



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0044]

Commercial Driver's License: Ohio Department of Public Safety; Application for Exemption

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to deny the Ohio Department of Public Safety's (DPS) request for an exemption to modify the mandatory skills test requirements for qualified military veterans. FMCSA has determined that the applicant did not provide an alternative to ensure that an equivalent level of safety would be achieved under the exemption. Furthermore, although a majority of the docket comments favored the exemption, none provided supporting data.

DATES: This decision is effective [INSERT DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE].

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; 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

[Viewing Comments and Documents](#)

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2019-0044 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility 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., e.t., Monday through Friday, except Federal holidays.

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 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 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 must specify the effective

period (up to 5 years) and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Ohio DPS requested an exemption from the requirement in 49 CFR 383.77(b)(2)(i)(A) and (C) that an applicant for a skills test waiver certify that he/she (1) is regularly employed or was so employed within the last year in a military position requiring operation of a CMV, and (2) operated a vehicle representative of the CMV that the driver operates or expects to operate for at least 2 years immediately preceding discharge from the military. In lieu of those requirements, Ohio DPS proposed that the applicant be required to have held a military position that required operation of a CMV for at least 2 years sometime during his/her military career, thus eliminating the current 1-year window to apply for a skills test waiver.

According to Ohio DPS, its goal is to promote the opportunities for experienced CMV operators who have served in the military by reducing the regulatory burden of obtaining a CDL. By doing so, Ohio DPS hopes that an increase in the population of CDL holders will benefit the Ohio transportation industry, and create better civilian employment opportunities for Ohio veterans and service members.

In addition, as this issue could be applicable in each of the States, FMCSA requested public comment on whether the exemption, if granted, should cover all State Driver's Licensing Agencies (SDLAs).

A copy of the Ohio DPS's application for exemption is available for review in the docket for this notice.

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

To ensure an equivalent or greater level of safety, Ohio DPS proposed a skills test waiver process in which the applicant would submit the following documentation to the Bureau of Motor Vehicles: (1) a violation-free driving record for the last 2 years; (2) proof of being regularly employed in a military position requiring operation of a CMV; and (3) proof of experience operating a representative vehicle which was exempt from the requirements of 49 CFR 383.113(c) for at least 2 years. In addition, applicants would be required to submit an Ohio waiver form similar to FMCSA's Military Skills Test Waiver form, currently found on FMCSA's website.

V. Public Comments

On April 18, 2019, FMCSA published notice of the application and requested public comment (84 FR 16330). The Agency received 37 comments, 35 of which favored both the exemption and its extension to all SDLAs. Among the advocates for the exemption were the Pennsylvania Department of Transportation (PennDOT); the American Beverage Association; the Ohio Trucking Association; the Ohio Propane Gas Association; and the National Propane Gas Association (NPGA); and two individual commenters. Additionally, 27 Members of Congress jointly expressed support for the application. A primary reason cited for the exemption was the trucking industry's serious need for qualified, skilled drivers. Commenters believed that the exemption would be a positive step toward addressing that need and would simultaneously credit the relevant skills and experience gained through military service toward obtaining a CDL.

NPGA stated, "...It is clear that the depth and breadth of military vehicle training is beyond the civilian skills assessment for a CDL. Similarly, it is evident that military

supervisors possess considerable expertise to assess the adequacy of an individual's skills during military service. Thus, the training, assessment, and supervision that a veteran received during military service presents at least the same level of safety, if not greater, as the level of safety achieved by administering the skills assessment of the CDL exam to military veterans.”

Two individuals opposed the Ohio DPS request. One commenter noted that “No length of time is stipulated, hence a driver who drove a military vehicle 10 years ago would qualify even though he has no recent experience. Vehicles change frequently with upgrades to safety and technology.”

VI. FMCSA Response and Decision

FMCSA has evaluated the Ohio DPS' application and the public comments and has concluded that the applicant did not provide an alternative that would ensure an equivalent level of safety under the exemption. Although a majority of the docket commenters favored the exemption, none provided supporting data. The Agency does not have data to determine whether the skills required to operate a CMV decline over time when not used regularly, which the exemption application would allow. For these reasons the Agency has decided to deny the exemption request.

James W. Deck,
Deputy Administrator.

[FR Doc. 2020-21325 Filed: 9/25/2020 8:45 am; Publication Date: 9/28/2020]