



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0101]

Controlled Substances and Alcohol Use and Testing: DISA Entertainment

Compliance Solutions Application for Exemption from the Drug and Alcohol

Clearinghouse Pre-Employment Full-Query

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

ACTION: Notice of application for renewal of exemption.

SUMMARY: FMCSA announces that it has received an application from DISA Entertainment Compliance Solutions (DECS), formerly known as Motion Picture Compliance Solutions, to renew its exemption from the requirement that an employer must not employ a driver who is subject to drug and alcohol testing to perform safety-sensitive functions prior to conducting a full query of the Drug and Alcohol Clearinghouse (Clearinghouse) on behalf of its members that employ commercial driver's license (CDL) holders. Under the requested exemption, DECS would conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exist in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a commercial motor vehicle (CMV). FMCSA requests public comment on DECS' application for an 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 Number FMCSA-2020-0101 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, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 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-2020-0101). 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 the ground level of the U.S. Department of Transportation, West Building, at 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption renewal request. DOT posts these comments, 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 under the “Department Wide System of Records Notices” at

www.dot.gov/privacy/privacy-act-system-records-notice. The comments are searchable by the name of the submitter and are posted without edit.

FOR FURTHER INFORMATION CONTACT: Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; FMCSA; (202) 366-4225; pearlie.robinson@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.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2020-0101), 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, insert the docket number (FMCSA-2020-0101) in keyword box, and click on this notice, click “Comment,” and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> insert FMCSA-2020-0101 in the keyword box, select the document tab and choose the document to review. To view comments, click this notice, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington,

DC 20590-0001, 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.

D. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed under the “Department Wide System of Records Notices” at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>. The comments are posted without edit and are searchable by the name of the submitter.

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 (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 the applicant’s safety analyses. 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(a)). The Agency must publish the decision in the Federal Register (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt and the effective period and will explain all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the

notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Currently, 49 CFR 382.701(a)(2) requires that employers 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 in response to the full query.

By contrast, a limited query allows an employer to determine whether the Clearinghouse contains any information about the driver but does not release any specific information about the driver. Limited queries require only a driver's general consent, which is obtained and retained outside the Clearinghouse and may be in written or electronic form. Under 49 CFR 382.701(b)(2), an employer may conduct a limited query in lieu of a full query when satisfying the annual query requirement for current driver-employees. However, 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). If the full query is not conducted within the 24-hour period, or shows that the driver is prohibited from operating a CMV, the employer must not permit the driver to continue to perform safety-sensitive functions.

On February 4, 2020, in response to a request from DECS, FMCSA issued DECS a three-month waiver from 49 CFR 382.701(a)(2) on behalf of its members that employ CDL holders subject to drug and alcohol testing under 49 CFR part 382. On June 1, 2020, FMCSA granted DECS a five-year exemption from 49 CFR 382.701(a)(2), which

indicates that DECS would likely achieve a level of safety obtained by complying with the regulation (85 FR 33274). The exemption will expire on May 28, 2025.

Application for Renewal of Exemption

DECS has requested an additional five-year renewal of its exemption from 49 CFR 382.701(a)(2) on behalf of its members that employ CDL holders subject to drug and alcohol testing under 49 CFR part 382. DECS' members employ drivers providing transportation services to or from theatrical, commercial, television, or motion picture production sites. Renewal of the exemption would allow DECS to continue to conduct a limited query of the Clearinghouse before one of its member employers hires a driver for a project. If the limited query indicates that information about the driver exists in the Clearinghouse, the driver would not be permitted to perform safety-sensitive functions unless and until a full query subsequently shows that the driver is not prohibited from operating a CMV. DECS, serving as a Consortium/Third-party Administrator (C/TPA) for its member employers, requests, obtains, and retains limited query general consent forms from drivers. A copy of the exemption application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on DECS' application for an exemption renewal. All comments received before the close of business on the comment closing date 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 also 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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