

MEMORANDUM

TO: Kent Carlson and Michael Wishnie, Co-Chairs, Task Force to Study the Use of
MOS Specialty Training as a Substitute for State Licensing Requirements
FROM: Law Student Interns, Veterans Legal Services Clinic, Yale Law School
DATE: November 1, 2013
RE: Licensing Requirements for Commercial Drivers Licenses

I. Recommendations

- The Connecticut State Legislature should change CONN. GEN. STAT. § 14-36 from a permissive (“may issue”) to a mandatory (“shall issue”) standard.
- The Connecticut Department of Motor Vehicles (DMV) should exempt veterans from knowledge test fees for licenses and endorsements for vehicles representative of those that the government has already licensed the veteran to operate.
- The DMV should eliminate the requirement that a veteran has a government license that allows him or her to operate a vehicle with at least 26,001 lbs. GVWR in order to be eligible for the skills test exemption.
- The DMV should eliminate the requirement that a veteran provides a letter from his or her commanding officer indicating which CDL class the veteran is licensed to operate given his or her military experience.
- DMV should amend its eligibility criteria for the military skills test exemption so that they are directly in line with those in the federal regulation (49 C.F.R. § 383.77(b)).

II. Relevance to the Task Force

This memo examines licensing practices for both Connecticut Heavy/Tractor-Trailer Drivers and Transit and Intercity Bus Drivers. According to the IAVA Report,¹ Connecticut Heavy/Tractor-Trailer Drivers receive a median annual income of \$42,300, which is higher than the national median income for the field (\$38,200), although still relatively low for the jobs listed in the report. The industry is expected to experience a job growth of 10% in Connecticut and 21% nationally over the next decade. This growth is projected to produce 380 openings annually in Connecticut and 64,940 job openings nationwide. Heavy/Tractor-Trailer Drivers is the occupational category with more Connecticut annual job openings than any other except Accountants (530). This occupation has the additional virtue of cutting across many MOS skill backgrounds in all of the military services. It is the civilian license with the highest number of Marine Corps and Army veterans with a potentially related MOS, and with the eighth-highest number of Navy veterans.

Transit and Intercity Bus Driver represents the civilian occupation with the sixth-most Army and Marine Corps veterans with a potentially relevant MOS. Transit and intercity bus

¹ The Veterans Legal Services Clinic (VLSC) at Yale Law School drafted a report on veterans’ employment for IAVA in October 2013. The draft report, which is titled *Transitioning Troops: Aiding Gulf War II Veterans in the Passage from War to the Workplace*, contains statistics on military occupational specialties and the Connecticut labor market. Copies were distributed to the Task Force at the first meeting. Please contact the VLSC law student interns if you would like another copy or more information: matthew.blumenthal@clinics.yale.edu; emma.kaufman@clinics.yale.edu; ryan.podolsky@clinics.yale.edu.

drivers in Connecticut make a median income of \$44,500, which is on the lower end of the job areas listed in the report but is significantly higher than the nationwide median income of \$36,600. Over the next ten years, job openings for this class of drivers are expected to grow by 10% in Connecticut and 15% nationwide. The IAVA Draft Report estimates that this growth will translate in 50 new job openings per year in Connecticut and 6,350 new jobs nationwide.

III. Licensing Requirements

a. Federal Requirements

Licensing for Heavy/Tractor-Trailer Drivers in Connecticut is governed by both federal and state statutes and regulations. Federal regulations mandate that in order to work as a driver of any commercial motor vehicle (CMV), an individual must have a Commercial Driver's License (CDL).

There are three classes of CDL issued in Connecticut. As listed in Connecticut Agency Regulation 246 C. § 14-44d(b), they include:

1. Class A - Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 lbs. or more, provided the GVWR of the vehicle being towed is in excess of 10,000 lbs.
2. Class B - Any single vehicle with a GVWR of 26,001 lbs. or more, and any such vehicle towing a vehicle not in excess of 10,000 lbs.
3. Class C - Any single vehicle with a GVWR of less than 26,001 lbs. or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 lbs. comprising:
 - a. Vehicles designed to transport 16 or more passengers, including the driver, or designed to transport more than 10 passengers, including the driver, and used to transport students under the age of 21 years to and from school; and
 - b. Vehicles used to transport hazardous materials which are required to be placarded in accordance with 49 C.F.R. § 172, subpart F, as amended.

