



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0221; FMCSA-2023-0266]

Commercial Driver's License: State of Hawaii Department of Transportation; Application for Exemption

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

ACTION: Notice of final disposition; grant in part, and deny in part, application for exemption.

SUMMARY: FMCSA announces its decision to grant in part and deny in part the exemption application from the Hawaii Department of Transportation (HDOT). FMCSA grants all State Driver's Licensing Agencies (SDLAs) a five-year exemption to issue a non-domiciled commercial driver's license (CDL) or non-domiciled commercial learner's permit (CLP) to citizens of Freely Associated States (FAS) who reside in the United States and who have a valid, unexpired passport issued by an FAS and a Form I-94 or I-94A. The FAS are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. FMCSA concludes that granting the exemption, subject to the terms and conditions set forth below, is likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved absent the exemption. FMCSA denies HDOT's request to issue standard, rather than non-domiciled, CLPs and CDLs to FAS citizens. This exemption decision supersedes the exemption previously granted to the Oregon Department of Transportation that allowed Oregon to issue standard, rather than non-domiciled, CLPs and CDLs to FAS citizens.

DATES: The exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires May 14, 2031.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 507-0363; bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9317 or (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0221/document> or <https://www.regulations.gov/docket/FMCSA-2023-0266/document> and choose the document to review. To view comments, click the applicable notice, then click “Document Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in room W58-213 of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., 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 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 the applicant’s safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, 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 without the exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the Federal Register (49 CFR 381.315(b)). If granted, the notice will identify the person or class of persons granted the exemption, the regulatory provision(s) from which the person or class of persons is 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

The United States Relationship with FAS Nations

The United States governs its relationships with FAS nations by agreements known as Compacts of Free Association (Compacts).¹ The Compacts grant unique status to FAS citizens based in part on the role of the FAS in supporting the United States security presence in the Pacific Islands region.² Under the Compacts, the United States may establish military facilities in the FAS and FAS citizens have the right to work and reside in the United States as lawful nonimmigrants without obtaining a visa.³ FAS citizens are also eligible to join the United States military. FMCSA's Non-Domiciled

¹ Pub. L. 99-239, 99 Stat. 1770, Jan. 14, 1986 (Compact of Free Association (COFA) with the Federated States of Micronesia and the Republic of the Marshall Islands); Pub. L. 99-658, 100 Stat. 3672, Nov. 14, 1986 (Compact of Free Association with the Republic of Palau); Pub. L. 108-188, 117 Stat. 2720, Dec. 17, 2003 (COFA Amendments Act of 2003).

² See Congressional Research Service, "The Freely Associated States and Issues for Congress," Dec. 10, 2004, available at [The Freely Associated States and Issues for Congress | Congress.gov | Library of Congress](#).

³ See U.S. Citizenship & Immigration Services, Fact Sheet: Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands, available at [Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands Fact Sheet | USCIS](#); U.S. Citizenship & Immigration Services, Fact Sheet: Status of Citizens of the Republic of Palau, available at [Fact Sheet: Status of Citizens of the Republic of Palau](#).

CDL final rule considered comments that requested that FAS citizens be admitted to the eligible categories allowed to receive a non-domiciled CDL (91 FR at 7055). FMCSA responded to those comments by explaining that FMCSA would continue to address the status of FAS citizens through FMCSA’s exemption process (*Id.* at 7056).

Under the “REAL ID Act Modification for Freely Associated States Act,”⁴ Congress authorized States to issue full-term REAL ID licenses and ID cards to citizens of the FAS. In its implementing regulations, the Department of Homeland Security (DHS) modified the identification documents that citizens of the FAS may present when applying for a REAL ID driver’s license or ID card from a compliant State.⁵ Under its authority in 6 CFR 37.11(c)(1)(x), DHS permits compliant States to accept “a valid unexpired passport issued by the Republic of the Marshall Islands, the Republic of Palau, or the Federated States of Micronesia with an approved Form I–94.”⁶

