
From: "James Lamb" <james@truckers.com>
Date: Fri, Mar 25, 2022 1:27 pm
To: hotline@oig.dot.gov, Scott.V.Harding@oig.dot.gov
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Subject: SBTC Complaint and Request for USDOT OIG Audit of FMCSA's CDL Regulations insofar as English Proficiency is Concerned...

Dear Inspector General Eric J. Soskin via Mr. Harding et al,

The SBTC offers this email as a formal request for an audit of FMCSA's regulations, specifically, what we contend are inconsistencies among the language in 49 CFR § 383.133(b)(3), 49 CFR § 383.111, and 49 CFR § 391.11.

Attached please find our January 3, 2022 petition for preemption and/or rulemaking to the Secretary, the FMCSA's March 3, 2022 response, and our March 18, 2022 petition for rulemaking.

This involves the FMCSA's existing rules that allows states to administer CDL written knowledge exams in languages other than English, despite its rule that carriers must make sure their drivers can read English road signs.

In our petitions to the Secretary, we point to two recent accidents in which there were fatalities where the drivers' ability to read either a road sign or a police accident warning posted in English was questioned by investigating police authorities.

The original Federal Register notice referenced in the 49 CFR § 383.133(b)(3) regulation is published at [Federal Register, Volume 76 Issue 89 \(Monday, May 9, 2011\) \(govinfo.gov\)](#)

As you know, USDOT OIG last looked at this issue twenty years ago.

Your attached May 8th, 2002 OIG CDL Audit report is published at [Audit Reports | Office of Inspector General | U.S. Department of Transportation \(dot.gov\)](#)

In the Executive Summary of your report, the OIG states:

Revisions and Clarifications to Federal Standards Will Enhance the National CDL Program

*Federal standards for testing and licensing commercial drivers provide a framework for State CDL programs and set the parameters for FMCSA oversight. In the course of our work, we became aware of several areas where Federal standards should be revised or clarified to ensure that applicants are eligible for CDLs and to provide needed consistency among State programs. These areas include verifying the applicant's legal presence in the United States, requiring proof of the applicant's State residency, verifying the applicant's Social Security information, establishing qualifications for CDL driver examiners, regulating the issuance of CDL learner's permits, and **setting guidelines for English language proficiency**. FMCSA recognizes there are gaps in Federal standards for testing and licensing commercial drivers, and it discussed specific concerns about validation of State residency, Social Security verification, English language proficiency, and CDL learner's permits in a report released in October 2000 or in State oversight reviews released in 2001. **However, FMCSA has not proposed changes in Federal standards that are needed to correct the problems**. We recognize that States may be taking unilateral action to strengthen their CDL programs, particularly in response to the events of September 11, 2001. We also acknowledge the difficulties involved with establishing Federal standards, particularly in controversial areas such as legal presence in the United States and English language proficiency. Such efforts will require coordination with those undertaking legislative or regulatory efforts to improve the overall security of driver licensing and identification. **However, the current situation requires that FMCSA take action in the following areas to translate its awareness of problems into tangible proposals for Federal standards that can be implemented...***

English Language Proficiency.

*Federal standards related to English language proficiency for commercial drivers require clarification. The Federal standard for motor carrier safety requires carriers to ensure that their commercial drivers are able to read and speak the English language sufficiently to converse with the general public, understand highway and traffic signs, respond to official inquiries, and make reports and records. **However, the Federal standard on CDL testing and licensing does not place any requirement on the States to test for language proficiency**. FMCSA guidance allows States to administer the CDL knowledge test in foreign languages. Eight of the 13 States visited allowed the use of interpreters for the knowledge tests, although various restrictions on their use were in place. Driving tests were*

also administered in a foreign language by bilingual examiners in 2 of the 13 States we visited. Given the variations and the previously noted condition on enforcing residency requirements, the current situation allows individuals to obtain CDLs in a State where the language requirements are different, and then return to their home State, where they may be able to exchange their CDLs without retesting. We estimate that 123,000 CDLs are transferred annually. **Establishing performance-oriented English proficiency standards and an agreed to testing protocol would discourage license shopping across States and establish consistent, nondiscriminatory practices nationwide.** FMCSA announced it was Executive Summary vii considering a revision to the standard in 1997*, but no draft or final standard has been issued (emphasis in bold red added).

