



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0070]

Inspection, Repair and Maintenance; Inspector Qualifications; Application for an Exemption from the American Trucking Associations

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

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA grants a limited 5-year exemption to the American Trucking Associations (ATA) on behalf of motor carriers, intermodal equipment providers (IEPs), and individuals, from the requirements that an individual must complete 1 year of training, experience, or a combination thereof prior to being qualified to conduct annual commercial motor vehicle (CMV) inspections and to conduct brake-related inspection, repair and maintenance tasks on CMVs. The exemption covers individuals who successfully complete a training program that is self-certified by the training provider as consistent with a set of recommended practices (RPs) developed by the ATA's Technology and Maintenance Council (TMC) and motor carriers and IEPs who rely on these training programs and individuals to satisfy FMCSA's rules. The Agency has determined that granting the exemption from the requirements for 1 year of training, experience, or a combination thereof for individuals who successfully complete, and educators who provide, a performance-based inspector training program consistent with the TMC RPs, would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulatory requirements.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires on January 16, 2030.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, FMCSA; 1200 New Jersey Avenue, SE, Washington, DC 20590-0001; (202) 366-9209; MCPSV@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2021-0070” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2021-0070” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)) and provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analysis. The Agency must 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(a)). The Agency must publish its decision in the *Federal Register* (49 CFR 381.315(b)). If granted, the notice will identify the person or class of persons receiving the exemption, the regulatory provision from which the exemption is granted, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemptions may be renewed (49 CFR 381.300(b)).

III. Background

A. Current Regulatory Requirements

The FMCSRs require motor carriers and IEPs to ensure that individuals performing annual inspections of CMVs (49 CFR 396.19), including individuals who inspect, maintain, repair, or service CMV brake systems (49 CFR 396.25), are properly qualified to perform such assignments. Under §§ 396.19(a)(3)(ii) and 396.25(d)(3)(ii), part of the qualifications to conduct those inspections is that an individual have training, experience, or a combination thereof totaling at least 1 year as outlined in those sections.

B. Applicant's Request

ATA applied on behalf of individuals seeking inspector qualifications for an exemption from the requirements in 49 CFR 396.19(a)(3)(ii) and 396.25(d)(3)(ii) that an individual must complete training, experience, or a combination thereof totaling at least 1 year prior to being qualified as an inspector. ATA requested that FMCSA permit educators to self-certify their training programs based on the TMC RPs and permit technicians who complete those training programs to be qualified to inspect CMVs in less than 1 year.

ATA stated that educators that provide a TMC RP-based training program develop technicians with the skills and knowledge to be highly proficient and qualified inspectors in less than a year. TMC's Educator Committee recommended training of a

minimum of 210 hours for individuals having some level of experience and competency to a maximum of 540 hours for those new to CMVs. The committee estimated that approximately one-third of the instruction would be classroom based, with the remainder of the curriculum being laboratory/hands-on based. ATA also proposed to “grandfather” individuals with some level of experience who can “test out” of the training by passing the National Institute for Automotive Service Excellence (ASE) Medium-Heavy Truck Certification Tests T4 – Brakes and T8 – Preventative Maintenance Inspection by demonstrating successful preventive maintenance inspection (PMI) to a qualified inspector or educator. After meeting the requirements, ATA stated that individuals should be exempt from the one-year requirement.

A copy of the application is included in the docket referenced at the beginning of this notice.

IV. Public Comments

FMCSA published a notice in the *Federal Register* on July 14, 2021, asking for public comment on the exemption request (86 FR 37208). The Agency received one comment from the American Bus Association (ABA).

The ABA supported the exemption. It stated that, given the shortage of drivers, safety professionals, and maintenance personnel following the COVID-19 pandemic, this exemption will positively impact the CMV industry by expanding accessibility and opportunities for professional development and staffing. The ABA also suggested that the program should be considered like commercial training programs designed to train students in brake maintenance/inspection and in CMV operation and maintenance, which are already encompassed in the relevant regulations; therefore, an exemption for educators should not be necessary.

FMCSA Response: FMCSA agrees with ABA regarding the positive impact of the exemption on the CMV industry, to help address a shortage of maintenance personnel.

Although FMCSA regulations do not directly apply to training programs, FMCSA emphasizes that each self-certifying training provider must ensure its training program is consistent with ATA's TMC RPs such that the individual is qualified in less than 1 year to conduct annual CMV inspections and brake-related inspection, repair, and maintenance tasks on CMVs. This approach would differ from existing programs designed to train students in CMV operation and maintenance that require training or experience totaling at least 1 year, which also include brake instruction.

