



U.S. Department
of Transportation

Administrator

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

**Federal Motor Carrier
Safety Administration**

Reply to: MC-ESL

August 30, 2012

Mr. Eric Haney
President
CDL College LLC
14800 Smith Road
Aurora, CO 80011

Dear Mr. Haney:

On May 9, 2011, the Federal Motor Carrier Safety Administration (FMCSA) published a final rule titled, "Commercial Driver's License Testing and Commercial Learner's Permit Standards." (76 FR 26854). The following organizations and individuals submitted petitions for reconsideration: Advocates for Highway and Auto Safety; All State Career School Pittsburgh; American Association of Motor Vehicle Administrators; Anonymous; Career Path Training Corp., and Roadmaster Drivers Schools; CDL College; Community College of Baltimore County; Great Lakes Truck Driving School; Illinois Farm Bureau; Terry Montalbano; Northampton Community College; SAGE Corporation; Schneider National, Inc.; and Werner Enterprises, Inc.

The American Trucking Associations, Inc., submitted a petition cosigned by the Commercial Vehicle Training Association, Inc.; the National Association for Publicly Funded Truck Driver Training Schools, Inc.; the Professional Truck Driver Institute; and the Truckload Carriers Association (collectively "ATA"). Also, U.S. Custom Harvesters, Inc., submitted a petition supporting ATA's petition.

In addition, six Illinois community colleges cosigned a petition: John Wood Community College, Lincoln Land Community College; Olive Harvey Community College, Prairie State Community College, Kishwaukee Community College, and Rend Lake Community College.

Many of these petitioners requested reconsideration of more than one aspect of the May 2011 rule and many requested reconsideration of the same provisions. As a result, FMCSA provides a

collective response. The Agency has completed its review of these requests and will initiate a rulemaking for those issues where the petition was granted. The enclosed decision and order explains in more detail the reasons for our decisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'ASF', with a long horizontal flourish extending to the right.

Anne S. Ferro

Enclosure

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DECISION ON PETITION FOR RECONSIDERATION

DECIDED: AUGUST 30, 2012

On May 9, 2011, the Federal Motor Carrier Safety Administration (FMCSA) published a final rule titled, "Commercial Driver's License Testing and Commercial Learner's Permit Standards" (76 FR 26854). The following organizations and individuals submitted petitions for reconsideration: Advocates for Highway and Auto Safety (Advocates); All State Career School Pittsburgh; American Association of Motor Vehicle Administrators (AAMVA); Anonymous; Career Path Training Corp., and Roadmaster Drivers Schools; CDL College; Community College of Baltimore County (CCBC); Great Lakes Truck Driving School (GLTDS); Illinois Farm Bureau; Terry Montalbano, Northampton Community College (NCC); SAGE Corporation (SAGE); Schneider National, Inc. (Schneider); and Werner Enterprises, Inc. (Werner).

The American Trucking Associations, Inc., submitted a petition cosigned by the Commercial Vehicle Training Association, Inc.; the National Association for Publicly Funded Truck Driver Training Schools, Inc.; the Professional Truck Driver Institute; and the Truckload Carriers Association (collectively "ATA"). Also, U.S. Custom Harvesters, Inc., submitted a petition supporting ATA's petition.

In addition, six Illinois community colleges cosigned a petition: John Wood Community College, Lincoln Land Community College, Olive Harvey Community College, Prairie State Community College, Kishwaukee Community College, and Rend Lake Community College.

Many of these petitioners requested reconsideration of more than one aspect of the May 2011 rule and many requested reconsideration of the same provisions. As a result, FMCSA is providing a collective response.

In accordance with 49 CFR 389.33, the Agency makes the following decisions:

Petitions Granted in Whole or Part

1. **Requiring Two Employees to Verify Documents – 49 CFR 383.73(m)**
Section 383.73(m) requires that two State Driver's Licensing Agency (SDLA) staff members verify Commercial Learner's Permit (CLP) and Commercial Driver's License (CDL) applicants' test scores, completed application forms, and documents to prove legal presence. For SDLA offices with only one staff member on duty, the documents must be verified by a supervisor before issuance. Alternatively, when the supervisor is not available, copies must be made of the documents used to prove legal presence and domicile for a supervisor to verify along with the completed application form within one business day of issuance of a CLP or CDL. The AAMVA and some of its members interpreted § 383.73(m) to require two employees to verify each document. They requested reconsideration, stating that it would burden existing resources and

4. Prohibiting States from Using a Photo on the CLP – 49 CFR 383.153(b)(1)
Section 383.153(b)(1) prohibits States from placing a photo on the CLP. The AAMVA petition requested reconsideration on the grounds that prohibiting the inclusion of a photo would cause economic harm to the States and/or make the CLP less secure.

