

area in need of improvement through its Self-Assessment summary reports. For example, the team could not find required documentation in the Project File Tab even though there were indications that a related task was completed. The areas under which the errors occurred, include, but are not limited to PI, EJ, environmental commitments, maintenance of traffic, and fiscal constraint. The projects identified represent all ODOT's 12 districts and included ODOT, ORDC, and LPA projects.

The team considers these to be project level compliance issues because, although documentation expected to be in the project file was missing, the files generally contained indications that the necessary review or commitments were being implemented. The team strongly encourages ODOT to continue improvements to EnviroNet and ODOT procedures to ensure complete documentation and compliance on future projects. The FHWA will more closely review these project level compliance issues in its next Audit review.

#### **Quality Assurance/Quality Control (QA/QC)**

#### **Observation 3: There are variations in awareness, understanding, and implementation of QA/QC process and procedures.**

The inconsistencies and missing information so far described are an indication that ODOT's QA/QC process requires attention. The interviews revealed that middle and upper management at the districts are not involved in the QA/QC process. The ODOT District environmental staff and non-environmental staff said that they rely on the ODOT Central Office to be the final backstop for QA/QC. However, most district staff indicated a lack of awareness or understanding of the overall QA/QC process. No training is provided exclusively for QA/QC.

#### **Successful Practice 2: EnviroNet serves as QA/QC in terms of process and consistency.**

Interviews with district and ODOT Central Office staff indicated that, overall, EnviroNet has changed the NEPA review process for the better and represents a "one-stop shop" for documentation of the NEPA process. The ODOT staff indicated that with everything now on-line, including electronic signatures, communication is easier between ODOT, the LPAs and consultants. The use of drop down menus and response selections within the project file resource areas acts as

QC, creating increased standardization and consistency statewide.

The system of checks built into the system includes error messages and a hard stop of the project if a peer review is required and not completed. Another safeguard of EnviroNet is "validation" which instigates a hard stop if required fields are not filled in the project file. There are security protocols to allow access to the appropriate staff for project file review and input, peer review and ultimately approval officials.

#### **Legal Sufficiency Review**

To date, ODOT has not applied the "ODOT NEPA Assignment Legal Sufficiency Review Guidance" guidance because it did not have any documents that required legal sufficiency review. There are no observations to report at this time.

#### **Performance Measures**

#### **Observation 4: Some of ODOT's performance measures are ineffective.**

The ODOT developed Performance Measures as required in MOU Section 10.2 to provide an overall indication of ODOT's execution of its responsibilities assigned by the MOU. The team urges ODOT to refine or revise performance measures to reveal any occasional or ongoing challenges in agency relationships as well as any possible need to adjust approaches to QC.

#### **Training Program**

The ODOT has a robust environmental training program and provides adequate budget and time for staff to access a variety of internal and external training. The ODOT updated its training plan in January 2017, and provided the plan to FHWA and resource agencies for their review, as required by Section 12.2 of the MOU. The training plan includes both traditional, instructor-based training courses and quarterly DEC meetings as well as monthly NEPA chats, where ODOT Central Office staff can share new information and guidance with district staff, including interactive discussions on the environmental program. Furthermore, the training plan includes a system to track training needs within ODOT. In addition, ODOT holds bi-annual meetings with consultants to provide on-going updates about the environmental program.

#### **Successful Practice 3: ODOT continues the practice of required and continuous training of both staff and consultants involved in the environmental process.**

The ODOT's training plan states that all ODOT environmental staff (both central and district offices) and

environmental consultants are required to take the pre-qualification training courses. Staff is also encouraged to take training offered beyond the minimum required training. All staff interviewed indicated that ODOT management fully supports required training of staff and consultants.

#### **Observation 5: Opportunities exist for expanding training in Environmental Justice (EJ).**

Currently, ODOT's training plan does not include a stand-alone training course on EJ. In the Self-Assessment summary report, ODOT identified EJ as an area needing improvement. This observation and that the team found project level compliance issues related to EJ indicate that additional attention should be paid by ODOT to EJ compliance. The FHWA encourages ODOT to include specific EJ training opportunities in its training plan, such as the Web-based course currently under development, and other EJ courses offered by the National Highway Institute, the FHWA Resource Center, and/or the EPA.

