

September 16, 2014

Administrator Darling
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

DEPARTMENT OF
TRANSPORTATION
TRUCK OPERATIONS

2014 NOV 18 A 10:15

Re: Exemption for CLP Holders who have Passed CDL Skills Test

Dear Administrator Darling:

C.R. England, Inc. ("C.R. England") respectfully submits this request for exemption under 49 C.F.R. §381.310. C.R. England seeks an exemption from 49 C.F.R. §383.25(a)(1). More specifically, C.R. England seeks an exemption from the requirement that those accompanying a Commercial Learner's Permit ("CLP") holder must be physically present at all times in the front seat of a Class 8 truck on the condition that they have successfully passed an approved CDL skills test. *Id.* §383.25(a)(1). This exemption would foster a more productive and efficient training environment and would achieve a level of safety that is equivalent to or greater than the level of safety provided under the rule. The information as required by 49 C.F.R. §381.310 is as follows:

Subpart (b)(1) TJ England, General Counsel, C.R. England, Inc., 4701 W. 2100 S. Salt Lake City, Utah, 84121. (801) 972-2712.

Subpart (b)(2) C.R. England, Inc.

Subpart (b)(3) 4701 W. 2100 S. Salt Lake City, Utah, 84121.

Subpart (b)(4) USDOT number 28406

Subpart (c)(1) As the FMCSA is well aware, the trucking industry is desperately in need of qualified and well-trained drivers to meet the ever-growing demand for shipping needs. However, subpart 383.25(a)(1) limits C.R. England's ability to effectively and efficiently recruit, train, and employ new entrants to the industry. The exemption is requested due to the significant burden that this rule may create on the driver supply for C.R. England.

Prior to the implementation of 383.25(a)(1), states routinely issued temporary CDLs to drivers who had successfully passed a CDL skills test in their state. The temporary CDL allowed C.R. England time to route the new driver to their state of domicile to obtain a final CDL. This permitted C.R. England to place the new driver into an on-the-job training position with a driver-trainer that was also a productive team truck until they could efficiently be routed through their home state to finalize the CDL. In this environment, a driver-trainer could supervise and observe the new driver, but was not required to be on-duty and in the front seat at all times while the new driver was driving. Thus, the new driver could become productive immediately, allowing more freight movement for C.R. England and an immediate paycheck for the new driver.

Under 383.25(a)(1), however, a CLP holder must be accompanied at all times by a CDL holder who, in turn, must be physically present in the front seat of the vehicle next to the CLP holder and in on-duty status during this time. This requirement appears to apply even after the CLP holder successfully passes the CDL skills test. This rule places C.R. England in an untenable position. Either we send the driver to their home state by bus or airplane, at C.R. England's expense, and hope that the CLP holder obtains the final CDL and returns to C.R. England, or C.R. England must incur double the cost for about half of the production by sending them to their home state on one of our trucks. The difficulties of each of these proposals will be outlined below.

First, it is inefficient and unproductive for both C.R. England and the driver to send a CLP holder home on a bus or airplane. It is inefficient for C.R. England because it will incur the added expense of bus fare or airfare and C.R. England will also give up any influence over whether the driver actually obtains a formal CDL and returns to work. In this competitive job market, carriers will be hard pressed to send new drivers, for whom they have invested significant recruiting and training resources, to a different state with little influence over whether they actually begin working for the carrier or immediately leave for a competing carrier or industry. Furthermore, drivers will not be able to utilize the training they just received and they may see some attrition in their skill set due to the days or weeks spent without driving as they travel home to obtain a formal CDL. This attrition of driver skills will have a negative impact on safety. Finally, the drivers themselves will be negatively impacted because they will be without an income during all the time it takes to travel back to their home state, apply for and obtain a permit, and return to the location where the carrier can put them to work. What's more, it is rumored that some states may have a waiting period after successful skills test completion before they can issue a CDL.

Second, if C.R. England tries to send the CLP holder home on a truck, the rule will result in significant productivity degradation and increased costs. At present, the driver-trainer and the new CLP holder can alternate driving, in accordance with HOS regulations, and each can earn an income as the company generates revenue from their driving. The new rule requires the driver-trainer to be in the passenger seat whenever the CLP holder is driving. Both drivers must be paid by the company even though only one is generating revenue. This results in twice the cost and about half of the productivity in order to send CLP holders home on a truck.

As a result of the foregoing, C.R. England seeks an exemption from subpart 383.25(a)(1) for CLP holders who have successfully passed a CDL skills test that is compliant under part 383. Specifically, C.R. England seeks an exemption that would allow a CLP holder, who has successfully passed a compliant CDL skills test, to be able to drive without having a CDL holder seated beside him in the truck.

