

## **Federal Motor Carrier Safety Administration**

### **Waiver of Certain Pre-trip Vehicle Inspection Skills Test Requirements for Certain School Bus Drivers**

**March 28, 2022**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Grant of waiver.

**SUMMARY:** FMCSA permits, but does not require, States to waive the engine compartment component of the pre-trip vehicle inspection skills testing requirement in 49 CFR § 383.113(a)(1)(i), also known informally as the “under-the-hood” component, for commercial driver’s license (CDL) applicants seeking the school bus (S) and passenger (P) endorsements and the intrastate only (K) restriction. Drivers issued a CDL pursuant to this waiver are restricted to the intrastate operation of school buses only. Additionally, FMCSA waives the requirement in 49 CFR § 383.133(c)(1) that States administer this portion of the pre-trip vehicle inspection test in accordance with an FMCSA pre-approved examiner information manual. FMCSA issues this waiver in response to multiple requests that the Agency provide regulatory relief to address the growing shortage of school bus drivers, which has been exacerbated by the coronavirus 2019 (COVID-19) public health emergency.

**DATES:** This waiver is effective April 1, 2022 and expires on June 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nikki McDavid, Chief of the Commercial Driver’s License Division, Office of Safety Programs, 202-366-0831, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

#### **Legal Basis**

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of Title 49 of the United States Code, 49 U.S.C. § 31136, to a person(s) seeking regulatory relief (49 U.S.C. §§ 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted for unique events for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The FMCSA Administrator has been delegated authority under 49 CFR 1.87(e) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to commercial motor vehicle operators, and 49 U.S.C. chapter 311, subchapter I and III, relating to commercial motor vehicle programs and safety regulations

#### **Background**

On July 31, 2002, FMCSA published a final rule implementing section 214 of the Motor Carrier Safety Improvement Act of 1999, which required the Agency to create a new endorsement that CDL holders must obtain to operate a school bus (67 FR 49742). To implement this new endorsement, FMCSA added a definition of “school bus” to 49 CFR 383.5; amended other provisions of part 383 to recognize the new school bus endorsement; added a license code for the endorsement; and specified that applicants must pass both a knowledge and a skills test to obtain the endorsement. The rule established the minimum knowledge and skills test requirements for this new endorsement. The rule further established that an applicant for an S endorsement must qualify for the passenger vehicle endorsement (P) and pass the knowledge and skills tests for obtaining a P endorsement.

The nationwide shortage of school bus drivers, which has historically existed in many States, has been exacerbated by the COVID-19 public health emergency.<sup>1</sup> In a joint survey conducted earlier this year by the National Association for Pupil Transportation (NAPT), the National Association of State Directors of Pupil Transportation Services (NASDPTS), and the National School Transportation Association (NSTA), 51 percent of respondents described their school bus driver shortage as “severe” or “desperate,” 78% indicated the school bus driver shortage is getting worse, and 65% said the shortage is their number one problem or concern.<sup>2</sup> FMCSA has received requests from States, school bus industry associations, and members of Congress asking the Agency to waive the engine compartment portion of the pre-trip vehicle inspection skills test to alleviate an impediment to obtaining a CDL with an S endorsement. Industry representatives and States report that the engine compartment component of the CDL skills test has negatively impacted their ability to attract school bus driver applicants. The recent availability of COVID-19 vaccines for school-aged children, which has further increased the number of children returning to the classroom, has increased the need for school bus drivers in an industry already experiencing driver shortages.

Ensuring the safe and reliable transportation of children to and from school is FMCSA’s paramount concern. The Agency also recognizes that alleviating the school bus driver shortage plays an important role in contributing to the economy by allowing parents and caretakers to get back to work. FMCSA issues this waiver in response to the unique circumstances resulting from the existing school bus driver shortage and its subsequent worsening caused by the COVID-19 public health emergency.

### **FMCSA’s Determination and Regulatory Provisions Waived**

Consistent with the statutory requirements for waivers, FMCSA has determined that it is in the public interest to issue a waiver, until June 30, 2022, limited in scope and circumstances, that is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. This waiver:

- Waives 49 CFR 383.113(a)(1)(i), which requires that CDL applicants must possess basic engine compartment pre-trip vehicle inspection skills for the vehicle class the driver operates or expects to operate. Subparagraph (i) requires applicants to identify each safety-related part of the engine compartment and explain what needs to be inspected to ensure a safe operating

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<sup>1</sup> On March 13, 2020, the President declared a national emergency under 42 U.S.C. § 5191(b) related to the COVID-19 public health emergency. On January 31, 2020, the Secretary of Health and Human Services issued a Public Health Emergency Declaration pursuant to Section 319 of the Public Health Service Act, with the latest renewal issued on [October 15, 2021](#).