Federal regulations mandate that in order to obtain a CDL, the applicant must pass a driving or skills test in accordance with “the standards contained in [detail in] subparts F, G, and H” and taken “in a motor vehicle that is representative of the type . . . the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party.” 49 C.F.R. § 383.71(b)(2). If the applicant plans to operate a vehicle that requires special endorsements, the applicant is required to pass additional tests, including a knowledge test for double or triple trailers, tank vehicles, or vehicles that carry hazardous materials. *Id.* at § 383.93(c). In order to obtain a license for either a passenger vehicle or a school bus, the applicant must perform additional knowledge and skills tests applicable to the “P” or “S” endorsements, respectively. *Id.*

There are several additional requirements beyond these knowledge and skills tests. First, CDL applicants must provide proof of citizenship or lawful permanent residency. *Id.* at 383.93(b)(9). Applicants must also show proof that the “State to which application is made is his/her State of domicile.” *Id.* at 383.93(b)(10). In addition, the applicant must provide all medical documentation required by the state, which at a minimum includes an original or copy of

a medical examiner's certificate. *Id.* at 383.93(h)(1). Finally, the applicant must also surrender his or her non-CDL driver's license. *Id.* at § 383.73(b)(4).

The federal regulations governing CDLs already allow states to waive the driving skills test may be waived "for a CMV driver with military CMV experience who is currently licensed at the time of his/her application, and substituted with an applicant's driving record in combination with certain driving experience," provided that the applicant is regularly employed in a position requiring operation of a CMV or was within the last 90 days in a military, that he or she was exempt from state CDL requirements while on duty in that position, and that for at least the 2 years immediately preceding discharge from the military, the applicant was operating a CMV representative of the one "he/she operates or expects to operate." 49 C.F.R. § 383.77(b).

The regulations also impose some affirmative restrictions that apply to those eligible for the military exemption. Within the previous two years, the applicant must not have had more than one license (apart from a military license), had his or her license suspended, revoked, or canceled; must have no major or multiple serious disqualifying offenses as specified in § 383.51, no convictions for a violation of military, state, or local law relating to traffic control as the result of an accident, and no record of an accident in which he or she was at fault. *Id.* at § 383.77.

An expansion of the federal exemption for military personnel would require notice and comment rulemaking. Under the Commercial Motor Vehicle Safety Act of 1986, the Department of Transportation (DOT) may "grant to a person or class of persons an exemption from a regulation prescribed" under the statute if the DOT finds that "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." 49 U.S.C. § 31315. Exemptions and changes to exemptions are required to go through notice and comment rulemaking. *See id.*; *Motor Vehicle Manufacturers v. State Farm*, 463 U.S. 29 (1983).

b. Connecticut State Requirements

To apply for a CDL in Connecticut, the applicant must present a valid Connecticut Driver's License, along with his or her social security card or most recent W-2 form, a physical examination made by a medical examiner made within two years of the application date, and a completed Application for Commercial Driver's License (DMV Form R-229a). The applicant must be 21 years old to drive interstate or carry hazardous materials; otherwise he or she must be at least 18.

The applicant is required to take the General Knowledge Test, Air Brakes and Combination Tests as applicable, any applicable Endorsement Tests, and a Skills Test. Testing is only offered at DMV Hub offices. The General Knowledge Test consists of 30 questions, and 24 correct answers constitutes a passing score. Each Endorsement Test consists of 10 questions, and 8 must be answered correctly to pass. There are additional requirements for obtaining a Hazardous Materials Endorsement or a Public Passenger Endorsement.