*It appears OIG meant FMCSA's predecessor agency FHWA as FMCSA was not created until January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113).

The SBTC is petitioning on this issue because the FMCSA has **never** resolved this matter; that is, they have **failed** to follow your 2002 recommendations that they revise Federal standards to set proper and consistent state guidelines for English language proficiency insofar as knowledge testing is concerned. While FMCSA thereafter clarified that skills testing must be conducted in English without the use of a translator, the agency has **ignored** your proper finding that "**the Federal standard on CDL testing and licensing does not place any requirement on the States to test for language proficiency.**"

While the agency may take the position that allowing all states to administer the knowledge test in foreign language is consistent in terms of being universal among the states, this policy is **not** consistent in terms of reconciling the existing aforementioned regulations, including 49 CFR § 391.11; that is, the regulations collectively require drivers speak and read English including English road signs, yet they neglect to require the states to show through written proficiency examination, that drivers meet this Federal requirement before they issue a CDL to be used in furtherance of interstate commerce under the full faith and credit clause, and they instead pass the buck and place the onus of compliance with 49 CFR § 391.11 on carriers instead of the states. It should be the state's responsibility to test for and certify English proficiency during the CDL licensing process, not be left to a matter of a motor carrier's responsibility thereafter.

In reading your aforementioned 2002 audit report, we believe you concurred twenty years ago and that it is now time for you to re-examine this issue through a new audit of the CDL rules if FMCSA will not resolve this matter voluntarily and

adequately in good faith in response to industry's petitions.

Since you found this life-and-death matter of motor carrier safety worthy of your agency's resources in 2002, we hope you will be consistent in addressing this complaint and request for audit and determine you should re-examine this problem that appears to be resulting in citizens' deaths because FMCSA continues to allow the states to recklessly put drivers who cannot read English road signs on the road through the CDL licensing process.

Lastly, today I spoke with the attorney for the mother of Connor Dzion who was **killed** in 2017 and was recently awarded \$1 billion for her loss when driver Yadwinder Sangha **who can't read English**, failed to brake in time after passing a police 'accident ahead' warning sign which he could not read. These deaths are unnecessary and must be prevented through an amended regulation to ensure English proficiency no matter how "controversial" that may be politically.

His picture is being posted again here so you and all who read this remember there are **real consequences to bad public policy**.



In conclusion, we respectfully request a written acknowledgement of this complaint from OIG and a response to our safety concerns from you on this matter.

As this matter involves FMCSA and we wish the public and industry to know about this request for an audit of FMCSA's handling of this matter these past 20 years, we are filing a copy of this request with FMCSA electronically through their general mailbox on regulations.gov.

We are also sharing our petitions, FMCSA's response thus far, and this complaint with the media in the hopes the result will be the USDOT will implement common sense reforms on this issue in the interest of good public policy and to save lives in accordance with the Department's Congressional mission and mandate.

The Secretary of Transportation is also copied here for his information, along with our attorney Mr. Socci.

Thank you.

Sincerely,

/s/ JAMES LAMB, Executive Director
Small Business in Transportation Coalition, Inc. ("SBTC")

Visit our new website:

www.smalltransportation.us

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From: "James Lamb" <james@truckers.com>

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Subject: Petition for Rulemaking Filed under Comment Tracking Number l0w-g5f6-8dlk

Please see attached PETITION that was just filed electronically.

From: "Minor, Larry (FMCSA)" <larry.minor@dot.gov>

Date: Fri, Mar 11, 2022 12:40 pm

To: "James Lamb" <james@truckers.com>, "Laurence Socci" <laurence.socci@soccilawfirm.com>

Cc: "Lawless, Sue (FMCSA)" <sue.lawless@dot.gov>, "D'Allaird, Mary (FMCSA)" <mary.dallaird@dot.gov>

Subject: SBTC Meeting -- Copies of FMCSA Responses

Mr. Lamb,

It was a pleasure meeting with you and Laurence this morning. As a follow up to our discussion, attached are the FMCSA responses to the petition for retrospective review of 49 CFR part 371, the petition for preemption concerning State driver licensing agencies and the English language requirements. Also attached is an acknowledgement letter to your petition for rulemaking to include a definition of dispatcher to the FMCSRs.

Larry

Larry W. Minor, Associate Administrator

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