



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0122]

#### Entry-Level Driver Training: State of Alaska; Application for Exemption

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

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant a two-year exemption to the State of Alaska from the limitations imposed by the commercial driver's license (CDL) regulations on the State's ability to issue restricted CDLs. The exemption allows the State to waive specified portions of the CDL skills test for drivers in 14 defined geographical areas that lack infrastructure to allow completion of the full skills test. Drivers who receive a restricted CDL under the provisions of this exemption are also exempt from the Entry-Level Driver Training (ELDT) regulations. 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 obtained absent the exemption.

**DATES:** The exemption is effective from [INSERT PUBLICATION DATE OF FEDERAL REGISTER NOTICE through INSERT DATE TWO YEARS AFTER PUBLICATION DATE OF FEDERAL REGISTER NOTICE].

**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](mailto:richard.clemente@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

## **Viewing Comments and Documents**

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number “FMCSA-2022-0122” 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](http://www.regulations.gov), insert the docket number “FMCSA-2022-0122” in the keyword box, click “Search,” and choose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 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 certain 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 also 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 achieve 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 decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application

and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Background**

#### *Current Regulatory Requirements*

Under 49 CFR 383.3(e) the State of Alaska may waive certain knowledge and skills tests requirements and issue restricted CDLs, subject to certain conditions. To be eligible for a restricted CDL under 49 CFR 383.3(e), which is not valid outside Alaska, drivers must operate exclusively over roads that are not connected to the State highway system and are not connected to any highway or vehicular way with an average daily traffic volume greater than 499 (§ 383.3(e)(2)). The Federal Highway Administration, FMCSA's predecessor agency, set the daily traffic volume limit at 499 in 1996 (54 FR 33230).

The ELDT regulations, implemented on February 7, 2022, and set forth in 49 CFR 380, subparts F and G, establish minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and behind-the-wheel (BTW) training. The ELDT curriculum in 49 CFR part 380, Appendix A, Section A3.1, requires Class A CDL applicants to demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner. Under 49 CFR 380.603(a)(2), drivers issued a restricted CDL by the State of Alaska are exempt from the ELDT requirements.

#### *Applicant's Request*

The State of Alaska (Alaska) requested an exemption from the ELDT curriculum in 49 CFR part 380, appendix A, section A3.1, which requires Class A CDL applicants to

demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner. Alaska stated that the exemption is necessary because the current threshold for determining whether a driver is eligible for a restricted CDL, set forth in 49 CFR 383.3(e), is outdated and excludes some remote communities that have unpaved, two-lane roads not connected to the National Highway System. Consequently, these areas “do not have the infrastructure or driving scenarios” to complete the portions of ELDT that require the driver-trainee to demonstrate proficiency in vehicle control maneuvers on the interstate or controlled access highway. Alaska asserts that, because CDL applicants from these remote communities are not currently eligible to receive a restricted CDL, and thus be exempt from ELDT, they would be required to fly into larger cities and incur travel costs and lost wages to complete the BTW training requirements related to controlled access highways.

In its request for exemption, Alaska asserts “that the new regulations define off-highway licenses under 49 CFR 383.3(e)(2)(ii) as average daily traffic count of 499 or less, which excludes many remote Alaska communities, so their commercial drivers are now subject to the new ELDT requirements.” Alaska describes this result as having “devastating impact on rural Alaska’s movement of produce, prescriptions, people, and other goods.”

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

The Agency believes permitting the issuance of restricted CDLs to drivers operating a commercial motor vehicle (CMV) in 14 geographically remote communities identified in Section VI of this notice will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)).

#### **V. Public Comments**

On July 6, 2022, FMCSA published notice of the State of Alaska application and requested public comment (87 FR 40334). The Agency received 30 comments, 24 of which supported the exemption. Those filing in support included Alaskan driver training schools, Alaskan cities/boroughs, the Alaska Department of Labor and Workforce Development, the Alaska Trucking Association, motor carriers, and several individuals. Five commenters opposed the exemption, including the Owner-Operator Independent Driver's Association (OOIDA), the AFL-CIO/Transportation Trades Division (AFL-CIO/TTD) and three other individuals. One commenter filed neither for nor against the exemption request.

The Prince of Wales Vocational/Technical School's comments in support of the exemption included points that were echoed by others, stating that the ELDT regulations "inadvertently will have a devastating effect on most of the State of Alaska by requiring road testing on roads that simply do not exist in most of the State. The shortage of and retention of CDL drivers will be negatively affected by this regulation."

The Petersburg Borough added support for the exemption request in their filed comments, stating that "the costs for regulatory compliant CDL training in combination with the inconvenience of having to spend extended time in another community to receive the training are egregious hardships on employers and the employees seeking to better themselves through attainment of a CDL. By allowing us to continue local rural training and testing, you would show Alaskans that you understand and appreciate that Alaska is a unique landscape." Another commenter stated, "Traveling to a community where training and testing are available is cost prohibitive as it could cost thousands of dollars."

OOIDA opposed the exemption, citing its participation as an industry stakeholder on the ELDT Negotiated Rulemaking Committee when the "framework" of the ELDT rule was agreed upon and commented that these minimum requirements must be

strengthened, not waived. The AFL-CIO/TTD also opposed the exemption, stating that allowing Alaska, or any locality within the State, to move forward with an exemption from such basic ELDT requirements would undermine the intent of the ELDT program to prepare commercial drivers to respond safely in situations that they will encounter while driving.

