



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 Final Disposition: Denial of Reconsideration of Request for Exemption.

SUMMARY: FMCSA announces its decision to deny the State of Minnesota's request for reconsideration of the Agency's 2017 denial of an application for exemption from the regulations governing the commercial driver's license (CDL) skills testing procedures and practices. Specifically, the Agency denies Minnesota's request to perform the CDL skills test in the order specified in the CDL regulations. The Agency denies Minnesota's requested relief from the requirement to use the American Association of Motor Vehicle Administrators' (AAMVA) 2005 Test Model Score Sheet and from the requirement that skills tests be conducted in three parts.

DATES: This decision is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety

Standards; 202-366-4225 or MCPSPD@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, go to www.regulations.gov, insert the docket number “FMCSA-2016-0180” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2016-0180” in the keyword box, click “Search,” and chose the document to view.

If you do not have access to the internet, you may view the docket online 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 portions of 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 the 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 compliance with 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. Current Regulatory Requirements

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 CDLs to CMV operators, but the Federal government sets minimum requirements for the issuance of a CDL. Subpart H of part 383 sets forth the principal requirements governing State testing of applicants for a CDL.

IV. Background

On August 1, 2016, FMCSA published Minnesota's application for exemption from certain testing requirements in 49 CFR part 383 and requested public comment (81 FR 50592). Under § 383.133(c)(6) the CDL skills tests must be conducted in the following order: pre-trip inspection, vehicle control skills, and on-road skills. Minnesota asked that it be allowed to combine the second and third parts (vehicle control skills and on-road skills) and thus reduce the skills tests to two parts. The State also asked to be exempted from using the AAMVA 2005 Test Model Score Sheet. Finally, the State asked 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 opposed the request for relief from using the AAMVA Score Sheet during testing. Most also opposed allowing the State to shorten the testing to two parts and allowing applicants for a Minnesota CDL 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 ensured by the existing regulations. 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 validated for use by all States in testing prospective CDL holders. 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 various elements of the skills tests. 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 of the skills tests (basic controls or on-road) 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.

V. Applicant's Request

In 2018, Minnesota requested reconsideration of FMCSA's denial of the exemption application. The State asked to be allowed to use its own scoresheet to score applicant drivers during the skills tests. Minnesota also requested to be allowed to combine vehicle control skills and on-road skills segments and thus have only two parts to its skills tests. Minnesota believes that FMCSA's denial letter does not accurately describe how its scoring is applied. Finally, Minnesota asked to be exempted from the

requirement that applicants pass the pre-trip inspection portion of the exam before proceeding to the balance of the test. The State argued that the order in which the elements of the CDL skills tests are conducted does not result in unsafe conditions or the operation of a CMV at highway speeds. FMCSA's May 9, 2017, denial letter and the State's request for reconsideration are in the docket listed at the beginning of this notice.

VI. Equivalent Level of Safety

To ensure an equivalent level of safety, Minnesota asserts that its score sheet evaluates the same driving skills and contains the same inspection elements as the AAMVA score sheet. Regarding administering the skills tests out of order, Minnesota explained that exam stations are in residential and downtown areas across the State where traffic speeds are low. 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 test.

VII. Public Comments

On November 30, 2020, FMCSA published a notice seeking public comment on the request for reconsideration (85 FR 76657). The Agency received five comments. The Minnesota School Bus Operators Association supported the exemption request, writing:

If Minnesota Driver and Vehicle Services believes that the accommodations outlined in Doc FMSCA-2016-0180 will allow them to deliver CDL skills testing more efficiently and will allow for more CDL tests scheduled, we fully support those efforts. Additionally, in reviewing the request, we see no evidence that it would compromise the test or the safety of those applicant drivers. These requests appear to be minor in nature and will allow the testing sites more flexibility to conduct tests.

The remaining four respondents opposed the exemption: The Brotherhood of Locomotive Engineers and Trainmen (BLET); Commercial Vehicle Training Association

(CVTA); Interstate Truck Driving School of MN, LLC (ITDS); and Mr. Michael Millard.

The BLET wrote:

Our concern with this exemption is the Minnesota equivalent to the road test for CDL applicants does not require drivers to be tested on crossing railroad tracks, therefore new CDL drivers are not required to display proper skills and awareness to safely cross railroad tracks with commercial vehicles. Many of the new drivers going through CDL training are immigrants from other countries and may not have experience crossing railroad tracks in this country.

The CVTA said, “Granting the exemption would be problematic as it would be a formal approval of Minnesota’s practice, and permit activities out of uniformity and congruence with the national system of CDL testing. Minnesota has offered no data as required by 49 CFR § 381.310 to substantiate the claim that a two-part test is safer.”

The ITDS stated:

The contradiction created by the Minnesota testing methods undermines the successfulness of proper training to comply with regulations. I respectfully request that the FMCSA deny the waiver request from the State of Minnesota. I suggest the state be required to implement the AAMVA testing model within 12 months to give the state adequate time to comply. This requirement would make it easier for the State of Minnesota to make any changes that might be required by proposed AAMVA modifications in 2022.

Mr. Millard commented:

The trucking industry has had an increase in CMV crashes, and I suspect the largest contributor is poorly trained drivers who are issued CDLs. I oppose Minnesota's request and struggle to understand why the state hasn't adopted the standardized testing to make it work. I believe it's haphazard to approve a plan without a written summary outlining the supposed better way. If Minnesota's way is better, then perhaps the FMCSR should be revised to follow suit. I see a slippery slope in non-standardized testing expanding by allowing Minnesota to deviate from standardized practices.

VIII. FMCSA Response to Comments and Decision

FMCSA carefully reviewed Minnesota’s petition for reconsideration and the public comments. The Agency has concluded that Minnesota provided no additional information that would affect FMCSA’s 2017 denial of the request for relief from use of the AAMVA testing model and no additional information to persuade the Agency to

allow the State to conduct a two-part skills test. Therefore, the Agency denies the application for exemption from the CDL regulations and reaffirms its previous denial.

FMCSA believes that conducting the elements of the CDL skills test in order (i.e., pre-trip, vehicle control skills test, on-road skills test) is the best practice for the safety and efficiency of the tester.

Robin Hutcheson,
Deputy Administrator.

[FR Doc. 2022-12875 Filed: 6/14/2022 8:45 am; Publication Date: 6/15/2022]