The exemption should contemplate that the CLP holder could drive for the remainder of the time available on the driver's CLP, so long as the driver can supply evidence of the passed CDL examination. This exemption would allow such a driver to operate more freely and in a way that benefits the driver, the carrier, and the economy as a whole. Furthermore, such an exemption will achieve a level of safety that is equivalent to, or greater than the level of safety obtained by compliance with subpart 383.25(a)(1), which is described more fully below.

The duration of the exemption sought by C.R. England is for two years.

Subpart (c)(2) C.R. England seeks an exemption from 49 CFR 383.25(a)(1) for CLP holders who have successfully passed a CDL skills test that is compliant under part 383. Specifically, C.R. England seeks an exemption that would allow those CLP holders who have successfully passed a compliant CDL skills test to be able to drive without a CDL holder at all times present in the front seat of the vehicle next to the CLP holder, however, the CDL holder will remain present in the truck while the CLP holder is driving. The exemption should contemplate that the CLP holder could drive for the remainder of the time available on the driver's CLP, so long as the driver can supply evidence of the passed CDL examination.

This exemption is consistent with the FMCSA's comments in the preamble to the rule that state that "FMCSA does not believe that it is safe to permit inexperienced drivers *who have not yet passed the CDL skills test* to drive unaccompanied." See 76 Fed. Reg. 26861 (emphasis added). The exemption sought would apply only to those who have passed the CDL skills test and hold a CLP.

Subpart (c)(3) The number of drivers that would operate under the terms of this waiver would likely be several thousand per year.

Subparts (c)(4) & (5) The exemption will result in a level of safety that is greater than the level of safety of the rule without the exemption. The only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has waited in line at the DMV and has received the hard copy CDL. The practical result of the exemption is that a CLP holder who has passed a CDL skills test would be able to drive without the requirements of subpart 385.25(a)(1) and begin immediate and productive on-the-job training. This will allow them to hone their recently acquired driving skills and put them to work (in addition to immediately earning an income). If subpart 385.25(a)(1) must apply, C.R. England will not be able to immediately begin training and employment of new drivers and their skills will wane as they travel home by bus or airplane to get to the DMV of their home state and then find their way back to C.R. England. As a result, it is a safer approach to allow these new drivers to begin practicing their skills immediately under an exemption to subpart 385.25(a)(1).

Subpart (c)(6) As described in Subpart (c)(1), above, the impact of a denial of the exemption is substantial. First, if the exemption is not granted, carriers will need to cover the cost for drivers returning to their home states to receive their CDLs. This will necessitate an increase in school tuition costs. As tuition goes up school becomes less affordable.

Most drivers arriving at our schools are in immediate need of a steady income. They understand it will be delayed because of the time they spend in school. Nevertheless, they are stretched to the limit when they receive their first pay check. To delay the first pay check by another week or two, or more, will have a devastating effect on people who are doing their best to provide for their families.

Finally, an unintended outcome of the new rule will be that carriers making a significant investment in driver education and training will lose their incentive to continue because a large percentage of their graduates will be lost to competitors. This is a direct result of the driver going home, without having earned an income and with the prospect of further delays in getting back on one of the carrier's trucks. Local trucking companies may offer more immediate opportunities without having incurred the cost to train new drivers.

The trucking industry needs at least 100,000 new drivers per year to meet the existing demand to move freight. For the above reasons, some training fleets, including C.R. England, will question whether schools are worth the investment. This not only hurts C.R. England, but it makes it more difficult for applicants with no experience to enter the industry and it will aggravate an already serious problem of too few drivers to move the nation's freight.

If the requested exemption is granted, it will be necessary for C.R. England and those drivers working for C.R. England to have an ability to communicate the exemption to federal, state, and local authorities. C.R. England requests that the various agencies or other groups administering CDL skills tests shall be directed to provide a receipt demonstrating successful completion of the CDL skills test, that can be presented to authorities upon request. The receipt provided to the driver should be in paper and/or email form, in addition to the required electronic submission to the driver's state of domicile. Accordingly, if the exemption is granted, the FMCSA will need to provide guidance to the various agencies or other groups that will be administering the CDL skills tests regarding the form of receipt or other documentation necessary to the driver.

Thank you in advance for your prompt consideration of this exemption request. If you would like additional information, please feel free to contact TJ England at (801) 972-2712.

Sincerely,

TJ England
Deputy General Counsel & Director of Corporate Compliance
C.R. England, Inc.