



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

1200 New Jersey Ave, SE
Washington, DC 20590

Three-Month Waiver For States and CLP Holders

December 1, 2022

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

ACTION: Grant of waiver.

SUMMARY: FMCSA grants a three-month waiver from certain regulations applicable to commercial learner's permit (CLP) holders seeking to take a skills test for a commercial driver's license (CDL) to operate commercial motor vehicles (CMVs), as defined in 49 CFR § 383.5, in interstate and intrastate commerce, and States administering CDL skills tests. The Agency has issued similar waivers since March 2020.

DATES: This waiver is effective December 1, 2022, and expires on February 28, 2023, or upon early termination by FMCSA, whichever is sooner.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Nemons, Director, Office of Safety Programs, 202-366-4986, 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 or 49 U.S.C. § 31136 (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 nonemergency and 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 Administrator of FMCSA 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

Trucking plays a critical role in the U.S. supply chain and economy. Seventy-two percent of goods in America are shipped by truck, and there is a continued need for CMV drivers to provide safe and timely delivery of critical goods and materials. To help address the continued need for eligible CMV drivers, FMCSA has issued waivers, since March 2020, from the restriction in 49 CFR § 383.79(a) that limits a State to administering a CDL skills test only to an out of State CDL applicant who has taken driver training in that State and from the requirement in 49 CFR § 383.25(e) that CLP holders are not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP. The current combined waiver expires on November 30, 2022.

On July 13, 2020, the American Trucking Associations (ATA) submitted a petition for rulemaking to FMCSA requesting that the Agency initiate a rulemaking to amend the CDL regulations to, among other things, make permanent the regulatory relief from 383.79(a). The Agency granted the ATA's petition for rulemaking on November 24, 2021, and has initiated a rulemaking to consider regulatory amendments to provide increased flexibility for testing and for drivers after passing the skills test.¹

In addition, in December 2021, FMCSA provided a "Strengthening the Supply Chain Through Licensing" toolkit² to State Driver Licensing Agencies (SDLAs) that included strategies to reduce CDL testing and issuance delays. The strategies included implementing the flexibilities provided in FMCSA's waivers to waive the requirement in § 383.25(e) that 14-day waiting period between the time the driver obtains his or her CLP and takes the CDL skills test and in § 383.79(a) to allow drivers to train and test in different States. FMCSA issued the toolkit in support of the Biden-Harris Administration's "Trucking Action Plan"³ to address supply-chain challenges, including strategies to reduce CDL testing and issuance delays.

Consistent with FMCSA's "Strengthening the Supply Chain Through Licensing" toolkit, the Agency issues a new waiver to provide continued regulatory relief for intrastate and interstate CLP holders to transport goods and people and to retain flexibilities for SDLAs to accelerate CDL testing.

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 February 28, 2023, 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.

To continue the ability of intrastate and interstate CDL and CLP holders to transport goods and people, and to provide flexibilities to SDLAs to accelerate CDL testing, this waiver:

¹ Information about the rulemaking is available at:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=2126-AC46>

²The toolkit is available at: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-08/Toolkit%20to%20Expedite%20Licensing.pdf>.

³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-%E2%81%A0harris-administration-trucking-action-plan-to-strengthen-americas-trucking-workforce/>.

- Waives the restriction under 49 CFR § 383.79(a) that limits a State to administering a driving skills test, in accordance with subparts F, G, and H of 49 CFR part 383, to an out of State CDL applicant who has taken driver training in that State. Under the terms, conditions, and restrictions of this waiver, a State may elect to administer a driving skills test to any out of State CDL applicant, regardless of where the applicant received driver training.
- Waives the requirement under 49 CFR § 383.25(e) that CLP holders are not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP. Under the terms, conditions, and restrictions of this waiver, States may, at their discretion, allow CLP holders to take the CDL skills test without waiting 14 days after initial issuance of the CLP, provided the CLP holder has completed applicable entry-level driver training requirements under 49 CFR Part 380, Subpart F.

States, SDLAs, and CLP holders are covered under this waiver without further action necessary to comply with the Federal Motor Carrier Safety Regulations. 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 waiver.

Note: Since March 2020 FMCSA has also issued a series of waivers from the requirement in 49 CFR § 383.25(a)(1) that a CLP holder be accompanied by a CDL holder in the front seat of the vehicle next to the CLP holder. The Agency previously had issued exemptions to an individual motor carrier that had applied for and been granted such relief.⁴ In March 2020 the Agency broadened the scope of the relief, issuing a temporary waiver applicable to all States and all motor carriers of property. The Agency is now returning to the previous practice of issuing such relief on a carrier-by-carrier basis only.⁵

Public Interest

FMCSA finds that the granting of this waiver is in the public interest, given the critical need for CMV drivers in support of the U.S. supply chain and economy. In addition, granting this waiver is in the public interest because it addresses supply-chain challenges by enabling SDLAs to reduce CDL testing and issuance delays. And as discussed further below, FMCSA has determined that the waivers will not create any increased safety risk that could adversely affect the public interest.

⁴ In 2015 FMCSA granted C.R. England an exemption from 49 CFR § 383.25(a)(1), and the Agency renewed the exemption in 2017 and 2022 (80 FR 33329 (Jun. 11, 2015), 82 FR 48889 (Oct. 20, 2017), 87 FR 36360 (Jun. 16, 2022)). The C.R. England exemption expires in June 2027.