#### **Finalization of Report**

The FHWA received one response to the **Federal Register** Notice during the public comment period for this draft report. This response, from the American Road & Transportation Builders Association, was supportive of the Surface Transportation Project Delivery Program and did not relate specifically to Audit 2. This report is a finalized draft version without substantive changes.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors**

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

**ACTION:** Notice of Unified Carrier Registration Plan Procedures Subcommittee Meeting.

**TIME AND DATE:** The meeting will occur on October 9, 2018, at 1 p.m. Eastern Daylight Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1-866-210-1669, passcode 5253902#, to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Procedures Subcommittee will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. An agenda for this meeting will be available in advance of the meeting at <https://ucrplan.org>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors, at (505) 827-4565.

Issued on: September 28, 2018.

**Larry W. Minor,**

*Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0133]

#### Commercial Driver's License (CDL): Application for Exemption; U.S. Custom Harvesters, Inc. (USCHI)

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

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

**SUMMARY:** FMCSA announces its decision to grant the U.S. Custom Harvesters, Inc. (USCHI) an exemption from the "K" intrastate restriction on commercial driver's licenses (CDLs) held by custom harvester drivers operating in interstate commerce. The Federal Motor Carrier Safety Regulations (FMCSRs) exempt drivers of commercial motor vehicles (CMVs) controlled and operated by a person engaged in interstate custom harvesting, including the requirement that drivers be at least 21 years old. However, many younger custom harvester drivers hold CDLs with an intrastate-only (or "K") restriction. This has caused drivers of USCHI member companies to be cited during roadside inspections in a different State, as the "K" restriction means that the license is invalid outside the State of issuance, even when the younger driver is operating under the custom harvester exemption. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will 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 from October 3, 2018 through October 3, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

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 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 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 decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant 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 also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### Request for Exemption

Custom harvesters are businesses that supply the equipment and labor to assist farmers with harvesting during their busiest seasons. Typically, there are two different classes of operations, grain harvesting and forage harvesting. A grain harvester uses combines to harvest wheat, corn, barley, canola, sunflowers, soybeans, and grain sorghum, among others. These crop products are transported to an elevator or on-farm storage, where the crop is stored and later transported elsewhere to be processed into products for public use. A forage harvester uses a chopper to harvest whole-plant crops such as corn, sorghum, milo, triticale, and alfalfa. These crops are used for silage to feed livestock in dairies and feedlots. Custom harvesters travel from State to State and

can spend from a few days to several months cutting crops for one farmer.

USCHI stated that custom harvesters are experiencing a problem with the exemption in 49 CFR 391.2(a). It was adopted by the Federal Highway Administration on December 22, 1971 [34 FR 24218] and has been widely used by custom harvesters since then. Under this provision, drivers of commercial motor vehicles (CMVs) controlled and operated by a person engaged in custom harvesting are exempt from all of part 391, including the requirement to be at least 21 years of age to operate a CMV in interstate commerce. USCHI member companies frequently employ drivers 18-21 years of age, who are issued commercial driver's licenses (CDLs) with a "K" restriction that makes the license valid only for operations within the issuing State (49 CFR 383.23(a)(2) and 383.153(a)(10)(vii)). The problem arises because the CDL regulations, adopted long after 1971, were not drafted to include an exemption corresponding to section 391.2(a). As a result, the "K" restriction means that the license is invalid outside the issuing State, even though section 391.2(a) exempts younger custom harvester drivers from the 21-year-old age requirement when operating in interstate commerce. Section 391.2(a) does not preempt State CDL regulations, like requirement in section 383.23(a)(2) to "possess a CDL which meets the standards contained in subpart J of this part," including any "K" restriction imposed under section 383.153(a)(10)(vii) of subpart J. This has caused drivers employed by USCHI's members to be cited for CDL violations during inspections, which is an issue not only for the individual driver, but also for the custom harvester employer, whose safety record is adversely affected.

##### Public Comments

On May 1, 2017, FMCSA published notice of the USCHI application for exemption and requested public comment (82 FR 20415). The Agency received a total of thirteen sets of comments. Ten comments—all submitted by custom harvesters—supported the exemption. Two commenters—the Oregon Department of Transportation (ODOT) and the American Association of Motor Vehicle Administrators (AAMVA) expressed various concerns with the request. One other commenter did not take a position on the exemption.

Those filing in support of the request stated that a large percentage of their employees have been under the age of 21. They rely on the rule allowing 18-