V. Equivalent or Greater Level of Safety Analysis

TMC's Study Groups and Task Forces have developed a series of best practices and standards for the maintenance and operation of CMVs and equipment that together will serve to provide training providers with the necessary content to deliver comprehensive training programs and assessments that provide individuals with the knowledge and skills to become qualified inspectors.

ATA has developed more than 500 RPs that outline individual procedures for inspecting, repairing, or replacing components on CMVs. These RPs are available in a document titled "A Guide to TMC Recommended Practices." The RPs are categorized into 15 sections based on the CMV systems and components, such as Electrical and Lighting, Tires & Wheels, Engine, Cab & Controls, Fleet Maintenance Management, Chassis and Brake Systems, Trailers Bodies and Material Handling, Cost Control Methods, Sustainability and Environmental Technologies, Onboard Vehicle Electronics, Last Mile and Vocational Vehicles, Specialty Trucks, Service Provider, Collision and Corrosion Control, and Offboard Data Systems. Generally, each RP includes:

- Preface: This section provides important warnings and disclaimers to the user.
- Scope and Purpose: This section defines the purpose and scope of the RP and identifies the intended audience.

- Background: This section provides an explanation of the need for the RP and a brief overview of the content.
- Recommended Practices: This section provides the step-by-step guidance and procedures for addressing the issue.
- References: This section lists any additional sources of information or references that are relevant to the RP.

FMCSA has evaluated the exemption application and the comment received. For the reasons discussed below, FMCSA has determined that granting an exemption from the requirements that motor carriers and IEPs ensure that individuals performing annual inspections have 1 year of training, experience, or a combination thereof would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulatory requirements if the individuals instead successfully complete a performance-based inspector training program consistent with the TMC RPs,.

TMC's RPs are compiled in accordance with a disciplined development process, subject to peer review, offer an appeals and formal decision-making process, are accessible, and provide a way for stakeholders to comment and contribute. The RPs are subject to a review cycle of no more than 5 years, during which time an RP must be reissued, revised, and if appropriate, withdrawn. FMCSA believes that by using a structured training program that follows the RP intended to accelerate an individual's knowledge and skills, the individual could gain more real-world experience and practical knowledge in less than the 1 year required by the FMCSRs. The collaborative effort involving industry experts ensures that the training material is relevant, up-to-date, and effective in addressing common issues technicians and inspectors face in their day-to-day work environment. The RPs also undergo a thorough review and validation by a group of knowledgeable and experienced professionals within the industry. This review process helps to ensure the accuracy, reliability, and quality of training content, which benefits

from the expertise of professionals with firsthand experience in the field. In summary, an inspector training program based on the TMC RP curricula would provide practical and relevant training experiences, as it provides industry best practices and real-world expertise. The RP peer review process contributes to an additional level of validation to the training, ensuring that it meets high quality standards and prepares individuals to effectively carry out their inspection responsibilities.

FMCSA also reviewed the TMC RP applicable to the inspection items in Appendix A to 49 CFR part 396 that establish the framework for the training program. FMCSA finds that the establishment of recommended inspection and repair practices and training guidelines through a program based on TMC RPs will have a positive impact on highway safety and competence in the field. In addition, FMCSA supports ATA's TMC recommendation that the training program duration should be at least 540 hours (approximately 13.5 work weeks) for new individuals, divided into one-third (1/3) classroom-based instruction and two-third (2/3) laboratory hands-on based instruction. FMCSA has determined that the combination of hours, classroom, and hands-on experience is sufficient to provide the individual with a level of knowledge, proficiency, and experience to perform quality PMI inspections.

FMCSA also agrees with the concept of allowing individuals who have completed fewer than 12 months of combined training and experience (and thus not yet qualified inspectors per the current FMCSRs) to "test out" by taking and successfully passing the ASE T4 and T8 tests. However, the Agency believes that this approach should be limited to individuals who have already completed a minimum of 330 hours (approximately 8.25 work weeks) of combined training and experience, followed by a minimum of 210 hours (approximately 5.25 work weeks) of combined training and experience under a curriculum that the training provider has self-certified as based on the TMC RPs (a

combined total equivalent to the 540 hours proposed by ATA). Paragraph VI(B)(1)(b)(ii) in the Terms and Conditions below reflects this alternative approach.

As noted above and based on a review of the comprehensive materials that ATA has developed, FMCSA has determined that an individual who successfully completes a training program consistent with the TMC RPs and under the terms and conditions of the exemption granted will likely possess the skills and knowledge to be as proficient and efficient an inspector as one who has completed 1 year of training, experience, or a combination thereof.