## **VI. FMCSA Safety Analysis and Decision**

FMCSA has evaluated the State of Alaska's application for exemption and the public comments and based on its analysis, decided to grant an exemption from 49 CFR 383.3(e)(2) in lieu of granting an exemption from the ELDT curriculum in 49 CFR part 380, Appendix A, Section A3.1, as requested by the State. If FMCSA were to grant the relief requested, the affected drivers would be eligible to obtain an unrestricted CDL and operate in any location in the U.S., even though they did not receive the requisite training to safely operate a CMV when entering and exiting an interstate or controlled access highway designed for high-speed vehicular traffic, navigating curves at speed, changing lanes, and stopping the CMV in a controlled manner. FMCSA concludes that this outcome would not result in a level of safety equivalent to, or greater than the level achieved without the requested exemption.

As noted above, Alaska currently has the discretion, under 49 CFR 383.3(e), to waive certain CDL knowledge and skills tests requirements and issue a restricted CDL, valid only in Alaska. Currently, drivers who apply for a restricted CDL are exempt from the ELDT regulations, pursuant to 49 CFR 380.603(a)(2). However, under § 383.3(e)(2), to be eligible for a restricted CDL issued under § 383.3(e), which is not valid outside the State, drivers must operate exclusively over roads that are not connected to the state highway system and are not connected to any highway or vehicular way with an average daily traffic volume greater than 499. This standard was adopted in 1989 by the Federal Highway Administration, FMCSA's predecessor agency. As the State pointed out in its

exemption request, this standard excludes many remote Alaska communities, requiring CDL applicants in these areas to comply with FMCSA's ELDT requirements.

The Agency believes that granting an exemption allowing Alaska to issue restricted CDLs, subject to the terms and conditions set forth below, will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption applies only to CDL applicants who reside in one of the named remote geographical areas identified below and who operate only within those defined areas. In addition, the State may waive only specified elements of the skills test affected by the lack of infrastructure in the identified communities. Individuals applying for a restricted CDL covered by this exemption are exempt from ELDT in accordance with 49 CFR 380.603(a)(2).

## **VII. Exemption Decision**

### **A. Grant of Exemption.**

FMCSA grants an exemption from 49 CFR 383.3(e)(2) for a period of two years subject to the terms and conditions of this decision.

### **B. Applicability**

The State of Alaska may issue CDLs under this exemption only to drivers who reside in the following communities or areas<sup>1</sup>:

- (1) Bethel – within the local Bethel community road network
- (2) Prince of Wales Island
- (3) Haines – within the Haines community, and along the Haines Highway corridor, ending at the Canadian Border

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<sup>1</sup> The locales were identified by the State of Alaska's Department of Administration, Division of Motor Vehicles (DMV) and independently verified by FMCSA as lacking the infrastructure for CDL applicants to perform the skills required by 49 CFR 383.113(c)(4) and (c)(5). FMCSA notes that the DMV initially identified 15 affected locales, but FMCSA determined that one of the 15 communities operates on major connected thoroughfares and the distances involved are not dissimilar to that experienced by many rural communities in the western United States. The DMV's letter identifying the affected areas is available in the docket of this Notice and can be accessed at [Regulations.gov](https://www.regulations.gov).

- (4) Ketchikan – within the Ketchikan community and the airport area on the neighboring Annette Island
- (5) King Salmon – within the local King Salmon community road network
- (6) Kodiak Island
- (7) Kotzebue – within the local Kotzebue community road network
- (8) Nome – within the local Nome community road network
- (9) Mitkof Island (Petersburg)
- (10) Sitka – within the local Sitka community road network
- (11) Skagway – within the Skagway community and along the Klondike Highway corridor, ending at the Canadian Border
- (12) Unalaska Island
- (13) Utqiavik – within the Utqiavik community road network
- (14) Wrangell Island

### **C. Terms and Conditions**

The State of Alaska and drivers operating under this exemption are subject to the following terms and conditions:

(1) The State of Alaska must comply with 49 CFR 383.133(b) and 383.135(a) of the knowledge tests standards for testing procedures and methods set forth in 49 CFR part 383, subpart H, and must continue to administer knowledge tests that fulfill the content requirements of subpart G.

(2) The State of Alaska may waive only the following portions of the CDL skills test, as set forth in 49 CFR 383.113(c), that cannot be performed due to infrastructure limitations in the identified communities or areas:

- ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo, and driver conditions (§ 383.113(c)(3)); and

- ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic (§ 383.113(c)(4));

(3) Drivers applying for a CDL to be issued under this exemption must reside in one of the 14 geographical areas identified in Section VII. B of this Notice;

(4) Drivers issued a restricted CDL under this exemption may operate only within the 14 geographical areas identified in Section VII. B of this Notice; and

(5) The drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350-399).

(6) The State of Alaska must include notice on a restricted CDL issued pursuant to this exemption of the geographical area(s) in which the CDL holder may operate a CMV.

#### **D. Preemption**

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.60, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

#### **E. Notification to FMCSA**

The State of Alaska must provide to FMCSA, upon request, a list of all drivers issued CDLs under this exemption.

#### **F. Termination**

FMCSA does not believe that drivers covered by this exemption will experience any deterioration of their safety record.

The Agency will, however, rescind the exemption if: (1) the State of Alaska or drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption results 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 objective of 49 U.S.C. 31136(e) and 31315(b).

**Robin Hutcheson,**

*Administrator.*

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