

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 383****[Docket No. FMCSA–2018–0332]****RIN 2126–AC23****Commercial Driver's License Out-of-State Knowledge Test; Withdrawal**

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

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: FMCSA is withdrawing a notice of proposed rulemaking (NPRM) to allow driver applicants to take the commercial driver's license (CDL) general and specialized knowledge tests in a State (the testing State) other than the applicant's State of domicile. The NPRM also proposed that the applicant's State of domicile would be required to accept knowledge test results from the testing State. As explained further below, FMCSA is taking this action after considering the comments received following the publication of the NPRM.

DATES: The proposed rule published July 29, 2019, at 84 FR 36552 is withdrawn as of March 9, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 0001, (202) 366–0831, nikki.mcdavid@dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

In August 2017, FMCSA issued regulatory guidance titled, “Commercial Driver's License Standards: Regulatory Guidance Concerning the Issuance of Commercial Learner's Permits” (August 2017 Guidance) (82 FR 36101 (Aug. 3, 2017)), which clarified the circumstances under which a CDL applicant's State of domicile may accept the results of knowledge testing administered to the applicant in another State. The August 2017 Guidance permits the testing State and the State of domicile to enter into a voluntary agreement prior to the general knowledge test being administered by the testing State. The guidance emphasizes that, because only the State of domicile is authorized to issue a Commercial Learner's Permit (CLP) or CDL, the responsibility for compliance with the requirements of 49 CFR 383.71

(driver application and certification) and 383.73 (CLP/CDL issuance) remains with the State of domicile. To the Agency's knowledge, no States have entered into an agreement pursuant to the August 2017 Guidance.

On July 29, 2019, FMCSA published in the **Federal Register** (Docket No. FMCSA–2018–0332, 84 FR 36552) an NPRM¹ to amend 49 CFR 383.79(a)(1) and (2) by permitting a State also to administer knowledge test(s) to an out-of-State applicant, and by requiring the State of domicile also to accept those knowledge testing results.

FMCSA received comments on the NPRM from the following parties: The American Association of Motor Vehicle Administrators (AAMVA); American Trucking Associations (ATA); California Department of Motor Vehicles (California); C. R. England, Inc.; Illinois Secretary of State (Illinois); Iowa Department of Transportation (Iowa); Minnesota Department of Public Safety, Driver and Vehicle Services Division (Minnesota); Minnesota State Patrol (MSP); Montana Department of Justice (Montana); National School Transportation Association (NSTA); Pennsylvania Department of Transportation (Pennsylvania); Truckload Carriers Association (TCA); Virginia Department of Motor Vehicles (Virginia); and six private citizens.

To improve the Agency's understanding of the impact of the NPRM on States and CDL applicants, FMCSA posed several specific questions. The questions and a summary of the responsive comments are set forth below.

Question 1. To what extent will State Driver Licensing Agencies (SDLAs) need to adapt existing procedures and processes to receive out-of-State knowledge testing results and remotely deliver the physical CLP or upgraded CDL? What are the costs associated with making these changes?

Responses: All SDLAs responding to this question stated that changes to existing CLP application and issuance procedures and software would be necessary; some also questioned how remote delivery of the CLP credential would be accomplished.

Only Pennsylvania responded to the cost question specifically, estimating a cost of approximately \$525,000 for the system changes needed to accept knowledge test results from other States and a cost of approximately \$1.6 million to begin offering knowledge testing to out-of-State driver applicants. Other

States noted there would be costs associated with changing existing systems and processes to accept test results from other States but did not quantify the amounts.

All State commenters said the NPRM would require changes in current procedures for processing knowledge test results and issuing CLPs. Minnesota and Virginia noted, for example, they would need to revise current processes to allow an applicant's record to remain “open” in pending status while waiting to receive the applicant's out-of-State knowledge test results. California questioned how it would receive the completion of knowledge testing notification from the testing State.

Question 2. What additional State implementation concerns are raised by [the NPRM]?

Responses: Pennsylvania noted that there is currently “no way to verify the person taking the knowledge test in another jurisdiction is in fact the same person taking the skills test later in the process,” adding that “[the Commercial Skills Test Information Management System] does not provide a mechanism for verification with other jurisdictions.” Virginia also noted security concerns, stating that “the requirement to issue a CLP remotely undermines the current processes Virginia has in place to ensure that a credential is securely issued to the applicant.” California also expressed concern over the proposed remote delivery requirement, questioning how secure delivery could be assured if the CLP credential was sent to an address outside their State. Montana noted “grave concerns about the real and substantial threat of fraudulent activity” if Montana is required to issue a CLP to an applicant who does not personally appear at a Montana driver license location. Minnesota and Virginia cited ongoing difficulties in the processing of out-of-State skills testing results, which could carry over to the processing of knowledge testing results.

