



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2016-0420]

Commercial Driver's License Standards: Application for Exemption; New Prime, Inc. (Prime)

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that New Prime, Inc. (Prime) has applied for an exemption from the requirement in 49 CFR 383.25(a)(1) that a commercial learner's permit (CLP) holder must be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements seated in the front seat of the vehicle while the CLP holder is operating a commercial motor vehicle (CMV) on public roads or highways. Prime requests an exemption to allow CLP holders who have successfully passed the CDL skills test to be able to drive a CMV without having a CDL holder seated in the front seat beside them. Prime states that the CDL holder would remain in the CMV at all times while the CLP holder is driving, but not necessarily in the passenger seat. Prime believes that the exemption, if granted, would promote greater productivity and help individuals who have passed the CDL skills test return to actively earning a living faster, while achieving a level of safety that is equivalent to or greater than the level of safety provided by complying with the regulations. FMCSA requests public comment on Prime's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2016-0420 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0420), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2016-0420” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an

individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of 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 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). 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 and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Prime seeks an exemption from 49 CFR 383.25(a)(1) that would allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, to drive without having a CDL holder seated beside them in the CMV. Prime indicates that the CDL holder will remain in the CMV at all times while the CLP holder is driving – just not in the front seat. At present, Prime’s compliance with 49 CFR 383.25(a)(1) delays the second phase of CMV training of its CLP holders who have passed the CDL skills test.

Prime is one of the nation’s largest transportation companies with a fleet of more than 7,500 CMVs. Prime advises that 2,500 to 3,500 CLP holders would operate under the terms of the exemption each year. The exemption application states that § 383.25(a)(1) creates undue burdens on Prime and its CLP holders, while also contributing to the unprecedented driver shortage that continues to plague the commercial trucking industry. Presently, the constraints that Prime faces in adhering to the requirements of 49 CFR 383.25(a)(1) are exceptionally cost-intensive. Prior to the implementation of this section of the regulations, it was not uncommon for States to issue temporary CDLs to CLP holders for the return trip to collect the CDL document from their State of domicile. During that time, CDL holders were neither required to log themselves “on duty” when supervising the CLP holder who had a temporary CDL, nor were they required to remain in the passenger seat of the CMV. Under that scenario, the productivity of the CMV, the earnings capacity of the CDL and CLP holders, and the

logistics of the motor carrier's freight network all went undisturbed. Under the current rule, however, carriers must staff two drivers in the cab of the tractor to accomplish the on-duty work of one.

Prime contends that compliance with the CDL rule leaves it with only two options. It can either: (1) secure some mode of public transportation to allow the CLP holder to collect his or her CDL document before returning to Prime; or (2) the company can route the driver to his or her State of domicile, often against the natural flow of the freight network. Prime argues that securing public transit for each of these CLP holders under Option 1 entails extreme cost burdens to the company;; and option 2 is no more beneficial because routing CLP holders to their home States, commonly without reference to shipper demand, introduces extreme cost inefficiencies.

Other reasons cited by Prime in support of the exemption request include: (1) CDL issuing agencies across States may require many days, if not weeks, to secure the CLP holder's licensure materials. CLP holders suffer great financial hardship during this waiting period. As commercial truck driving is already notorious for its high turnover rates, requiring such protracted waiting periods will greatly augment driver attrition levels. (2) A marked reduction of CLP holders' functional driving skills: CLP holders who are sidelined for many days or weeks will experience a material diminishment in their driving skills, as continuous experiential exposure to commercial driving is required to keep such skills suitably honed; and (3) The industry-wide driver shortage is exacerbated by the current rule. Prospective drivers who learn that they might have to wait several days and be inefficiently routed back to their home State for CDL licensure, are less likely to enlist in the trucking profession.

The exemption sought would apply only to those Prime drivers who have passed the CDL skills test and hold a valid CLP.

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

Prime states that granting this exemption will result in a level of safety that is equal to or greater than the level of safety without the exemption. The practical result of the exemption is that a CLP holder who has passed a CDL skills test would be able to drive without complying with § 383.25(a)(1) and begin immediate and productive on-the-job operation of a CMV on a public road or highway. Anyone who obtained training and took the CDL skills test near his or her home could go directly to the licensing agency, collect the CDL, and begin driving without onboard supervision. It is only when the new driver completes the training and testing in another State that the trip back to obtain the CDL from the State of residence becomes problematic. Allowing CLP holders who have passed the skills test to function as a team driver on the trip home enables these new operators to continue to sharpen their driving skills under the mentoring and observation of a more experienced driver – and they immediately earn an income.

FMCSA has granted an exemption similar to the Prime request on two prior occasions. In the September 23, 2016, **Federal Register**, FMCSA granted a similar exemption from 49 CFR 383.25(a)(1) to CRST Expedited (81 FR 65696). In the June 11, 2015, **Federal Register**, FMCSA also granted this exemption to C.R. England, Inc. (80 FR 33329). Under the terms and conditions of both of these exemptions, a CLP holder who has documentation of passing the CDL skills test may drive a CMV for either of these companies without being accompanied by a CDL holder in the front seat of the vehicle. The Agency believed that both of these requests for exemption would

achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

A copy of Prime's application for exemption is available for review in the docket for this notice.

Issued on: December 15, 2016

Larry W. Minor

Associate Administrator for Policy

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