<sup>2</sup> See <https://s3-us-west-2.amazonaws.com/nsta/70966/2021-08-31-PR-3N-Driver-Shortage-Survey-2021-08-27-FINAL.pdf> (NAPT/NASDPTS/NSTA survey results, Aug. 31, 2021).

condition of each part. In accordance with the American Association of Motor Vehicle Administrators' "2005 CDL Test System (July 2010 or newer Version) Model CDL Examiner's Manual" (AAMVA Test Model), which FMCSA has approved and provides to all State Driver Licensing Agencies (SDLAs), the engine compartment portion of the pre-trip vehicle inspection skills test includes: oil level; coolant level; power steering fluid/belt/gear; water pump belt/gear; alternator belt/gear; air compressor (belt/gear) or hydraulic master cylinder (as applicable); and leaks/hoses. Pursuant to the terms of this voluntary waiver, States may waive the engine compartment portion of the pre-trip vehicle inspection skills test *only* for applicants seeking a CDL with the S and P endorsements<sup>3</sup> and the intrastate only (K) restriction. States must continue to test these applicants on the remaining elements of the pre-trip vehicle inspection skills test, as discussed below.

- Waives 49 CFR 383.133(c), which requires that States administer and score the CDL skills test based solely on the standards contained in the FMCSA pre-approved examiner information manual that conforms to the AAMVA Test Model (49 CFR 383.131(b)). States availing themselves of the regulatory relief provided under this waiver are permitted to deviate from the standards set forth in the AAMVA Test Model, insofar as they require SDLAs to administer the engine compartment portion of the pre-trip vehicle inspection test for the applicants identified above.

FMCSA will not issue a finding or a determination of substantial noncompliance under 49 CFR part 384 against States for action or inaction consistent with this voluntary waiver.

### ***Public Interest***

FMCSA finds that granting this waiver, by helping to alleviate the school bus driver shortage, is in the public interest because school bus drivers play a vital part in assuring that children are transported safely to and from school and school activities. As discussed below, riding a school bus is recognized as the safest way to get to and from school. Further, to the extent that driver shortages have resulted in cancellation of in-person instruction days in some States, this waiver will serve the public interest by allowing more children to benefit from in-person rather than virtual classroom learning. FMCSA also recognizes that safely and reliably transporting school-aged children plays a critical role in contributing to the economy by allowing parents and caretakers to get back to work.

### ***Safety Equivalency***

Due to the limited scope of this waiver, the existing regulatory requirements that remain in place, and the terms, conditions, and restrictions set forth below, FMCSA has determined that the waiver is likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver. The waiver of a particular regulation should not be viewed in isolation but rather as part of the whole of all regulations governing the safety of drivers. Waiver determinations are made holistically, taking all relevant factors into account. *See International Bhd of Teamsters v. DOT*, 724 F.3d 206 (D.C. Cir. 2013).

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<sup>3</sup> 49 CFR 383.123(a)(1) requires that applicants must pass the knowledge and skills test for the passenger endorsement in order to obtain the S endorsement.

FMCSA has determined that waiving the requirement that States conduct the engine compartment component of the pre-trip vehicle inspection skills testing requirement in 49 CFR § 383.113(a)(1)(i), and the requirement in 49 CFR § 383.133(c)(1) that States administer the engine compartment component of the pre-trip vehicle inspection test in accordance with the AAMVA Test Model for CDL applicants seeking the S and P endorsements with the Intrastate only K restriction, will not negatively impact safety.

States relying on this waiver must require CDL applicants taking the skills test in a school bus to perform the remaining elements of the pre-trip vehicle inspection components of the skills test, as currently set forth in 49 CFR 383.113(a)(1)(ii-ix): Cab/engine start, Steering, Suspension, Brakes, Wheels, Side of vehicle, Rear of vehicle and special features of Tractor-trailer, *school bus*, or coach/transit bus, if this type of vehicle is being used for the skills test. (emphasis added). Therefore, drivers obtaining CDLs under this waiver will have demonstrated their ability to safely *operate* the “special features” of a school bus. Further, because school buses are typically operated for relatively short distances (i.e., to and from school and school activities),<sup>4</sup> mechanics or other qualified personnel can readily provide roadside assistance in the event of an engine malfunction, and a replacement bus can be provided if necessary.

FMCSA notes that current Federal regulations do not require a school bus driver to make engine repairs or perform routine maintenance, even though the driver has successfully completed the engine compartment pre-trip inspection component of the CDL skills test. Rather, Congress has determined that the regulatory oversight of school bus operations is a State function, and most States have adopted vehicle maintenance and inspection standards that apply to school bus operations.<sup>5</sup> Any State or local school bus inspection and maintenance standards would continue to apply under this waiver.

