

April 2, 2024

Mr. Patrick D. Nemons
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**SUBMITTED VIA THE FEDERAL E-RULEMAKING PORTAL AT
REGULATIONS.GOV**

Re: Amendments to the Commercial Driver's License Requirements: Increased Flexibility for Testing and for Drivers After Passing the Skills Test [FMCSA-2023-0115][RIN 2126-AC46]

Dear Mr. Nemons:

The National Propane Gas Association (NPGA) respectfully submits this comment in response to the Federal Motor Carrier Safety Administration (FMCSA) Notice of Proposed Rulemaking: Amendments to the Commercial Driver's License Requirements: Increased Flexibility for Testing and for Drivers After Passing the Skills Test.¹ FMCSA proposed this rulemaking to enhance the flexibility and efficiency of the Commercial Driver's License (CDL) program by removing certain regulatory restrictions to allow applicants to obtain a CDL, and be productively employed as a Commercial Motor Vehicle (CMV) driver in less time than it currently takes, without compromising safety.² FMCSA believes the proposed changes will further address CMV driver shortages, enhance supply chain stability, and provide appropriate regulatory relief without impacting safety.³

NPGA is the national trade association of the propane industry with a membership of about 2,400 companies, and 36 state and regional associations that represent members in all 50 states. Membership in NPGA includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane gas fuels millions of installations nationwide for home and commercial heating and cooking, in agriculture, industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. Roughly 75% of NPGA's members have fewer than 100 employees, and are considered small businesses. NPGA members include motor carriers who transport propane and propane equipment would be subject to the amendments in the Proposed Rule.

**REMOVAL OF REQUIREMENT TO HAVE OBTAINED TRAINING IN STATE OF
CERTIFICATION**

¹ Notice of Proposed Rulemaking, Amendments to the Commercial Driver's License Requirements: Increased Flexibility for Testing and for Drivers After Passing the Skills Test, 89 Fed. Reg. 7327 (Feb. 2, 2024) (hereinafter, "NPRM").

² *Id.* at 7328.

³ *Id.*

The NPRM proposes to remove the restriction that the out-of-state applicant must have obtained training in the testing State to take the CDL skills test in the testing State. State Drivers License Authorities (SDLAs) thus would be permitted to administer the CDL driving skills test to out-of-State CDL applicants regardless of where the applicant received driver training. The requirement that the State of domicile accept the skills tests results in fulfillment if the applicant's testing requirements under § 383.71, and the State's testing administration requirements under § 383.73, as currently set forth in § 383.79(a)(2), would remain unchanged.⁴

COMMERCIAL LEARNER'S PERMIT AMENDMENTS

Currently, a Commercial Learner's Permit (CLP) is considered a valid CDL to operate a CMV on public roads or highways only for the purpose of Behind-The-Wheel (BTW) training, subject to certain conditions. FMCSA proposes to amend § 383.25(a)(1) by adding an exception permitting a CLP holder who has passed the skills test to operate a CMV for purposes other than BTW training without having a CDL holder sitting in the front passenger seat or to operate an empty passenger CMV, including a school bus or empty tank vehicle, without a CDL holder seated directly behind, or in the first row behind, the CLP holder. The proposed exception would apply only if the CLP holder has already passed the skills test, possesses documentary evidence from the testing State of having passed the skills test, and the holder of a valid CDL is physically present in the CMV.⁵

ELIMINATION OF 14 DAY WAITING PERIOD

Currently, applicants who obtain a CLP after passing the required knowledge test(s) are not eligible to take the CDL skills test during the 14 days following initial issuance of the CLP, as set forth in § 383.25(e). On February 7, 2022, FMCSA implemented Entry-Level Driver Training (ELDT) standards, including BTW training on a driving range and on public roads, set forth in 49 CFR part 380, appendices A through D. States must verify that CLP holders completed the required ELDT before administering the skills test, as set forth in § 383.73(b)(11). The Agency therefore proposes to remove paragraph (e) because the 14-day waiting period is no longer necessary.⁶

ELIMINATION OF THE "P" ENDORSEMENT

In accordance with § 383.93(b)(2) and (5), CDL holders transporting CMVs designed to carry passengers, including school buses, must have a "P" endorsement. The "P" endorsement is intended primarily to ensure the driver has the necessary skills and knowledge to safely transport passengers and does not otherwise require additional on-road driving skills beyond those already required to hold a CDL of the appropriate class. FMCSA proposes to amend § 383.93(b) to create an exception to the requirement that CDL holders have a "P" endorsement to operate an

⁴ NPRM at 7333.

