



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0224]

Controlled Substances and Alcohol Use and Testing: FirstGroup plc. Application for Exemption from the Drug and Alcohol Clearinghouse Pre-Employment Full Query

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

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

SUMMARY: FMCSA announces that FirstGroup plc (FirstGroup) has applied for an exemption on behalf of three of its subsidiaries, First Student, Inc., First Transit, Inc., and First Mile Square, which employ commercial driver's license (CDL) holders subject to drug and alcohol testing. FirstGroup requests an exemption from the requirement that an employer must conduct a full query of FMCSA's Drug and Alcohol Clearinghouse (Clearinghouse) before employing a CDL holder to perform safety-sensitive functions. Under the requested exemption, in lieu of a full query, FirstGroup would conduct a limited pre-employment query of the Clearinghouse. If the limited query indicated that information about the driver existed in the Clearinghouse, FirstGroup would then conduct a full query of the Clearinghouse, with the driver-applicant providing consent in the Clearinghouse as required. In addition, FirstGroup would conduct a second limited query within 30 to 35 days of the initial limited query and conduct multiple limited queries on all its CDL drivers each year thereafter.

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 Number FMCSA-2020-0224 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Dockets Operations, 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: (202) 493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2020-0224). 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory exemptions 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: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; (202) 366-2722; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (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-2020-0224), 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 email 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-2020-0224” 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.

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. 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 absent the exemption (49 U.S.C 31315(b)(1)). 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 specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

Under 49 CFR 382.701(a)(2) employers of CDL holders must not employ a driver subject to the testing requirements of 49 CFR part 382 without first conducting a pre-employment full query of the Clearinghouse. A full query allows the employer to see any information that exists about a driver in the Clearinghouse. An employer must obtain the driver's specific consent, provided electronically through the Clearinghouse, prior to the release of detailed information provided in response to the full query.

A limited query is permitted to satisfy the annual query requirement in 49 CFR 382.701(b)(1), which pertains to currently employed drivers. The limited query, conducted after obtaining the driver's general consent, will tell the employer whether

information about the individual driver exists in the Clearinghouse but will not release that information to the employer. General consent is obtained and retained outside the Clearinghouse and may be in written or electronic form. If the response to a limited query indicates there is information about the driver in the Clearinghouse, the employer must conduct a full query, after obtaining the driver's specific consent, within 24 hours, as required by 49 CFR 382.701(b)(3).

Applicant's Request

FirstGroup requests an exemption from the rule prohibiting an employer from employing a driver subject to drug and alcohol testing requirements to perform safety-sensitive functions without first conducting a full query of the Clearinghouse. Under the requested exemption, FirstGroup would, in lieu of a full query, conduct a limited pre-employment query of the Clearinghouse before one of its members employed a driver. If the limited query indicated that information about the driver exists in the Clearinghouse, FirstGroup would then conduct a full query of the Clearinghouse, with the driver applicant providing consent in the Clearinghouse as required. In addition, FirstGroup would conduct a second limited query within 30 to 35 days of the initial query, would conduct quarterly limited queries on all its CDL drivers for the first year of the exemption, and for years 2 through 5, would conduct semi-annual limited queries on all its CDL drivers.

FirstGroup believes the requirements of 49 CFR 382.701(a)(2) is hindering its ability to hire at the speed and level needed to keep pace with the demands of the contracted school and transit transportation industry. FirstGroup also believes the exemption is needed since the delays and administrative costs related to conducting a full query during FirstGroup's driver hiring process is resulting in hundreds of thousands of dollars of increased costs.

A copy of FirstGroup's exemption application is included in the docket referenced above.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on FirstGroup's application for an exemption from § 382.701(a)(2). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,
Associate Administrator for Policy.

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