



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0236]

Commercial Driver's License: Application for Exemption; Florida Department of Highway Safety and Motor Vehicles

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its denial of an application for exemption, filed by the Florida Department of Highway Safety and Motor Vehicles (FLHSMV), from the commercial driver's license (CDL) skills testing regulation requiring the three-part CDL skills test to be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. The FLHSMV applied for an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection or basic vehicle controls segments of the CDL skills test and allow the applicant to come back at a later date to retake the failed segment(s) only. After reviewing the application and the comments submitted to the docket, the Agency has determined the record does not show that granting the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722; richard.clemente@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-2023-0236” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2023-0236” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations 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(b) to grant exemptions from 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 safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the Federal Register (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which

the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 383.133(c)(6) of the FMCSRs, States must administer a three-part CDL skills test to applicants for CDLs in the following order: 1) pre-trip inspection, 2) basic vehicle control skills, and 3) on-road skills.

Applicant's Request

The FLHSMV requested an exemption from the requirement in 49 CFR 383.133(c)(6). The state of Florida operates as a third-party testing state, where nearly all CDL skills tests are conducted by third-party testers. If an applicant fails one segment of the test, they cannot attempt the next segment(s) and must return on a different day to retake all three parts of the test. The FLHSMV requested an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection (step 1) or basic vehicle controls (step 2) segments of the test and allow the applicant to come back at a later date to retake only the failed segment(s). The applicant stated that the most failed segment of the test is the pre-trip inspection, and, if the exemption is granted, the tester could continue to test basic vehicle control skills and on-road skills in this instance. If the CDL applicant passed these other portions of the test, they could return at a later date and retake just the pre-trip inspection portion of the test. The exemption applicant further stated that, if granted, the exemption would allow compliance staff to better utilize their time and resources in completing the required monitoring of third-party testers.

Applicant's Method to Ensure an Equivalent or Greater Level of Safety

The FLHSMV believes that an equivalent or greater level of safety will be maintained because the decision to continue with the test would reside with the certified experienced testers. The FLHSMV also noted that, with the implementation of the Federal Entry-Level Driver Training regulations, most applicants being tested have been certified as proficient in operating commercial motor vehicles (CMVs), having completed behind-the-wheel training that prepares them to safely operate a CMV during the on-road portion of the CDL skills test.

IV. Public Comments

On December 5, 2023, FMCSA published FLHSMV's application and requested public comment [88 FR 84387]. The Agency received 30 comments; 19 in opposition, 8 in support, and 3 others expressed no position either for or against the exemption request. Of the 19 commentors opposed to granting the exemption, 17 were individuals and two were trucking companies. Tim Kordula provided the following comment that captured the concerns raised in most of the opposing comments: "The American Association of Motor Vehicle Administrators or (AAMVA), along with the FMCSA has done [its] research into the methodology behind why the tests are performed the way they are. An applicant failing the pre-trip and then being allowed to continue is not only unsafe but irresponsible. The FMCSA rules set forth... a pre-trip must be done and the driver must be sure the vehicle is in good operating order PRIOR (sic) to moving the vehicle. Allowing the test to continue goes against that rule as well as what the CDL schools are trying to teach."

Of the eight commenters filing in support, three were from industry trade associations: the Commercial Vehicle Training Association (CVTA), the National Tank Truck Council (NTTC), and the American Bus Association (ABA). CVTA commented that the additional flexibility that the exemption would give Florida's CDL testing program would help address skills testing delays. According to CVTA, citing a study of

cumulative data from 33 states, “These delays put jobs on hold for 258,744 drivers and resulted in over \$1 billion in lost wages for these drivers.” CVTA’s comment was referring to an independent economic analysis commissioned by CVTA and published in 2019. CVTA further stated “As a result, federal and state governments missed out on an estimated loss of \$234 million in forgone income taxes and \$108 million in forgone state and local sales taxes that could have been generated in the absence of skills testing delays.” CVTA added that skills testing delays can cause a new driver’s skills to deteriorate.

The NTTC agreed with CVTA, noting that if the petition is approved, skills testers in Florida will be able to devote less time to areas in which drivers have already shown they are competent, increasing the efficiency of the CDL credentialing process. According to NTTC, “Given the well documented commercial driver shortage, it is imperative that we reduce barriers to individuals attaining the proper credentials for operating commercial vehicles.”

ABA commented in support of granting the exemption, stating “in providing additional flexibility to the testing protocol, testing delays will be mitigated as students will only need to take portions of the test they did not pass, freeing up vital resources for the administration of additional evaluations.” ABA continued its comment with “This will also incentivize students to retest, instead of giving up because they could not complete the testing protocol in a precise order. We believe this could be a valuable step in reducing the driver shortage and welcoming new qualified drivers into the commercial driving industry.”

V. FMCSA Safety Analysis and Decision

FMCSA reviewed the FLHSMV application and the public comments and denies the exemption request. The Agency believes that conducting the elements of the CDL skills test in the required order (*i.e.*, pre-trip inspection, vehicle control skills test, on-

road skills test) is the best practice for the safety of the CDL applicant, the examiner, and any motorists who must share the public roadway with the CDL applicant during the on-road portion of the CDL skills test. The current regulations provide flexibility for retesting, depending on when the failure in the three-part CDL skills test happens. If the CDL applicant fails step 1, the pre-trip inspection, the test ends, and the candidate must come back to take the entire test. If the candidate passes step 1, the pre-trip inspection, but fails step 2, the basic vehicle control portion, the test ends, and the candidate must come back to repeat step 2, the basic vehicle control, and take step 3, the on-the-road portion. Finally, if the candidate passes steps 1 and 2, but fails step 3, the on-the-road portion, the candidate must return to repeat step 3.

The sequence of the skills test ensures that an applicant has demonstrated sufficient knowledge and skills to safely attempt the next step in the testing process. The current regulations also provide flexibility, in that generally, applicants are not required to retake portions of the test which have been successfully completed. Moreover, with the implementation of the Federal Entry-Level Driver Training (ELDT) requirements, the Agency believes SDLAs should see a reduction in the percentage of applicants who fail portions of the CDL skills test.

For the above reasons, FLHSMV's exemption application is denied.

Sue Lawless,

Acting Deputy Administrator

[FR Doc. 2024-08335 Filed: 4/17/2024 8:45 am; Publication Date: 4/18/2024]