⁵ *Id.*

⁶ *Id.*

empty passenger CMV, including an empty school bus, when the vehicle is being transported for delivery or in a *driveaway-towaway operation* as defined in § 390.5T.⁷

THIRD-PARTY KNOWLEDGE EXAMINERS

FMCSA proposes to except certified third-party skills test examiners who also administer the knowledge tests from certain provisions of §384.228 to avoid application of duplicative requirements.⁸ Additionally, FMCSA proposes to establish conditions under which States would be authorized to permit third-party knowledge testing, which currently apply on to third-party skills testing, as set forth in §383.75. The NPRM would add a new requirement that third-party knowledge testing be administered electronically and securely to minimize the opportunity for negligence or fraud that may exist when knowledge tests are administered on paper.⁹

Under the proposal, third-party knowledge examiners would be required to take a 20-hour training course every 3 years in order to administer knowledge tests.¹⁰ FMCSA is proposing that knowledge tests be administered electronically, but is not proposed requirements on the physical location of the knowledge testing site. FMCSA requests comments on these alternatives, and whether remote physical testing site requirements should be adopted.¹¹ States that opt to allow third-party knowledge testing would be required to develop an auditing and monitoring program to ensure the integrity of the knowledge.¹² FMCSA requests comment on the burden of creating the auditing process, and associated costs.

ISSUES ON WHICH FMCSA SEEKS COMMENT

FMCSA is particularly interested in receiving comments on the following issues:¹³

- 1) What forms of documentation would be acceptable to demonstrate to a law enforcement officer or CMVS inspector that the CLP holder operating the CMV has successfully completed the CDL skills test? What form of documentation did States acting under the authority of the waiver or exemptions provide for CLP holders who passed the skills test in their State?

NPGA appreciates the opportunity to answer Question 1, but believes the question is best answered by law enforcement or CMVS. NPGA supports both paper and electronic documentation associated with the CLP or CDL.

⁷ NPRM at 7334.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 7338.

¹¹ *Id.*

¹² *Id.*

¹³ NPRM at 7335.



- 2) Should a CLP holder be permitted to operate a CMV under the proposed exception to §383.25(a)(1) until the CLP expires or should there be a shorter time period after passing the skills test that the CLP holder must obtain the CFL credential?

FMCSA should not maintain an artificial timeline under which a CLP holder must obtain the credential. Creating an artificial deadline could have deleterious effects on supply and logistics, as well as available drivers.

- 3) Did SDLAs relying on the waiver allowing a CLP holder to take the CDL skills test without waiting 14 days following issuance of the CLP experience a change in the applicant passing rate for the road test portion of the skills test? Were there a large number of applicants who took the skills test in your State without waiting 14 days? Did these SDLAs see a reduction in skills testing backlogs in their State?

NPGA appreciates the opportunity to respond to Question 3, but given that the question is directly addressed to States, NPGA will decline to respond.

- 4) Are there safety or operational concerns associated with lifting the mandatory 14-day waiting period between obtaining a CLP and taking the CDL skills test? Would your State impose a waiting period between CLP issuance and the CLP holder taking the skills test, even if it was no longer be required?

NPGA cannot point to certain or discrete operational concerns with lifting the mandatory 14-day waiting period. Given that FMCSA requires specific behind the wheel training, if a holder completes the required behind the wheel training in a shorter period of time, the holder should not be restricted from taking the skills due to an arbitrary waiting period.

- 5) The NPRM proposes to permit a State to administer the CDL skills test to an out-of-state CLP holder who has not obtained training in the testing State. If adopted, would removing this restriction have any impact on your State's decision to permit out-of-state CLP holders to take the skills test in your State.

NPGA appreciates the opportunity to respond to Question 5, but given that the question is directly addressed to States, NPGA will decline to respond. NPGA does support creative a more flexible environment to allow out-of-state CLP holders to take the skills test in every state, given the need for flexible engagement in supply and logistics.

- 6) With a few noted exceptions, the NPRM proposes to apply training and oversight standards currently applicable to third-party skills testers to third-party knowledge testers. Do you believe any of these existing requirements are not relevant to third-party knowledge testers?