VI. FMCSA Decision

A. Granting of Exemption

FMCSA hereby grants a limited 5-year exemption to motor carriers and IEPs from the requirements in 49 CFR 396.19(a)(3)(ii) and 396.25(d)(3)(ii) to ensure that an individual complete training, experience, or a combination thereof totaling at least 1 year, provided that those individuals successfully complete an inspector training program that has self-certified with the ATA as meeting the requirements of the terms and conditions below. The inspector qualification requirements in 49 CFR 396.19(a)(1) and (2) and 396.25(d)(1) and (2) continue to apply.

These exemptions are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 15, 2030 11:59 p.m. local time, unless rescinded earlier by FMCSA.

B. Terms and Conditions of the Exemption

This exemption allows individuals to meet the inspector qualification requirements of 49 CFR 396.19(a)(3)(ii) and 396.25(d)(3)(ii) if they have completed a training course using a curriculum consistent with the RPs developed by the TMC, subject to all the following terms and conditions:

1. The training provider must self-certify that its inspector training program satisfies all the requirements of these terms and conditions. Each program must:
 - a. Provide an inspector training program that is consistent with ATA's TMC RPs which are updated from time to time and includes at a minimum *PMI Guidelines for Class 7 & 8 Diesel Powered Tractors*, *PMI Guidelines for Light & Medium-Duty Vehicles (excluding guidelines applicable to light-duty vehicles)*, *PMI Guidelines for Trailers & Material Handling*, *PMI Trainer/Instructor for Class 7 & 8 Diesel Powered Tractors*.
 - b. Provide at least:
 - i. 540 hours of classroom and hands-on instruction exclusive of time for new individual entrants to satisfy the requirements described below, or;
 - ii. 210 hours of classroom and hands-on instruction exclusive of time for individual entrants who have already completed at least 330 hours of combined classroom and hands-on experience and who have taken and successfully passed the ASE T4 and T8 tests.
 - c. Provide instructional training such that approximately one-third of the instruction is classroom based and two-thirds of the instruction is laboratory or hands-on, consistent with the ATA's TMC RPs.
 - d. Provide notice to ATA of the training program's self-certification, including the effective date of self-certification.
 - e. Provide graduates with certificates of program completion that indicate the individual has satisfactorily completed an inspector training program consistent with the terms of this exemption.
 - f. Maintain a list of individuals to whom it has issued a certificate as described in paragraph (d), confirm whether an individual has successfully

completed its inspector training program, and provide such documentation upon the request of FMCSA, or a motor carrier or EIP that employs, seeks to employ, or otherwise utilizes, the individual as a qualified inspector.

g. Allow FMCSA access to any documents or records relating to the inspector training program it provides that may be necessary for FMCSA to evaluate the educator's compliance with the terms and conditions of this exemption.

2. ATA must maintain, publish, and provide to FMCSA, a public list of the training programs that have self-certified as having curricula that meet the terms and conditions of this exemption. ATA must remove from the list of self-certified training programs any training provider that FMCSA or ATA determines does not comply with the terms and conditions of the exemption.
3. Motor carriers and IEPs using an individual qualified under the terms and conditions of this exemption to perform annual inspections under 49 CFR 396.17 must ensure that the individual's training program was on ATA's list of self-certified training programs as of the date on the individual's certificate of program completion and must continue to retain evidence of the individual's qualifications, as required by 49 CFR 396.19(b) and 49 CFR 396.25(e).

The terms and conditions of this exemption do not delegate any FMCSA responsibility to ATA. The exemption also does not authorize ATA to collect a fee on behalf of the government, or to state or imply that any third party's payment for ATA's training services is in lieu of an otherwise applicable government fee. ATA is not offering goods or services to FMCSA. Granting this exemption does not create any expectation of payment or obligation to pay future claims.

VII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600,

during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to an entity operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

VIII. Termination

Interested parties possessing information demonstrating that the exemptions granted herein do not result in the requisite statutory level of safety should immediately notify FMCSA by email at MCPSV@dot.gov.

The exemptions will be immediately rescinded if: (1) ATA, training providers, motor carriers, IEPs, or individuals fail to comply with the terms and conditions of the exemptions; (2) the exemptions have resulted in a lower level of safety than was maintained before the exemptions were granted; or (3) continuation of the exemptions would not be consistent with the goals and objectives of 49 U.S.C. 31136 or chapter 313.

Vincent G. White,
Deputy Administrator.

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