The FMCSA grants the petition for reconsideration. The Agency will issue a final rule addressing AAMVA's concerns.

Denied Petitions

The FMCSA denies the petitions described below. A number of these issues were raised and addressed during the rulemaking's notice and comment period. In addition, FMCSA did not find that the petitioners submitted sufficient data or explanations to support the requested changes.

1. Tank Vehicle Definition – 49 CFR 383.5

Section 383.5 defines a tank vehicle to include any CMV with a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is permanently or temporarily attached to the vehicle or chassis. Advocates questioned the Agency's decision to use 1,000 gallons as the threshold for the aggregate capacity and the decision to use tanks with more than 119 gallons for the calculation of the 1,000 gallon limit.

The FMCSA denies the petition for reconsideration. Separately, FMCSA received a number of petitions for rulemaking seeking to amend this definition. On March 30, 2012, FMCSA granted those petitions and agreed to initiate a new rulemaking proceeding to address this issue.

2. CLP Holder Under the Supervision of a CDL Holder – 49 CFR 383.25(a)(1)

Section 383.25(a)(1) requires that a CLP holder be at all times accompanied by a holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

Advocates petitioned for the Agency to establish standards for the accompanying CDL holder and to require dual controls in training vehicles. Advocates also expressed concern that drivers as young as 18 years old, who are now prohibited from operating a commercial motor vehicle, would be allowed to drive with a CLP as long as there is a CDL holder accompanying the CLP holder in the vehicle.

The FMCSA denies this petition for reconsideration. Advocates' comments regarding standards for the accompanying CDL holder were already raised and addressed during the NPRM's comment period. In addition, the requirement that training vehicles contain dual controls is well beyond the scope of this rule. Finally, the current requirement that a person must be at least 21 years old to operate in interstate commerce and must be at least 18 years to operate in intrastate

reinforces the current minimum age requirement to operate a CMV. It is not the intent of this final rule to limit the use of a CLP to intrastate commerce. Just like a CDL holder, a CLP holder who is 18 through 20 years old is limited to operating in intrastate commerce, but a CLP holder who is at least 21 years old may operate in interstate commerce. Accordingly, FMCSA will not make any changes at this time.

6. CDL Holders Suspected of Fraud – 49 CFR 383.73(k)(2)

Section 383.73(k)(2) requires a State that receives credible information that a CLP- or CDL-holder is suspected, but not convicted, of fraud related to the issuance of his/her CLP or CDL, to require the driver to re-take the knowledge and/or skills test. Within 30 days of receiving notification of the need to re-take the test, the CLP- or CDL-holder must make arrangements to take the next available test. Advocates suggested that specific timeframes be set for retesting so that the scheduling of the test is not delayed to allow suspected perpetrators of fraud to continue operating.

The FMCSA denies the petition for reconsideration. The FMCSA disagrees that this section does not set specific timeframes. Requiring drivers to take action within 30 days of receiving a notice sets a specific time frame while giving States as well as drivers flexibility to schedule re-testing. In addition, the petition does not present data or supporting evidence to demonstrate that this provision will have a negative effect on safety. Accordingly, FMCSA will not make any changes at this time.

7. Use of Digital Image or Photograph – 49 CFR 384.227(b)

Section 384.227(b) requires a State to check the digital image or photograph on record whenever a CDL applicant or holder appears in person to renew, upgrade, or transfer a CDL and when a duplicate CDL is issued. Advocates expressed concern that limiting the use of the photographs to occasions when the operator appears in person nullifies the anti-fraud intent of the on-file photograph.

The FMCSA denies the petition for reconsideration. Although it is clear that the petitioner objects to this provision, it is not clear what changes the petitioner seeks. Additionally, the petition does not present data or supporting evidence to demonstrate that this provision will have a negative effect on safety or fraud prevention. Accordingly, FMCSA will not make any changes at this time.

CONCLUSION

The FMCSA will issue a new final rule addressing the following issues raised in the above petitions for reconsideration:

1. Requiring Two Employees to Verify Documents – 49 CFR 383.73(m)
2. Prohibiting Training Schools from Administering Skills Tests – 49 CFR 383.75(a)(7)
3. Skills Test Reciprocity – 49 CFR 383.79(b)
4. Prohibiting States from Using a Photo on the CLP – 49 CFR 383.153(b)(1)