Drivers issued a CDL pursuant to this waiver are authorized to engage solely in the intrastate operation of school buses, as defined in 49 CFR 383.5; the driver is not authorized to operate trucks, motorcoaches, or any other type of commercial motor vehicle. Accordingly, States issuing CDLs pursuant to this waiver must designate a “school bus only” restriction on the CDL in accordance with 49 CFR 383.153(a)(10)(ix), which permits States to add additional restrictions as long as the restriction is fully explained on the front or back of the CDL document. The school bus only restriction on the CDL will enable FMCSA personnel and State-based traffic enforcement officers to determine whether the driver is complying with this restriction. Employers will also be able to discern that the driver is restricted to the intrastate operation of school buses only.

In FMCSA’s judgment, this waiver, by helping to lessen the school bus driver shortage, will actually improve safety in an important respect. According to the National Highway Traffic Safety Administration (NHTSA), school buses are the most regulated vehicles on the road and are designed to be safer than passenger vehicles in preventing crashes and injuries. NHTSA estimates that students are 70 times more likely to arrive at school safely when traveling by bus

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<sup>4</sup> In a recent study, “U.S. Active School Travel in 2017: Prevalence and Correlates” (Kontu, E., et al. *Preventive Medicine Reports Vol. 17*) (March 2020), the average distance to school was 6.9 miles. The abstract can be accessed at <https://doi.org/10.1016/j.pmedr.2019.101024>.

<sup>5</sup> See 69 FR 13803, 13804 (Mar. 24, 2004); 53 FR 18042-43 (May 19, 1988) (Describing State regulatory oversight of school bus operations).

than by passenger car.<sup>6</sup> More school bus drivers will mean more children are able to get to and from school by the safest means possible.

The SDLA must, upon request by FMCSA, provide the Agency with the names and CDL numbers of the drivers who were issued a CDL pursuant to the terms of this waiver, as authorized under current regulations. FMCSA intends to monitor the safety performance of these drivers to determine whether this waiver should be revised or revoked.

The Terms, Conditions, and Restrictions as set forth below, taken collectively, provide the assurance needed to demonstrate that granting the waiver is likely to achieve an equivalent level of safety to, or greater than, the level of safety achieved in the absence of the waiver.

### ***Unique Circumstances***

As noted previously, there is a well-documented shortage of school bus drivers nationwide. As discussed above, the COVID-19 public health emergency has aggravated this shortage. FMCSA finds that the circumstances surrounding this waiver are unique because State and local governments are currently unable to meet the demand for school bus drivers.

For the reasons above, FMCSA grants a waiver of the regulatory requirements identified above, subject to the terms, conditions, and restrictions below.

### **Terms, Conditions, and Restrictions of the Waiver**

This waiver covers States for the period beginning at 12:00 a.m. (ET) on April 1, 2022 and continuing through 11:59 p.m. on June 30, 2022. Under this waiver, a State may, but is not required to, waive the engine compartment portion of the pre-trip vehicle inspection skills test, set forth in 49 CFR 383.113(a)(1)(i), only for CDL applicants seeking the S and P endorsements and the intrastate only (K) restriction. States issuing CDLs pursuant to this waiver are waived from the requirement in 49 CFR § 383.133(c)(1) that this portion of the pre-trip vehicle inspection test be administered in accordance with an FMCSA pre-approved examiner information manual.

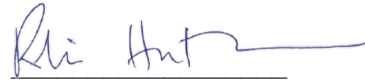
States issuing CDLs pursuant to this waiver must abide by the following terms and conditions:

1. The CDL credential must conform to the requirements of Part 383, subpart J.
2. When issuing a K-restricted CDL with the S and P endorsements pursuant to this waiver, States must continue to comply with the applicable provisions set forth in 49 CFR 383.73.
3. When issuing a K-restricted CDL with the S and P endorsements pursuant to this waiver, States must place a school bus only restriction on the CDL in accordance with 49 CFR 383.153(a)(10)(ix).
4. States must conduct the remaining pre-trip vehicle inspection components of the skills test for drivers subject to this waiver, as set forth in 49 CFR 383.113(a)(1)(ii-ix).
5. Upon request from FMCSA, the State must provide the names and CDL numbers of drivers who issued a CDL pursuant to the terms of this waiver, as authorized by 49 CFR sections 383.73(h) and 384.225(e)(2).

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<sup>6</sup> NHTSA, School Bus Safety, <https://www.nhtsa.gov/road-safety/school-bus-safety> (last accessed Dec. 18, 2021).

6. This waiver applies only to the intrastate operation of school buses used to transport students from home to school, from school to home, or to and from school-sponsored events, as defined in 49 CFR 383.5.<sup>7</sup>
7. FMCSA reserves the right to revoke this waiver for drivers' involvement in accidents, the failure of States or drivers to comply with the terms of this waiver, or as circumstances otherwise warrant.



Robin Hutcheson  
Acting Administrator

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<sup>7</sup> 49 CFR 383.5 defines "school bus" as "a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include operations of a for-hire motor carrier."