



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2019-0174]

Commercial Driver's License Standards: Application for Exemption; Wilson Logistics

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

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

SUMMARY: FMCSA announces that Wilson Logistics has applied for an exemption from the requirement that the holder of a Commercial Learner's Permit (CLP) be accompanied by the holder of a Commercial Driver's License (CDL), seated in the front seat, while the commercial motor vehicle (CMV) is being driven by the CLP holder. Specifically, Wilson Logistics requests an exemption to allow CLP holders who have successfully passed the CDL skills test to drive a CMV without having a CDL holder seated in the front seat. Wilson Logistics states that the CDL holder would remain in the CMV while the CLP holder is driving, but not necessarily in the passenger seat. Wilson Logistics believes that the exemption, if granted, would promote greater productivity and help individuals who have passed the CDL skills test return to actively earning a living faster. FMCSA requests public comment on Wilson Logistics' application for 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-2019-0174 by any of the following methods:

- Federal Rulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- 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.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this document. 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. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (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 document (FMCSA-2019-0174), 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 comments online, go to www.regulations.gov and put the docket number, "FMCSA-2019-0174" 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. An option to upload a file is provided. 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 and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the 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 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 Agency's decision 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 of exemption also specifies the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Wilson Logistics is a nationwide motor carrier with a fleet of over 700 commercial motor vehicles (CMVs). Wilson Logistics seeks an exemption from the provision in 49 CFR 383.25(a)(1) that requires a CDL driver to be seated in the front seat of a CMV operated by a CLP holder. Under Wilson Logistics' exemption request, a CDL holder would remain in the vehicle while a CLP holder who has passed the skills test is driving – just not always in the front seat. Wilson Logistics believes this would allow the CLP holder to participate in a revenue-generating trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile. Wilson Logistics advises that, if granted, 400-500 CLP holders would operate under the terms of the exemption each year.

Wilson Logistics states that 49 CFR 383.25(a)(1) creates undue burdens on the company and its CLP holders, is cost intensive, and contributes to the driver shortage affecting the commercial trucking industry. Wilson Logistics explains that, previously, “it was not uncommon for States to issue temporary CDLs to CLP holders for the return trip to collect the CDL document from their State of domicile. During that time, CDL holders were neither required to log themselves ‘on duty’ when supervising the CLP holder who had a temporary CDL, nor did they always remain in the passenger seat of the CMV. Under that scenario, the productivity of the CMV, the earnings capacity of the CDL and CLP holders, and the logistics of the motor carrier’s freight network were all protected. Currently carriers must assign a second CDL holder to the vehicle to accomplish the on-duty work that was previously performed by the CLP holder who had a temporary CDL.”

Wilson Logistics contends that compliance with the CDL rule leaves it with the following two options: (1) Secure some mode of public transportation from the State of

training to the State of domicile to allow the CLP holder to pick up his/her CDL document before returning to Wilson Logistics; or (2) route the team of drivers directly to the CLP holder's State of domicile, often against the natural flow of the freight network. Wilson Logistics argues that securing public transportation for each of the CLP holders under the first option entails extreme cost burdens to the company; the second option is no better because routing CLP holders directly to their home States, commonly without reference to shipper demand, introduces extreme cost inefficiencies.

In addition, Wilson Logistics asserts that CDL-issuing agencies may require several days, if not weeks, to secure the CLP holder's licensure materials; CLP holders suffer financial hardship during this waiting period. The exemption sought would apply only to those Wilson Logistics drivers who have passed the CDL skills test and hold valid CLPs.

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

To ensure an equivalent level of safety, Wilson Logistics asserts that it offers a company-sponsored, hands on, on-the-job training program. In its program, CLP holders will spend a minimum of two or three weeks driving over-the-road with a CDL instructor in the passenger seat. Wilson's CLP holders deliver loads to customers in all manner of weather and traffic conditions. Wilson Logistics trains drivers on all aspects of the job before drivers take their CDL exams, which prepares them better for every part of the job.

Once Wilson Logistics' drivers pass their CDL skills test, administered by Wilson as a CDL third-party tester, the CLP holders have the passing scores in their possession. Wilson Logistics then uploads the scores to the Commercial Skills Test

Information Management System (CSTIMS) in accordance with the State's requirements and the State Driver's Licensing Agency for the students' State of domicile to have access to the information. In addition to the test scores, the drivers' CLP document would be scanned into the driver profiles with the company's Compliance Department before being allowed to take their first load after the CDL skills test. Wilson Logistics would ensure that all CLP holders would have their skills test scores in their possession at all times until they receive their CDL.

Wilson Logistics notes that CLP holders who pass the skills test after training in their State of domicile would be allowed to start operating the CMV without someone in the passenger seat – they would have received a licensing document from the agency.

Wilson Logistics believes that permitting a CLP holder to drive *en route* to his or her State of domicile without a CDL holder in the passenger seat is safer than current State regulations that allow a new CDL holder to drive unsupervised, moments after receiving the CDL.

FMCSA has previously granted similar exemptions to C.R. England – initially in 2015, renewed in 2017 [82 FR 48889, Oct. 20, 2017] – and to New Prime, Inc. [82 FR 29143, June 27, 2017].

A copy of Wilson Logistics' application for exemption is available for review in the docket for this document.

Issued on: October 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019-24100 Filed: 11/5/2019 8:45 am; Publication Date: 11/6/2019]