

revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Richard Jehlen no later than April 14, 2009. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on February 18, 2009.

**Richard Jehlen,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

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BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0232]

#### Commercial Driver's License: Commonwealth of Virginia, Department of Motor Vehicles; Application for Exemption

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

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

**SUMMARY:** FMCSA approves an application from the Commonwealth of Virginia Department of Motor Vehicles (Virginia DMV) for an exemption for a period of 2 years from a provision of the Agency's commercial driver's license (CDL) regulations requiring that each CDL issued by a State contain a color photograph of the driver. Virginia DMV requested that it be allowed to use a black and white, laser-engraved photograph in lieu of a color photograph. Virginia DMV believes that the issuance of CDLs with black-and-white, laser-engraved photographs would enhance the security of the credential and assist law enforcement officials with the identification of the

CDL holder. FMCSA has determined that the exemption would provide for a level of safety that is equivalent to or greater than the level of safety achieved without the exemption.

**DATES:** This exemption is effective March 9, 2009 and expires on March 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations. Telephone: 202-366-4325, or E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a maximum of 2 years if it finds “\* \* \* such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption \* \* \*.” The procedure for requesting an exemption is prescribed by 49 CFR part 381.

The Virginia DMV is in the project-planning phase of its transition to centralized issuance of drivers' licenses and identification cards. Virginia DMV is working towards meeting the requirements of the REAL ID Act of 2005 (Pub. L. 109-13, May 11, 2005, 119 Stat. 231, 302), and U.S. Department of Homeland Security's (DHS) implementing regulations (73 FR 5271, January 29, 2008). Under the REAL ID Act, Federal Agencies are prohibited, effective May 11, 2008, from accepting a driver's license or State-issued personal identification card for an official purpose unless the issuing State has met the requirements of the Act.

##### Virginia DMV Application for Exemption

Virginia DMV has applied for an exemption from 49 CFR 383.153(a)(4), which requires each CDL to contain a color photograph of the driver. Virginia DMV requested that it be allowed to use a black and white, laser-engraved photograph on Virginia-issued CDLs in lieu of a color photograph. In its application for an exemption, Virginia DMV explains in detail how the use of black and white, laser-engraved photographs on Virginia CDLs will enhance the security of the credential, in particular because the laser-engraved photograph cannot easily be altered. Virginia DMV also stated that a black and white, laser-engraved image actually enhances driver identification because, with hair and eye color absent, the image provides greater emphasis on other, less readily-altered, facial

features. A copy of the Virginia DMV's application for an exemption is included in the docket referenced at the beginning of this notice.

#### Comments

Three comments were received to this docket. Canadian Bank Note Company, Ltd., supported the application, stating that the process proposed by Virginia DMV would provide “the most secure means of applying a photograph,” and a clearer image as well. L-1 Identity Solutions (L-1) opposed the application, suggesting that Virginia DMV employ both a color and a black and white photograph on each CDL. L-1 also recommended certain color technologies it believed to be more secure than the Virginia DMV technology. The third commenter, Virginia DMV, provided additional detail about its proposed black and white, laser-engraved technology indicating that it is no less secure than other technologies.

#### FMCSA Decision

FMCSA has evaluated Virginia DMV's application on its merits following full consideration of the comments submitted to the docket, and has decided to grant the exemption from 49 CFR 383.153(a)(4) for a period of 2 years. FMCSA determined that the exemption would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption (49 U.S.C. 31315(b)(1)).

In reaching its decision, FMCSA considered DHS's January 29, 2008, final rule implementing certain provisions of the REAL ID Act. The final rule permits State licensing agencies to use either color or black and white photographs on driver's licenses and identification cards (6 CFR 37.17(e)(2)). DHS determined through a notice-and-comment rulemaking proceeding that laser-engraved black and white photography provides a comparable if not greater level of security or deterrence to falsification. (See 73 FR 5301)

The regulation from which the Virginia DMV is exempted does not concern the qualifications of the CDL holder or his or her safety performance. Furthermore, the rule does not pertain to FMCSA's requirement that the CDL document be tamperproof or tamper resistant. (See 49 CFR 383.155.) Because the exemption is limited to the actual photograph or image of the CDL holder and the State would continue to be required to maintain compliance with all other CDL document rules, FMCSA concludes the exemption would not have an adverse impact on safety.

FMCSA's tamper-proofing rule (49 CFR 383.155) should not be construed to apply a higher standard of document security than the rules prescribed by DHS on January 29, 2008. The Agency concludes that the objections to laser-engraved black and white images raised by L-1 should be addressed to DHS, as they relate to DHS's decision in its READ ID Act rulemaking. The Agency will not attempt to resolve those concerns here.

For the reasons discussed above, FMCSA grants the Virginia DMV's application for an exemption from 49 CFR 383.153(a)(4) for a period of 2 years.

Issued on: March 2, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2009-0010]

#### Hours of Service of Drivers: Redding Air Services, Inc. and Guardian Helicopters, Inc., 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 a joint application from Redding Air Service, Inc. and Guardian Helicopters, Inc. (Redding/Guardian) requesting an exemption from certain commercial motor vehicle (CMV) driver hours-of-service (HOS) provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption request is for Redding/Guardian's CMV drivers who transport jet fuel for their helicopters in support of wild-land firefighting operations. They specifically request an exemption for 20 drivers from the HOS prohibition against driving a CMV after the 70th hour of cumulative on-duty time in any 8-day period. The exemption, if granted, would enable Redding/Guardian drivers to conduct their operations—including transportation of jet fuel to and from the firefighting sites—without having to comply with the 70-hour in 8-day HOS rule. Redding/Guardian believes the exemption would ensure a level of safety equivalent to or greater than the level of safety that would be obtained absent the exemption. FMCSA requests

public comment on the Redding/Guardian application for exemption.

**DATES:** Comments must be received on or before April 8, 2009.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number [FMCSA-2009-0010] by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *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.

**Instructions:** All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit <http://DocketInfo.dot.gov>.

**Public Participation:** The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be

included in the docket, and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its 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 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 decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, 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 also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### Request for Exemption

The Federal hours-of-service (HOS) regulations in 49 CFR 395.3(b)(2) prohibit a property-carrying commercial motor vehicle (CMV) driver from driving a CMV after having been on duty for 70 cumulative hours in any period of 8 consecutive days, if the employing motor carrier operates CMVs every day of the week.

Redding/Guardian's business is primarily in support of wild-land firefighting operations within the continental United States in conjunction with the U.S. Department of Interior, U.S. Forest Service and various State and County agencies. Redding is based in Redding, California, and Guardian is based in Van Nuys, California. The two