Like many other states, Connecticut has adopted the CDL Skills Test Exemption for Military Applicants. The statute provides that the Commissioner "may waive part or all of the examination" for any applicant "honorably separated from the United States armed forces who applies within two years following the separation and who, prior to the separation, held a military operator's license for motor vehicles of the same class as that for which such applicant has applied." CONN. GEN. STAT. § 14-36.

In practice, this exemption is applied more narrowly, largely in accordance with the federal requirements. The exemption applies only to the Skills Test and does not include any of the testing requirements for being licensed to drive hazardous materials. Military applicants eligible for the exemption must still pass the required knowledge test for the vehicle type, although they are not charged the test fee if they are on active duty status or “meet the current military fee exemption criteria.” No readily available published articulation of the “current military fee exemption criteria” exists. *See* Connecticut Department of Motor Vehicles, CDL Skills Test Exemption for Military Applicants, *available at* <http://www.ct.gov/dmv/cwp/view.asp?a=805&q=450888>.

In addition to the aforementioned documents, Connecticut CDL applicants who are veterans must also provide a valid U.S. Government Motor Vehicle Operator Identification Card, a Military Identification Card or DD-214, a letter from their commanding officer indicating which CMV class is representative of the military vehicle the applicant is licensed to operate, a fee waiver form, a color photograph, proof of social security number, and a certification form that is issued at the branch office. The Government License must indicate the types of vehicles and vehicle capacity that the applicant is licensed to operate, and the capacity must be at least 26,001 lbs. GVWR. *Id.*

According to the Connecticut DMV website, in order to qualify for the exemption, the applicant must also “have operated a vehicle representative of the commercial motor vehicle that they currently operate or expect to operate for at least two (2) years immediately preceding this application for the CDL.” *Id.* The website also states that “evidence must be included such as: a letter from the applicant’s employer; or test results from another state.” If the applicant cannot make such a showing, the applicant may instead demonstrate that “regularly employed in a job requiring operation of a CMV and have either previously taken and passed a skills test given by a State with a classified licensing and testing system and that the test was behind the wheel in a representative vehicle for the applicant’s license classification.” *Id.* I could find these no basis for these policies in any Connecticut regulation. They seem to be an imprecise summary of the federal requirements.

IV. Analysis

Although the number of Heavy/Tractor-Trailer and Transit and Intercity Bus Driver openings make them very attractive fields for the attention of the Task Force, there is limited room for reform available at the state level. The Connecticut statute for military exemptions to CDL licensing requirements gives the maximum exemption for veterans that the federal regulations allow. The only way to improve the statute would be to change it from a permissive (“may issue”) to a mandatory (“shall issue”) standard, which would make permanent a regime that maximizes the exemption allowed by the federal regulation.

In addition, there are several minor adjustments that can be made to Connecticut DMV policies to streamline military veterans’ access to CDLs. First, the DMV could exempt all eligible veterans from the knowledge test fee independent of the “military fee exemption criteria,” and possibly from all test and filing fees. The DMV could also eliminate the requirement that a veteran has a government license that allows him or her to operate a vehicle with at least 26,001 lbs. GVWR, and instead could require only that the government license be for a vehicle representative of the one the veteran plans to operate. This amendment would open the exemption to veterans with government licenses for vehicles representative of Class C vehicles only.

The DMV could also eliminate the requirement that a veteran provides a letter from his or her commanding officer indicating the CDL class associated with the military vehicle the veteran is licensed to operate. Obtaining a letter from a commanding officer post-discharge can often be quite onerous, and there is no reason that the DMV should not be able to do the research to determine which CDL class is applicable based on a veteran's MOS. Finally, the DMV could also change its policy, as enunciated in the last paragraph of the previous section, so that it is more directly in line with the federal regulation. None of these policies are mandated by any federal or Connecticut statute or regulation. Changing them would therefore require merely convincing the agency to do so, amending the website, and ensuring that the information is widely disseminated.

In order to expand the scope of the Connecticut state military exemption regime, the federal regulations would also have to be changed. A petition for rulemaking seeking to expand the military exemption would have to be submitted to the DOT, go through notice and comment rulemaking, and then be adopted and promulgated by the agency.