⁵The waiver from 49 CFR § 383.25(a)(1) relieved motor carriers and drivers from the requirement that a CLP holder be accompanied by a CDL holder, with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder operates a CMV on public roads or highways. Under the terms, conditions, and restrictions of this waiver, a CLP holder could operate a CMV on public roads or highways without an accompanying CDL holder present in the front seat of the vehicle, provided that the CDL holder was elsewhere in the cab. In addition, the CLP holder had to be in possession of evidence from the testing jurisdiction that the CLP holder has passed the CDL driving skills test and had a valid non-CDL driver’s license and medical certificate.

Safety Equivalency

FMCSA has determined that waiving the requirement under 49 CFR § 383.79(a) will not negatively impact safety. Section 383.79(a) permits, but does not require, an SDLA to allow an out of State CDL applicant to take the CDL driving skills (i.e., on-the-road) test if the applicant also received training in that State. Under this waiver, SDLAs would be permitted to allow an out of State CDL applicant to take the CDL driving skills test regardless of where the applicant received training. The Federal regulations in 49 CFR part 383, subparts F, G, H, and J, set forth uniform national knowledge and skills testing procedures and antifraud measures for the States. FMCSA's regulatory framework provides for uniform national testing standards irrespective of where a CDL applicant receives training. *See* 49 CFR §§ 383.131, 383.133. The waiver requires the SDLA to transmit the test results electronically directly from the testing State to the licensing State in an efficient and secure manner in accordance with 49 CFR § 383.79(a)(1). FMCSA notes that the requirement in 49 CFR § 383.79(a)(2) that the State of domicile must accept the results of a driving skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the CDL applicant's testing requirements under part 383 would continue to apply.

FMCSA has also determined that waiving the requirement under 49 CFR § 383.25(e) will not negatively impact safety. Section 383.25(e) states that CLP holders are not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP. Under this waiver, States are permitted, but not required, to allow CLP holders to take the CDL skills test without waiting the requisite 14 days. As noted above, the waiver does not alter any of the skills testing standards for obtaining a CDL. In addition, the entry-level driver training (ELDT) regulations, which went into effect on February 7, 2022, establish minimum training standards for certain individuals applying for their CDL for the first time (81 FR 88732 (Dec. 6, 2016); 85 FR 6088 (Feb. 4, 2020)). *See generally* 49 CFR Part 380, Subpart F. The regulations set forth Class A and Class B CDL core curricula subdivided into theory (knowledge) and behind-the-wheel (range and public road) segments. In order to complete ELDT, driver-trainees must receive an overall score of at least 80 percent on the theory assessment and demonstrates proficiency in performing all required behind-the-wheel skills. Under the terms, conditions, and restrictions of this waiver, the EDLT requirements continue to apply, and States opting to implement this relief may only waive the 14-day waiting period for CLP holders who have completed applicable ELDT requirements.

Moreover, this waiver is limited in scope, and ample precautions remain in place to ensure safe operation by drivers of commercial motor vehicles requiring CDLs. FMCSA believes that the measures listed below under Terms, Conditions, and Restrictions of the Waiver, taken collectively, provide further assurance that the legal standard of "likely to achieve [an equivalent] level of safety" is met. The waiver of a particular regulation also should not be looked at 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). It is important to note that this waiver does not alter any of the knowledge and skills testing requirements for a CDL, a CLP, or a necessary endorsement.

FMCSA has therefore determined that a waiver from the regulations noted above during the period of the waiver 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.

Unique and Non-emergency Events

As noted previously, there is a shortage of qualified CDL and CLP holders to meet the demands of the U.S. supply chain. The low supply of truck drivers continues to strain the efficient movement of goods from the ports to our roadways.⁶ The Nation's goods movement supply chain is heavily dependent on continued CMV operations, and the need for eligible drivers remains critical. For these reasons, FMCSA finds that the circumstances surrounding this waiver are unique.

For the reasons above, FMCSA grants a three-month waiver as provided above, subject to the terms, conditions, and restrictions below.

Terms, Conditions, and Restrictions of the Waiver

This waiver covers States and CLP holders for the period beginning at 12:00 a.m. on December 1, 2022, and expires at 11:59 p.m. on February 28, 2023, or upon early termination by FMCSA, whichever is sooner.

- (1) This waiver does not apply to a CLP holder if the driver's privileges have been suspended or withdrawn for offenses requiring disqualification under 49 CFR § 383.51.
- (2) This waiver does not apply to a CLP holder subject to a driver imminent hazard order under 49 CFR § 383.52 or disqualified under 49 CFR § 391.11.
- (3) This waiver does not apply to a CLP holder who does not have a valid medical examiner's certificate.
- (4) This waiver does not apply to a CLP holder who is prohibited from performing safety sensitive functions under 49 CFR § 382.501.
- (5) An SDLA that elects to administer a CDL driving skills test to an out of State applicant under this waiver must transmit the test results electronically directly from the testing State to the licensing State in an efficient and secure manner in accordance with 49 CFR § 383.79(a)(1).
- (6) An SDLA that elects to administer a CDL driving skills test to a CLP holder within the first 14 days after initial issuance of the CLP under this waiver, must not conduct a skills test of an applicant for a Class A or Class B CDL until the SDLA verifies electronically that the CLP holder completed applicable ELDT requirements in accordance with 49 CFR Part 380, Subpart F.

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Robin Hutcheson
Administrator

⁶ https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/04/fact-sheet-the-biden-administrations-unprecedented-actions-to-expand-and-improve-trucking-jobs/?utm_source=link.