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Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0135]

Entry Level Driver Training: Railsback HazMat Safety Professionals, LLC; Application for Exemption

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 application submitted by Rex Railsback, Owner, Railsback HazMat Safety Professionals, LLC (Railsback HMSP), for an exemption from the theory instructor qualification requirements in the entry-level driver training (ELDT) regulations. The exemption will allow Mr. Railsback to conduct theory (*i.e.*, classroom) training for driver trainees seeking to obtain a hazardous materials endorsement on their commercial driver's license (CDL). The exemption excuses Mr. Railsback from the requirement that a driver training instructor must possess a CDL with all applicable endorsements to perform ELDT theory instruction and meet applicable state qualification requirements for commercial motor vehicle (CMV) instructors. FMCSA concluded that granting the exemption is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: The exemption is effective from January 12, 2023 through January 12, 2028.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2022-0135" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "View Related Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number "FMCSA-2022-0135" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations 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., 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.

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 (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 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 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 also 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 Regulatory Requirements

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, established

minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and behind-the-wheel (BTW) training. The ELDT regulations also established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definition of "theory instructor" in 49 CFR 380.605. The definition requires that the instructor hold a CDL of the same (or higher) class, with all endorsements necessary to operate the commercial motor vehicle (CMV) for which training is to be provided, and have either: (1) a minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or (2) at least two years of experience as a BTW CMV instructor. In addition, the instructor must meet applicable state qualification requirements for CMV instructors. The definition also includes an exception to the requirement that a theory instructor currently possess an applicable CDL, if the instructor previously held a CDL and meets the other qualification requirements. The regulations were based in part on consensus recommendations from the Agency's ELDT Advisory Committee (ELDTAC), a negotiated rulemaking committee.

Applicant's Request

Rex Railsback, Owner, Railsback HazMat Safety Professionals, LLC, requests an exemption from the requirement that a driver training instructor must possess a CDL with all applicable endorsements to perform ELDT theory instruction. Mr. Railsback would perform theory (*i.e.*, classroom) training of 49 CFR parts 100-185 relating to the transportation of hazardous materials (HM) for driver trainees seeking to obtain a hazardous materials endorsement on their CDL.

IV. Method To Ensure an Equivalent or Greater Level of Safety

Mr. Railsback states that his experience and expertise in the HM field would be equal to or supersede theory training offered by others and would enhance the safety of HM transportation for prospective driver trainees. Mr. Railsback provided the following list of his credentials in his application for exemption to the Agency:

- Over 24 years' experience as a certified truck inspector holding certifications in Commercial Vehicle Safety Alliance (CVSA) NAS Inspection Part A and B, General Hazardous

Materials, Cargo Tank Inspection and other Bulk Packaging Inspection;

- 20 years' experience as an FMCSA, National Training Center (NTC) North American Standard (NAS) Inspection Part B and HM Instructor;
- 5 years' experience as an FMCSA, NTC Master Instructor for NAS Inspection Part A and B, General HM, Cargo Tank Inspection, and other Bulk Packaging Inspection;
- 14 years' experience as an FMCSA, NTC Instructor Development Coach;
- 9 years' experience conducting compliance reviews, specializing in HM carriers and shippers;
- 5 years' experience conducting Cargo Tank facility reviews;
- Member and subject matter expert for several FMCSA, NTC course development and update working groups;
- Previous Region III COHMED Chairman;
- Previous COHMED International Chairman;
- Former Lead MCSAP Trainer, Training Coordinator and Training Lieutenant for the Kansas Highway Patrol Troop 1;
- Certified civilian CVSA Hazardous Materials Instructor (HMIT).

V. Public Comments

On July 8, 2022, FMCSA published notice of the Rex Railsback application and requested public comment [87 FR 40876]. The Agency received eight comments. Six individual respondents submitted comments favoring the exemption application, while the Owner-Operator Independent Drivers Association (OOIDA) and one other individual commenter filed in opposition to the request.

