from the medical certification requirements in 49 CFR 391.51(b)(7)(ii) to permit the company to use newly hired drivers without having to obtain a MVR that reflects the latest medical certification status during the first year of employment. Knight-Swift is subject to the following terms and conditions:

(1) Knight-Swift must maintain the initial MVR reviewed prior to hiring the driver showing the driver was medically certified by a healthcare professional on the Agency's National Registry of Certified Medical Examiners;

(2) The medical examiner's report the company will rely upon for the first year of employment must be prepared by a healthcare professional on the Agency's National Registry of Certified Medical Examiners and be available for inspection by Federal or State enforcement personnel during an investigation or compliance review;

(3) Knight-Swift must obtain reliable proof that the new medical examiner's certificate was provided by the driver to the SDLA and include such proof in the driver qualification file.

VIII. Preemption of State Laws and Regulations

During the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm

or person operating under the exemption (49 U.S.C. 31315(d)).

IX. Notification to FMCSA

Knight-Swift must provide a quarterly report to FMCSA concerning newly hired drivers who are downgraded from a 2-year medical certificate to a shorter duration certificate, or medically disqualified upon completion of the company-mandated medical examination. The report must provide:

- Driver's full name;
- CDL number and State of issuance;
- Medical examiner's name and FMCSA-issued National Registry identification number for the examination recorded on the MVR prior to the Knight-Swift medical exam.
- Examination date and expiration date for the medical exam noted on the MVR;
- Knight-Swift medical examiner's name and FMCSA-issued National Registry identification number.
- Knight-Swift examination date and expiration date for the medical exam.

The report must be transmitted electronically in a manner to protect drivers' Personally Identifiable Information (PII).

TERMINATION

FMCSA does not believe this exemption would result in Knight-Swift or any of its newly hired drivers experiencing a decrease in safety performance. Interested parties possessing information that would otherwise show that the exemption has resulted in a lower level of safety than what would be observed absent the exemptions should immediately notify FMCSA.

The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4), FMCSA will immediately take steps to revoke the exemption.

James W. Deck,
Deputy Administrator.

[FR Doc. 2020-24472 Filed: 11/3/2020 8:45 am; Publication Date: 11/4/2020]