The most critical consideration for NPGA and its members is the preservation of safety and appropriate safety procedures. NPGA strongly endorses applying training and oversight



standards currently applicable to third-party skills testers to third-party knowledge testers, as it would provide assurances of an equivalent level of safety in the knowledge testing.

- 7) Should State knowledge examiners be included in the auditing and monitoring requirements proposed for third-party knowledge examiners in new §384.229(b)(2) and (3) to minimize fraud? Why or why not?

NPGA has no data or information with respect to incidents of fraud among State knowledge examiners. Therefore, NPGA will not comment on the question.

- 8) What form of oversight do States currently provide for State knowledge examiners? If State knowledge examiners were included within the scope of the oversight requirements proposed in new §384.229(b)(2) and (3), would that result in additional costs for the States? If so, please explain the additional costs.

NPGA appreciates the opportunity to respond to Question 8, but given that the question is directly addressed to States, NPGA will decline to respond.

- 9) Do you agree or disagree with the proposed requirement that CDL knowledge tests administered by third-party examiners be securely conducted electronically to minimize fraud.

NPGA agrees that CDL knowledge tests administered by third-party examiners be securely conducted electronically. As a registered training provider, NPGA uses electronic remote teaching methods in order to provide theory training to applicants for CDLs. Given our experience, we believe a secure, electronic test is in the best interest of both applicants and FMCSA.

- 10) FMCSA is aware that several States currently permit third-party knowledge testing and that some States permitted third party knowledge testing in accordance with waivers in effect between July 1, 2020, and February 3, 2022. For these States, do/did you permit third-party examiners to administer the tests in a physical location outside the SDLA? If not, why not? If yes, please describe the specific measures you take/took to ensure the integrity of the third-party knowledge testing process in a separate physical location. For example, how did/does your State verify the applicant's identity before they take the knowledge test and that applicants take the test themselves without assistance, such as reference materials?

NPGA appreciates the opportunity to respond to Question 10, but given that the question is directly addressed to States, NPGA will decline to respond.

- 11) Would your State consider allowing third-party knowledge testing in accordance with the new requirements proposed by the NPRM? Why or why not? What factors do you believe will influence your decision?

NPGA appreciates the opportunity to respond to Question 11, but given that the question is directly addressed to States, NPGA will decline to respond.

- 12) The NPRM estimates that the proposed application of training, record check, and oversight requirements to States opting to utilize third-party knowledge examiners and testers would result in additional costs to those States and has preliminarily identified cost estimates in this NPRM. Do you agree with those estimated costs? Why or why not? Do these costs change if the State already has an auditing and monitoring program for third-party skills examiners?

NPGA appreciates the opportunity to respond to Question 13, but given that the question is directly addressed to States and the costs they would incur or avoid, NPGA will decline to respond.

- 13) How long would States need to adapt their administrative processes and procedures to accommodate the proposed changes? Would any of the proposed change require a modification of SDLAs IT systems or a change in underlying State law?

NPGA appreciates the opportunity to respond to Question 13, but given that the question is directly addressed to States, NPGA will decline to respond.

- 14) Does the proposal to except CDL holders transporting empty passenger CMVs, including school buses, from having a P endorsement in driveaway-towaway operations, or when transporting the vehicle from the manufacturer to a distributor, raise any safety concerns? Why or why not?

The most critical consideration for NPGA and its members is the preservation of safety and appropriate safety procedures. NPGA endorses excepting CDL holders transporting empty passenger CMVs from having a “P” endorsement as the requirement, under the circumstances, provides no additional safety. Under the proposed circumstances, CDL holders can achieve an equivalent level of safety with or without the “P” endorsements.

INFORMATION COLLECTION

Through the NPRM, FMCSA seeks OMB approval of an updated information collection titled “Commercial Driver Licensing and Testing Standards,” currently scheduled to expire on April 30, 2025.¹⁴ FMCSA requests comment on (1) whether the proposed information collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the information collection.¹⁵

¹⁴ *Id.* at 7340.

¹⁵ *Id.* at 7341.



NPGA has no objections or proposed changes to the proposed information collection.

CONCLUSION

Thank you for your consideration of these comments.

A handwritten signature in black ink, appearing to read "Benjamin Nussdorf", is positioned above a horizontal line.

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