



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA-2013-0147]

Qualification of Drivers: Skill Performance Evaluation Program; Virginia

Department of Motor Vehicles Application for Exemption Renewal

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

ACTION: Notification of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew an exemption for truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) Certificate to operate commercial motor vehicles (CMV) in interstate commerce. The exemption enables interstate CMV drivers who are licensed in Virginia and are subject to the Federal SPE certificate requirements to continue to fulfill the Federal requirements with a State-issued SPE certificate that qualifies such drivers to operate CMVs in interstate commerce. The exemption renewal is for a period of 2 years.

DATES: This renewed exemption is effective from July 8, 2023, through July 7, 2025.

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 Docket Number FMCSA-2013-0147 using any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2013-0147) for this notification. 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. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption 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 <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC

20590, (202) 366-4001, FMCSAMedical@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notification (FMCSA-2013-0147), indicate the specific page and section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov, insert the docket number "FMCSA-2013-0147" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notification listed, click the "Comment" button, and type your comment into the text box on 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption for a class of persons from the Federal Motor Carrier Safety Regulations for up to 5 years if it finds "such exemption would likely achieve a

level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption” (49 U.S.C. 31315(b)(1)). The Virginia Department of Motor Vehicles (VA DMV) has requested on behalf of Virginia-licensed drivers who require a Federal SPE certificate renewal of the current exemption. A copy of the request is available in Docket No. FMCSA-2013-0147.

III. Background

Current Regulatory Requirements

CMV drivers who are otherwise qualified to drive a CMV but are not physically qualified to drive under 49 CFR 391.49(b)(1) or (2) because of a loss or impairment of limbs, may drive a CMV if FMCSA has granted an SPE certificate to that person under 49 CFR 391.49.

Initial Decision Granting Exemption

In 2014, FMCSA initially granted the VA DMV’s request for exemption to enable Virginia-licensed drivers subject to the Federal SPE certificate requirements under 49 CFR 391.49 to fulfill the Federal requirements with a State-issued SPE certificate (79 FR 38659, July 8, 2014). The exemption required the State-issued SPE certificate to be based on standards, processes, and procedures comparable to those used by FMCSA, and the State was required to maintain copies of all evaluation forms and certificates issued to allow FMCSA to conduct periodic reviews of the State’s program. Virginia-licensed drivers who receive the State-issued SPE certificate are allowed to operate CMVs in interstate commerce. The exemption contained specific terms and conditions to ensure that the VA DMV maintained an equivalent level of safety to the Federal SPE process.

2016 and 2018 Renewals

FMCSA renewed the exemption on the same terms and conditions for a 2-year period from July 9, 2016, to July 9, 2018 (81 FR 44674, July 8, 2016).¹ FMCSA renewed the exemption again for a 5-year period, from July 8, 2018, to July 8, 2023 (84 FR 3532, Feb. 12, 2019).

Renewal Request

In its pending renewal request on behalf of the exempted drivers, the VA DMV noted that the current exemption allows trained staff from the Commonwealth of Virginia to review applications and conduct SPEs for Virginia commercial driver's license (CDL) holders and the Virginia DMV Commissioner to approve SPE certificates. It notes that the application package mirrors the package otherwise required by FMCSA for SPE applications. The VA DMV will use an identical process and identical standards to process SPE applications. It further noted that, "Virginia DMV staff assigned to review SPE application packages are medical professionals (licensed practical nurses and Registered Nurses)." In addition, it stated that the Medical Review staff receive FMCSA training on how to conduct a thorough review of the SPE application information and that new staff are required to go through an extensive orientation. It noted that the nurse evaluators and the overseeing Healthcare Compliance Officer (Registered Nurse) have all participated in training conducted by FMCSA or will have recently attended the training provided by FMCSA on May 22 – 24, 2023.

Additionally, Medical Review staff forward those drivers who have met the Federal criteria for an SPE certificate to the Driver Licensing Quality Assurance (DLQA) staff to conduct the SPEs. The DLQA examiners hold Class A CDLs and have completed

¹ At the time the first exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, on December 4, 2015, Congress enacted the Fixing America's Surface Transportation (FAST) Act, which allows an exemption to be granted for a period of 5 years (49 U.S.C. 31315(b)(2)) if FMCSA finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (49 U.S.C. 31315(b)(1)).

the FMCSA training required to conduct evaluations. Virginia states that since completing their training SPE examiners have coordinated with local FMCSA representatives to ensure retention of knowledge. The May 22 – 24, 2023, training will provide training to additional DLQA staff who have never had the class to allow Virginia to have a complement of examiners to accommodate any retirements in the future.