Question 3. Would 2 years, or 3 years, allow SDLAs sufficient time to achieve compliance with the proposed requirement to accept any out-of-state knowledge test results? Please explain the basis of your preferred compliance date.

Responses: Three States responded to this question. Pennsylvania said it would need 2.5 years to accommodate necessary changes in State laws and processes. California and Virginia said they would need 3 years to achieve compliance.

Question 4. If [the NPRM] is finalized, would your SDLA offer knowledge testing to out-of-state CLP applicants or

¹ To view the NPRM and the comments we received, go to <https://www.regulations.gov/document/FMCSA-2018-0332-0001>.

CDL holders wishing to add an endorsement to their license? Why or why not?

Responses: Of the States that responded directly to this question, Minnesota and California said they would not offer out-of-State testing; Virginia said it would likely offer out-of-State testing if authorized by the State legislature. Iowa also implied that it would offer knowledge testing to out-of-state CLP applicants by noting that Iowa-based driver training programs, which attract many out-of-State students, bring “tremendous economic value” to the State. Pennsylvania said that, without “process improvements and additional funding,” it would be difficult to provide testing out-of-State applicants.

Question 5. Would the proposed changes allow applicants who take driver training outside their State of domicile to obtain a CLP or upgraded CDL more efficiently? If so, please provide specific examples of time or cost savings that may accrue if the proposed changes were adopted.

Responses: Pennsylvania responded that, if its concerns were addressed, allowing out-of-State knowledge testing “could be a significant achievement in enhancing access for our future commercial drivers and their employers.” Iowa predicted the proposed rule would enhance efficiency and that associated cost savings would accrue to employers, trainers, and drivers. ATA, TCA, and other commenters also believed the rule would enable applicants to receive their CLPs more efficiently. Minnesota, which does not intend to provide knowledge testing to out-of-State applicants, stated that “[t]he only efficiency with this proposal is to truck

driving students who take training in another state that is not a border state.”

Commenters provided additional input beyond answering these five questions, as summarized below.

Some commenters, including ATA, TCA, and NSTA, believed the proposed rule would have no detrimental impact on safety because all CLP applicants must be tested and licensed in accordance with the standards established by the May 9, 2011, final rule titled, “Commercial Driver’s License Testing and Commercial Learner’s Permit Standards” (76 FR 26854). Some States expressed concern that, if adopted, the proposed rule would undermine the State of domicile’s ability to maintain control over the testing process and ensure that only qualified drivers obtain a CLP. Several commenters commended the proposed rule for relieving the time and travel cost burden on CLP applicants who must return to their State of domicile to take the knowledge test after receiving training in another State. On the other hand, one commenter stated there is no undue burden imposed by requiring a CLP applicant to take the knowledge test in their State of domicile, noting that “[l]earning needed to pass the written knowledge test can be done by reading the written materials available from any SDLA.”

Several commenters noted that the proposed rule would benefit driver training schools and motor carriers by enhancing efficiency of the training process, thereby helping to alleviate driver shortages. As one commenter explained, a more efficient testing process will encourage more drivers to apply for a CDL, which means “more opportunities to fill the gap between the supply and demand of commercially-licensed drivers.”

Two commenters asserted that FMCSA is exceeding its legal authority over the States’ commercial licensing processes by requiring the State of domicile to accept knowledge test results from another State. Virginia stated that the rule is an unfunded mandate and FMCSA has not indicated it will provide funding to help States comply. Some States noted the potential loss of testing fees if applicants domiciled in their State elect to take the knowledge test in another State.

The Agency carefully considered all comments. The NPRM was intended to promote further flexibility in the CDL issuance process without negatively impacting safety. All State commenters noted, however, that due to process complexities associated with the proposed change, SDLAs would need to implement significant changes to accommodate the receipt of out-of-State knowledge test results. Given States’ security and operational concerns surrounding out-of-State knowledge testing, including remote delivery of the CLP credential, FMCSA concludes the proposed change is not advisable at this time. The Agency hereby withdraws the July 29, 2019, NPRM, based on the same legal authorities on which it issued the NPRM, set forth at 84 FR 36552, 36553. The Agency notes, however, that States may enter into voluntary agreements for out-of-State knowledge testing in accordance with the August 2017 Guidance discussed above.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Acting Administrator.

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