Current Regulatory Requirements

Under 49 CFR 383.71(a) and (b), an SDLA may issue a CLP or CDL only to an applicant who presents proof of United States citizenship or lawful permanent residency, as listed in Table 1 to § 383.71, List of Acceptable Proofs of Citizenship or Lawful Permanent Residency. FMCSA published a final rule titled “Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL)” (Non-Domiciled CDL final rule) on February 13, 2026 with an effective date of March 16, 2026 (91 FR 7044). Under the Non-Domiciled CDL final rule, an SDLA may issue a non-domiciled CLP or CDL to an applicant domiciled in a foreign jurisdiction only if the applicant provides a Form I–94/94A with an unexpired Admit Until Date indicating a nonimmigrant status

⁴ Pub. L. 115–323, 132 Stat. 4443, Dec. 17, 2018.

⁵ *See* 84 FR 46556 (Sept. 4, 2019).

⁶ *Id.* at 46557. *See* 8 CFR 1.4 for a definition of Form I–94, which includes the collection of arrival/departure and admission or parole information by DHS, whether in paper or electronic format. This would therefore include the paper Form I–94A, a sample of which is available on U.S. Citizenship and Immigration Services’s website at <https://www.uscis.gov/i-9-central/form-i-94>.

classification of H-2A-Temporary Agricultural Workers, H-2B-Temporary Non-Agricultural Workers, or E-2-Treaty Investors (*see* 49 CFR 383.73(f)(3)(ii) which requires in part that the applicant provide the Form I-94/94A as *evidence of lawful immigration status* as defined under 49 CFR 383.5). Thus, under 49 CFR 383.71, an FAS citizen who is not a lawful permanent resident is not eligible for a standard CLP or CDL, or for a non-domiciled CLP or CDL, because FAS citizens do not qualify for H-2A, H-2B, or E-2 nonimmigrant status.

On September 25, 2024, FMCSA granted an exemption to the Oregon Department of Transportation allowing the State to issue standard CLPs and CDLs to FAS citizens with a valid, unexpired passport and an I-94 or I-94A form (89 FR 78428).

Applicant's Request

HDOT's application for exemption was described in detail in a Federal Register notice on September 11, 2024 (89 FR 73744) and will not be repeated here as the facts have not changed.

IV. Public Comments

FMCSA requested comment on HDOT's application and on whether, if granted, the exemption should apply to all SDLAs, and not just HDOT. The Agency received no comments.

V. FMCSA Decision

FMCSA has evaluated HDOT's application for exemption and based on its analysis, grants all SDLAs an exemption, applicable to FAS citizens only, from the condition in paragraph (1)(ii) of the definition of "evidence of lawful immigration status" in 49 CFR 383.5 that an individual's Form I-94 or I-94A indicate one of the following classifications: H-2A, H-2B, or E-2, as such evidence is required under 49 CFR 383.73(f)(3)(ii)(A). The exemption allows SDLAs to accept a valid, unexpired passport issued by an FAS and an Arrival/Departure Record, meaning a Form I-94 or I-94A

issued by DHS, to prove that the individual has entered the United States lawfully, and to issue non-domiciled CLPs and CDLs to those individuals that otherwise meet the eligibility requirements. Under this exemption, FAS citizens do not need an H-2A, H-2B, or E-2 visa to receive a non-domiciled CLP or CDL. Congress granted FAS citizens a unique work status. FAS citizens do not require a visa to work in the United States and do not have expiration dates on their Form I-94s or I-94As. However, those forms are still considered to have an “unexpired” Admit Until Date “[b]ecause FAS citizens are authorized to have an indefinite period of stay in the United States (known as ‘duration of status’ or ‘D/S’).”⁷ FMCSA believes that granting this exemption is consistent with Congressional intent to allow FAS citizens to live and work in the United States as lawful nonimmigrants. The Agency has no data indicating that granting the exemption would negatively impact safety.