Those individuals who filed in support cite Mr. Railsback's numerous years as a recognized industry expert in the field of HM training, including his previous employment with the Kansas Highway Patrol, his time as an active member of the CVSA and the Pipeline and Hazardous Materials Administration, and the Cooperative Hazardous Materials Enforcement Development (COHMED) programs. One individual commenter, Nick Wright, who filed in support of the exemption request, stated:

While Mr. Railsback does not possess a CDL as required by the ELDT regulations, he is not requesting to teach new CDL applicants how to operate commercial vehicles. Instead, he is intending to instruct the classroom portion (*i.e.*, "theory") about the safe and legal transportation of HM/dangerous goods aboard commercial motor vehicles. Mr. Railsback's application and list of qualifications he provided with his

application is only a drop in the bucket of his actual qualifications and knowledge. Mr. Railsback served as a state trooper for the Kansas Highway Patrol, during which the majority of his career was spent as a commercial vehicle inspector and instructor. Mr. Railsback has instructed, led, and mentored countless inspectors and instructors across the United States throughout his career. Mr. Railsback is well known nationwide as an authority on commercial vehicle regulations, with a strong emphasis and specialty on HM regulations. I have never met another person with the level of knowledge and experience with the HM regulations, both the classroom instruction portion and real-world hands-on experience in the field applying the regulations, as Mr. Railsback. During Mr. Railsback's career I considered him THE authority on hazardous materials regulations.

Five other individual commenters filed comments echoing support of the exemption request, for similar reasons.

OOIDA commented in opposition citing several reasons, including OOIDA's participation as a primary industry stakeholder on the ELDTAC when the "framework" of the ELDT rule was agreed upon. OOIDA noted its support for the provision in the final ELDT rule that required CDL experience for training instructors, stating that "we feel there is no substitute for an experienced behind-the-wheel trainer and employing these instructors will help achieve the objectives of the ELDT rulemaking." One other individual commenter opposed the exemption request, stating that while Mr. Railsback is a "well-qualified HM instructor," he is not a qualified theory instructor under Part 380 because he has never held a CDL.

VI. FMCSA Response to Comments and Decision

FMCSA has evaluated Rex Railsback's application for exemption and the filed public comments and has independently verified Mr. Railsback's credentials. FMCSA grants the exemption. While OOIDA commented in opposition regarding the experience requirements in the ELDT regulations for training instructors, it bears note that for a theory instructor for HM training, there is no BTW training involved, as there is no skills test for an HM endorsement. Mr. Railsback has extensive experience teaching HM-related subjects and is a widely acknowledged subject matter expert in the transportation of hazardous materials by CMV. Further, because the theory instruction curriculum for the H endorsement does not include any BTW training, the Agency believes that the exemption will likely achieve a level of safety that is equivalent to, or greater

than, the level that would be achieved absent such exemption, in accordance with § 381.305(a).

Extent of the Exemption

This exemption is granted to Mr. Rex Railsback as the owner of Railsback HMSP. The exemption from the requirement in 49 CFR 380.713(a) that training instructors must utilize theory instructors meeting the qualification requirements set forth in the definition of "theory instructor" in 49 CFR 380.605, will allow Mr. Railsback, through Railsback HMSP, to provide ELDT theory instruction for the H endorsement curriculum in Appendix E of Part 380 without meeting these requirements. The exemption is effective January 12, 2023 through January 12, 2028.

Robin Hutcherson,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0035]

Guidance on Development and Implementation of Railroad Capital Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of final guidance.

SUMMARY: FRA is publishing final guidance on the development and implementation of railroad capital projects that may be funded, in whole or in part, by FRA ("final guidance"). This final guidance follows publication of the proposed guidance ("proposed guidance") on June 28, 2022.

ADDRESSES: The final guidance is available at <https://regulations.gov> under docket number FRA-2022-0035.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. David Valenstein, Office of Railroad Development, at david.valenstein@dot.gov or 202-493-6368; or Mr. Michael Longley, Office of Rail Program Development, at michael.longley@dot.gov or 202-493-6377.

SUPPLEMENTARY INFORMATION:

I. Overview

Over the next five years, the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the "Bipartisan Infrastructure Law") will provide unprecedented Federal funding