



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0180]

Commercial Driver's License (CDL) Testing; Application for Exemption: State of Minnesota

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

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

SUMMARY: FMCSA announces that the State of Minnesota seeks reconsideration of its application for exemption from regulations governing commercial driver's license (CDL) skills testing procedures and practices that was denied on May 9, 2017.

Minnesota believes it can deliver its CDL skills testing more efficiently in an alternative manner. It asserts that its method of delivering skills testing will maintain the testing standards enumerated by the regulations. FMCSA requests public comment on Minnesota's application for reconsideration.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0180 by any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Dockets Operations; 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: Dockets Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, 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.

- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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: Ms. Pearlie Robinson, 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 notice (FMCSA-2016-0180), 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-2016-0180" 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. 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 the Federal Motor Carrier Safety Regulations (FMCSRs)(49 CFR part 350 et seq.). 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 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 exemption is granted. The notice must also specify the effective period of the exemption (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

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [49 U.S.C. chapter 313, implemented by 49 CFR part 383] was designed to improve highway safety by ensuring that truck and bus drivers are qualified to drive a commercial motor vehicle (CMV). States issue drivers' licenses to CMV operators, but the Federal government sets minimum requirements for the issuance of a commercial driver's license (CDL). Subpart H of part 383 of the FMCSRs sets forth the principal requirements governing State testing of applicants for a CDL.

On August 1, 2016, FMCSA published a notice in the Federal Register requesting public comment on Minnesota's application for exemption from certain testing

requirements in § 383.133 (81 FR 50592). Under § 383.133(c)(6) the CDL skills test must be conducted in three parts in the following order: pre-trip inspection, vehicle control skills, and on-road driving. Minnesota asked that it be allowed to combine the second and third parts (vehicle control skills and on-road driving) and thus reduce the skills tests to two parts. It also requested to be exempted from using the American Association of Motor Vehicle Administrators (AAMVA) 2005 Test Model Score Sheet. Finally, it requested to be exempted from the requirement that applicants must pass the pre-trip inspection portion of the exam before proceeding to the balance of the test.

The Agency received 12 comments. Many commenters voiced opposition to Minnesota's request for relief from using the AAMVA Score Sheet during testing. Most commenters opposed allowing Minnesota to shorten the testing to two parts and to allow applicants who fail the initial portion of the test to proceed to the on-road testing. Generally, those opposed felt that granting the exemptions would compromise the standardization of testing among the various States. On May 9, 2017, FMCSA denied Minnesota's application for exemption for the following reasons:

- FMCSA opposed allowing a State to amend the AAMVA test model score sheet, which has been tested and validated for use by all States in testing prospective CMV drivers. When a CDL driver moves to a new State and seeks to transfer his or her CDL to that State, universal use of the score sheet assures the new State that the driver met a baseline standard for safety when his or her CDL was first issued.
- FMCSA opposed combining the skills test. Under the proposed exemption, an individual could pass Minnesota's combined test even though he or she has exceeded the maximum point deduction allowed when the two portions (basic controls or on-the road) of the skills test are given separately.

- FMCSA opposed allowing CDL applicants to operate CMVs at highway speeds when they have not demonstrated the proper handling of the vehicle at lower speeds during the basic controls test.

Request for Reconsideration of Agency Decision

Minnesota requests that FMCSA reconsider its denial of the exemption described. The State asks to be exempt from using the AAMVA 2005 Test Model Score Sheet and asserts that FMCSA's position is moot because Minnesota's score sheet evaluates the same driving skills and contains the same inspection elements as the AAMVA scoresheet. Details are provided in the State's request for reconsideration.

Minnesota asks that it be allowed to combine vehicle control skills and on-road driving and thus have two parts to its skills test. Minnesota argues that FMCSA's finding in the denial letter does not accurately describe how its scoring is applied.

Finally, Minnesota asks to be exempted from the requirement that applicants must pass the pre-trip inspection portion of the exam before proceeding to the balance of the test. Minnesota contends that the order in which the elements of the CDL test are conducted does not result in unsafe conditions or the operation of a CMV at highway speeds. Minnesota explained that exam stations are located in low traffic speed residential and downtown areas across the State. Once the vehicle inspection is completed, drivers travel at low speeds per traffic signs to the location where backing exercises are conducted. The basic controls segment consists of backing maneuvers with potential pull ups and is performed at very low speed. Consequently, drivers do not proceed to highway speeds prior to completing the basic control skills.

A copy of FMCSA's May 9, 2017, letter denying Minnesota's original application and of the State's request for reconsideration is in the docket listed at the beginning of this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Minnesota's request for reconsideration of its application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,
Associate Administrator for Policy.

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