FMCSA also believes that it would be inconsistent with the Agency’s Non-Domiciled CDL final rule to allow SDLAs to issue standard CLPs and CDLs to individuals who are not domiciled in the United States. The final rule, and the CDL regulations in 49 CFR part 383, draw a bright line between individuals who are United States citizens and lawful permanent residents and those who are not. Therefore, this exemption decision also supersedes the prior exemption granted to the Oregon Department of Transportation that allowed Oregon to issue standard CLPs and CDLs to FAS citizens, rather than non-domiciled CLPs and CDLs. However, a non-domiciled CLP or CDL still permits citizens of the FAS “to pursue a CLP/CDL and a career in the motor carrier industry,” as requested by Hawaii in its application.⁸ The exemption also permits SDLAs to issue a non-domiciled CLP or CDL for the maximum term available under 49 CFR 383.73(f)(2)(iv), which is one year. Accordingly, under this exemption,

⁷ 84 FR 46423, 46424 (Sept. 4, 2019).

⁸ Application at 2.

FAS citizens may obtain a non-domiciled CLP or DCDL from a State that issues non-domiciled CLPs and CDLs, subject to the domicile requirements imposed under State law.

Based on the information provided by HDOT, FMCSA concludes that the exemption, subject to the terms and conditions set forth in section V.B, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1).

A. Applicability of Exemption

FMCSA grants an exemption to all SDLAs, for a period of five years, from the condition that an individual's Form I-94/I-94A indicate an H-2A, H-2B, or E-2 classification, as described in paragraph (1)(ii) of the definition of "Evidence of lawful immigration status" in 49 CFR 383.5 and as required under 49 CFR 383.73(f)(3)(ii)(A), for FAS citizens residing in the United States, subject to the terms and conditions of this decision. SDLAs may issue non-domiciled CLPs and CDLs under this exemption in accordance with State procedures in 49 CFR 383.73(a) and (b) to an FAS citizen who is otherwise eligible and who presents a valid, unexpired passport issued by an FAS and an Arrival/Departure Record, meaning a Form I-94 or I-94A, to prove that the individual has entered the United States lawfully.

FMCSA intends to closely monitor the safety impacts of the relief granted under this exemption. As necessary, FMCSA may take action to modify the exemption, including scaling back the regulatory relief provided, or to terminate the exemption sooner, if conditions warrant.

B. Terms and Conditions

1. An SDLA must notify FMCSA at MCPSD@dot.gov that the SDLA intends to issue non-domiciled CLPs or CDLs under this exemption before issuing a non-domiciled CLP or CDL under this exemption.

2. An SDLA must not issue standard CLPs or CDLs to FAS citizens under this exemption.

3. An SDLA must comply with all other requirements for issuing non-domiciled CLPs and CDLs, including, but not limited to, ensuring that the period of validity of the non-domiciled CLP or CDL does not exceed one year under 49 CFR 383.73(f)(2)(iv), querying the Systematic Alien Verification for Entitlements system specified in 49 CFR 383.73(m)(2)(ii) to confirm the applicant's lawful immigration status, and retaining copies of all documents involved in the licensing process, as required by 49 CFR 383.73(m)(2)(iii).

4. An SDLA must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350-399).

5. An SDLA must provide to FMCSA, annually at MCPSD@dot.gov and upon request, the names and CLP/CDL numbers of all drivers who are issued a non-domiciled CLP or CDL pursuant to the terms of this exemption, as authorized by 49 CFR 383.73(h) and 384.225(e)(2).

6. This exemption supersedes the exemption previously granted to the Oregon Department of Transportation (89 FR 78428), which is no longer in effect. Absent receipt of information as specified in 49 CFR 383.73(f)(5), any CLP or CDL that the Oregon SDLA issued in accordance with the terms and conditions of the Oregon exemption may remain in effect until expiration. However, at the next licensing transaction following the effective date of this exemption (for example, reissuance, amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL; transfer; renewal; or upgrade), the SDLA must apply the terms and conditions of this exemption.

C. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation

applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

D. Termination

FMCSA does not believe the SDLAs or FAS citizen CLP- and CDL-applicants covered by this exemption will experience any deterioration of their safety record. However, the exemption will be revoked if: (1) an SDLA fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of Title 49, chapter 313 or section 31136.

Derek D. Barrs,

Administrator.

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