The VA DMV noted that DLQA examiners are positioned across VA DMV's eight districts and each district has a CDL test site that can be used for the non-driving and off-highway portion of the SPE, and each district has a planned test route for the on-highway portion of the SPE. It states this minimizes the wait times for SPE applicants.

Finally, the VA DMV notes that it has participated in audit reviews, record reviews, and submits regular reports to FMCSA as part of ongoing quality assurance process. Since the most recent July 2018 renewal, the VA DMV notes that 37 Virginia drivers have applied for and obtained SPE certificates under the exemption and that an additional 40 to 50 drivers renew their certificates each year.

The VA DMV notes that its program has contributed to Virginia's commitment to being the most military and veteran-friendly state in the nation through the Troops to Trucks Program (www.dmvnow.com/troopstotrucks). And it states that expediting the SPE process assists wounded veterans and military personnel with transition to civilian employment and reduces the time between discharge and employment for many wounded veterans "while addressing the trucking industry's shortage of qualified licensed commercial truck drivers."

IV. Equivalent Level of Safety

Virginia's SPE program is essentially identical to the current FMCSA SPE program and is subject to oversight by FMCSA to ensure that VA's processes are equivalent to FMCSA's SPE processes. Virginia continues to adhere to the application process modeled on the FMCSA process. State personnel who conduct the SPE

complete the same training as FMCSA personnel conducting SPEs and follow the same procedures and testing criteria used by FMCSA. FMCSA has conducted ongoing monitoring and SPE program reviews and Virginia continues to maintain records of applications, testing, and certificates issued for periodic review by FMCSA. Based on FMCSA's analyses of the applications and the program, FMCSA has determined that continuing the exemption for the class of exempted drivers and continuing to allow the VA DMV to issue SPE certificates for Virginia residents will provide an equivalent level of safety as provided by FMCSA issuing the SPE certificates.

FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption. There is no indication of an adverse impact on safety under the terms and conditions specified in the initial exemption or exemption renewals. FMCSA concludes that provisionally extending the exemption for a period of 2 years, under the terms and conditions listed below, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Decision

A. Granting of Exemption

FMCSA provisionally renews the exemption for interstate Virginia-licensed drivers to be relieved of the requirement for an SPE certificate issued by FMCSA under 49 CFR 391.49 for a period of 2 years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Sec. VII below. The exemption renewal is otherwise effective July 8, 2023, through July 7, 2025, 11:59 p.m. local time, unless renewed or rescinded.

B. Terms and Conditions

The exemption to allow the VA DMV to issue an SPE certificate for interstate drivers who have experienced an impairment or loss of a limb and are licensed in the Commonwealth of Virginia is subject to the following terms and conditions:

1. VA DMV's SPE program must be substantially similar to the current requirements in 49 CFR 391.49.
2. VA DMV must maintain an application process modeled on the FMCSA process and submit information concerning the application process to FMCSA's Medical Programs Division for review, as requested.
3. State personnel who conduct SPEs must complete SPE training identical to that of FMCSA personnel currently administering the Federal SPE program.
4. The SPE and scoring for the SPE must be done using the same procedures and testing criteria used by FMCSA.
5. VA DMV must maintain records of applications, testing, and certificates issued for periodic review by FMCSA.
6. VA DMV must submit a monthly report to FMCSA listing the names and license number of each driver tested by the State and the result of the SPE (pass or fail).
7. As requested, the VA DMV must provide records required to be retained under this exemption and provide any other information necessary for FMCSA to evaluate the VA DMV's compliance with the terms and conditions of this exemption.
8. Each driver who receives a State-issued SPE certificate must carry a copy of the certificate when driving for presentation to authorized Federal, State, or local law enforcement officials.

VI. Preemption

During the period the exemption is in effect; no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption. An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. The decision to grant the exemption amounts to automatic Federal ratification of the State-issued SPE Certificate and therefore prohibits other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate must be treated as if it had

been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE certificate are allowed to operate CMVs in interstate commerce.

VII. Termination

If the Agency determines that safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption. The exemption will also be revoked if the exemption has resulted in a lower level of safety than was maintained before it was granted; or continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the Federal Motor Carrier Safety Regulations.

VIII. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on the application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notification will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notification. 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.

Robin Hutcheson,
Administrator.

[FR Doc. 2023-13731 Filed: 7/5/2023 8:45 am; Publication Date: 7/6/2023]