



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[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 final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant New Prime, Inc. (Prime) an exemption from the regulation that requires a commercial learner's permit (CLP) holder to 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 performs behind-the-wheel training on public roads or highways. Under the terms and conditions of this exemption, a CLP holder who has documentation of passing the CDL skills test may drive a commercial motor vehicle (CMV) for Prime without being accompanied by a CDL holder in the front seat of the vehicle; however, a CDL holder must be in the vehicle. The exemption enables CLP holders to drive as part of a team and have the same regulatory flexibility as Prime team drivers with CDLs. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE FIVE YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION 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.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from some of the Federal Motor Carrier Safety Regulations. 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 the safety analyses and public comments, 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 reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption, and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Prime is one of the nation's largest motor carriers, with a fleet of more than 7,500 CMVs. 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 a truck without a CDL holder being present in the front seat of the vehicle. Prime indicates that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. This would allow a CLP holder to participate in a revenue-producing trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile in accordance with 49 CFR part 383. Prime advises that 2,500 to 3,500 CLP holders would operate under the terms of the exemption each year.

Prime states that 49 CFR 383.25(a)(1) creates undue burdens on the company 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 adoption of that regulation, 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 neither required logged themselves “on duty” when supervising the CLP holder who had a temporary CDL, nor did they always 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 were all protected. Under the current rule, however, carriers must assign a second CDL holder to the vehicle to accomplish the on-duty work that was previously performed by the CLP holder who had a temporary CDL.

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

Other reasons cited by Prime in support of the request include: (1) CDL-issuing agencies may require many days, if not weeks, to secure the CLP holder's licensure materials. CLP holders suffer financial hardship during this waiting period. As commercial truck driving is already known for its high turnover rates, requiring such protracted waiting periods will augment driver attrition levels; and (2) CLP holders who are sidelined for many days or weeks will experience a material diminishment in their driving skills. The exemption sought would apply only to those Prime drivers who have passed the CDL skills test and hold a valid CLP. Prime stated that granting this exemption will result in a level of safety that is equal to or greater than the level of safety of safety without the exemption.

Public Comments

On December 20, 2016, FMCSA published notice of this application and requested public comment (81 FR 92947). The Agency received 13 sets of comments from individuals/drivers in unanimous opposition to the request. The Owner-Operator

Independent Driver's Association (OOIDA) also opposed the request. No one commented in support of the application.

OOIDA commented that the exemption request is not based upon increased safety, but rather upon granting an economic advantage over carriers with similar business practices who would continue to be held to the standards of 49 U.S.C. 31315(a). The claimed economic hardship which is stated, but not supported by data, is exaggerated. OOIDA commented that all of the stated hardships and claims by Prime could be avoided by producing well-trained drivers through their driving training school and compensating them accordingly, which would also lead to lower driver turnover rates.

Other reasons given in opposition include: (1) Prime's application undermines existing Federal safety regulations. Granting the exemption will result in a substantial reduction in the level of safety currently provided by the regulation; (2) While FMCSA should consider the impact its regulations have on productivity, it does not need to grant an exemption based on the desire to increase productivity at all costs. All this exemption would do is allow a large trucking company to bypass the regulations that are in place for public safety; and 3) If not on duty in the passenger seat of the CMV, how is the CDL holder supervising the unlicensed driver and seeing the road conditions, and how does an instructor who is not supervising the trainee or evaluating the road conditions help the CLP holder? Commenters state that the exemption request does not provide a sufficient answer to these questions.

FMCSA Response and Decision

The premise of respondents opposing the exemption is that CLP holders lack experience and drive more safely when observed by a CDL driver-trainer who is on duty and in the front seat of the vehicle. The fact is that CLP holders who have passed the CDL skills test are qualified and eligible to obtain a CDL. If these CLP holders had obtained their training and CLPs in their State of domicile, they could immediately obtain their CDL at the State driver licensing agency and begin driving a CMV without on-board supervision. There are no data showing that having a CDL holder accompany a CLP holder who has passed the skills test improves safety. Because these drivers have passed the CDL skills test, the only thing necessary to obtain the CDL is to visit the Department of Motor Vehicles in their State of domicile.

FMCSA has evaluated Prime's application for exemption and the public comments. The Agency believes that Prime's overall safety performance, as reflected in its "satisfactory" safety rating, will enable it to 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 is restricted to Prime's CLP holders who have documentation that they have passed the CDL skills test. The exemption will enable these drivers to operate a CMV as a team driver without requiring the accompanying CDL holder be on duty and in the front seat while the vehicle is moving.

Terms and Conditions of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 383.25(a)(1) is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through

[INSERT DATE FIVE YEARS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Extent of the Exemption

The exemption is contingent upon Prime maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of- service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver’s license and CLP with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

This exemption from 49 CFR 383.25(a)(1) will allow Prime drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle. The CDL holder must remain in the vehicle at all times while the CLP holder is driving—but not in the front seat.

Preemption

During the period this exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

Prime must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to MCPSD@DOT.GOV, and include the following information:

- a. Exemption Identifier: “Prime”

- b. Date of the accident,
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- d. Driver's name and driver's license number,
- e. Vehicle number and State license number,
- f. Number of individuals suffering physical injury,
- g. Number of fatalities,
- h. The police-reported cause of the accident,
- i. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- j. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the CLP-holders covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: June 15, 2017

Daphne Y. Jefferson
Deputy Administrator

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