



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 18, 2020

**NOTICE OF ENFORCEMENT DISCRETION DETERMINATION
CONCERNING CERTAIN REQUIREMENTS FOR STATES
IN 49 CFR PARTS 383 AND 384**

The President has declared a national public health emergency under 42 U.S.C. § 5191(b) and the Health and Human Services Secretary declared a public health emergency related to the Coronavirus Disease 2019 (COVID-19). The Federal Motor Carrier Safety Administration (FMCSA) is aware that some States continue to experience operational disruptions caused by the COVID-19 public health emergency. As the Nation engages in a phased re-opening, the pace of return to normal operations for State Driver Licensing Agencies (SDLA) will vary across the country. As a result, some SDLAs may be unable to comply with the requirements of 49 CFR §§ 383.3(f); 383.75(a)(2); 383.75(a)(5); 383.75(c); 384.212(b); 384.228(f); 384.229(a), and 384.229(b).

The Commercial Motor Vehicle Safety Act of 1986, at 49 U.S.C. § 31311(a), sets forth requirements for States to participate in the commercial driver's license (CDL) program. Under 49 U.S.C. § 31312, the Federal Motor Carrier Safety Administration (FMCSA) has the authority to decertify States found to be in substantial non-compliance with the requirements of 49 U.S.C. § 31311(a) from issuing CDLs. Under 49 U.S.C. § 31314, as implemented through 49 CFR Part 384, if, during FMCSA's annual review of a State's compliance with 49 U.S.C. § 31311(a), a State is found to be in substantial non-compliance, FMCSA shall withhold amounts from a State's apportionment of Title 23 Federal-aid Highway funding beginning the first fiscal year following the first fiscal year of substantial non-compliance.

This Notice is to advise States that, due to disruptions caused by the COVID-19 public health emergency, FMCSA is exercising its discretion not to issue a finding or make a determination of substantial non-compliance for SDLAs that were unable to comply with the specific requirements set forth below. SDLAs are expected to bring their practices back into compliance with the noted sections promptly in accordance with the terms specified for each section.

49 CFR part 383

1. Section 383.3(f)(3)(ii) – “Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of calendar days in any 12-month period for which the restricted CDL is valid does not exceed 180.” Under this NEDD, until the end of the President's Declaration of National Emergency under 42 U.S.C. § 5191(b) concerning the COVID-19 public health emergency, States may issue a restricted (seasonal) CDL for a period of up to 24 months. For each 12-month period within the 24-month license, the total number of calendar days for which the restricted CDL is valid must not exceed 180 days.

2. Section 383.75(a)(2) – “The State must conduct an on-site inspection of each third-party tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates.” Under this NEDD, States have the flexibility not to conduct any such inspection through December 31, 2020. States must conduct any inspections that were not completed in 2020 by June 30, 2021.
3. Section 383.75(a)(5) – “The State must, at least once every 2 years, do one of the following for each third-party examiner: (i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant; (ii) Have State employees co-score along with the third-party examiner during CDL skills tests to compare pass/fail results; or (iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results.” Under this NEDD, States have the flexibility to extend the period for meeting these requirements through the December 31, 2021.
4. Section 383.75(c) – “The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. Exception: Examiners who do not meet the 10-test minimum must either take the refresher training specified in § 384.228 of this chapter or have a State examiner ride along to observe the third-party examiner successfully administer at least one skills test.” In accordance with this NEDD, FMCSA will not issue a finding or make a determination of substantial non-compliance for States that do not revoke the skills testing certification of examiners who fail to meet the 10-test minimum or qualify for the exception for calendar year 2020. States must ensure that all examiners meet the 10-test minimum or qualify for the exception for calendar year 2021.

49 CFR part 384

1. Section 384.212(b) – “The State must require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in §383.71(c)...” This NEDD provides the State with the flexibility to require an applicant to apply for a transfer CDL within 90 days after the end of the President’s Declaration of National Emergency under 42 U.S.C. § 5191(b) concerning the COVID-19 public health emergency.
2. Section 384.228(f) – “Require State and third party CDL test examiners to complete a refresher training course and examination successfully every four years to maintain their CDL test examiner certification.” This NEDD provides States the flexibility to extend the required refresher training interval from four to five years for examiners who became due for refresher training on or after March 1, 2020 through December 31, 2020. States would be permitted to grant examiners an additional year from the date they became due for refresher training to complete the requirement.
3. Section 384.229(a) – “To ensure the integrity of the CDL skills testing program, the State must at least once every 2 years, conduct unannounced, on-site inspections of third party testers’ and examiners’ records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third-party testers’ files.” Under this NEDD, States have the flexibility not to conduct any such inspections through

December 31, 2020. States must conduct any inspections that were not completed in 2020 by June 30, 2021.

4. Section 384.229(b) – To ensure the integrity of the CDL skills testing program, the State must at least once every 2 years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners. Under this NEDD, States have the flexibility not to conduct any such monitoring through December 31, 2020. States must conduct any monitoring that was not completed in 2020 by June 30, 2021.

This Notice:

1. Acknowledges the current and anticipated disruptions to the SDLAs' ability to comply with the requirements of 49 CFR §§ 383.3(f)(3)(ii); 383.75(a)(2); 383.75(a)(5); 383.75(c); 384.212(b); 384.228(f); 384.229(a), and 384.229(b) due to the Presidentially declared COVID-19 national emergency;
2. Considers the interests of public safety; and
3. Creates no individual rights of action and establishes no precedent for future determinations.

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James Wiley Deck
Deputy Administrator