

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 945**

[FHWA Docket No. FHWA-99-5844]

RIN 2125-AE63

**Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Withdrawal of proposed rulemaking and closing of public docket.

**SUMMARY:** This document withdraws a proposed rulemaking to amend FHWA regulations to require the use of the FHWA Specification for "Dedicated Short Range Communications (DSRC) for Commercial Vehicles." The FHWA undertook this rulemaking action to create a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using Federal-aid highway funds. The final determination on this action was deferred until testing of the provisional standard was completed. This test program is still underway. However, the FHWA is withdrawing this NPRM action. Any further action to address national interoperability will be the subject of a separate rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366-2128, e-mail address: [william.s.jones@fhwa.dot.gov](mailto:william.s.jones@fhwa.dot.gov); or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC-40), (202) 366-0780, e-mail address: [wilbert.baccus@fhwa.dot.gov](mailto:wilbert.baccus@fhwa.dot.gov), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

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Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web site at: <http://www.access.gpo.gov>.

**Background**

A notice of proposed rulemaking (NPRM) published at 64 FR 73674 on December 30, 1999, with a supplemental notice of proposed rulemaking (SNPRM) published at 65 FR 77534 on December 12, 2000, proposed adding a new part to title 23, Code of Federal Regulations. In these actions, the FHWA proposed to require the use of FHWA Specification for DSRC for Commercial Vehicles as a provisional standard for ITS commercial vehicle projects using highway trust funds.

At the time there were several different technologies that were being proposed for use on commercial vehicles for interfacing with the Commercial Vehicle Information System Network (CVISN). However, CVISN is a national system for all commercial vehicles and it is necessary that there be technical uniformity in the devices on vehicles to enable a nationally interoperable system.

To ensure success of the program, the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, 1998) (TEA-21) required the Secretary of Transportation to issue provisional standards when national interoperability was required. This authority was delegated to the Federal Highway Administrator. Since the industry could not agree on a standard, the FHWA proposed a Provisional Standard for use on commercial vehicles.

**Comments Received in Response to the NPRM and SNPRM**

The FHWA received 24 comments in response to the NPRM and we summarized and discussed these comments in detail in the SNPRM. In response to the SNPRM, the FHWA received 4 comments in response to the SNPRM.

The major objections to the original NPRM were voiced by the industry that manufactures the DSRC devices, and the private companies that are the service providers for States in the implementation of the CVISN roadside network. The manufacturers had been unable to agree on a common standard and most of the commenters were not in favor of the Provisional Standard. The major issue raised by other commenters concerned the timing of the NPRM. At the time, no equipment had been designed, built, or tested using the Provisional Standard. Many felt it was

inappropriate to require the use of devices that had not been thoroughly tested and proven to work in the CVISN system.

In response to these concerns, the FHWA issued an SNPRM announcing that further consideration of this rulemaking would be postponed until the appropriate testing of equipment designed to the Provisional Standard could be completed.

In response to the SNPRM, the FHWA received four comments. Three of the comments were from the State of Oregon: The Oregon DOT, the Oregon Forest Products Association, and the Oregon Trucking Association. In addition, a comment was received from the Kentucky Transportation Center of the University of Kentucky.

The four commenters supported the need for national interoperability for CVISN and the FHWA efforts through rulemaking to achieve that goal. The commenters noted that since the initial FHWA NPRM, all deployments of CVISN systems had used a single technology, and this technology had become the de facto standard. In addition, these commenters urged the FHWA to act on the remaining barrier to national interoperability.

That barrier involves the policies of the companies that are the service providers to many of the States deploying CVISN systems.

The FHWA is currently in the process of testing devices manufactured to the Provisional Standard. When these tests are completed successfully, the FHWA will reevaluate the need for rulemaking.

**Determination**

The FHWA recognizes that a de facto standard has emerged within the States deploying CVISN. Further, it is recognized that national interoperability is no longer inhibited by the technology, but rather, the business practices within the service provider industry. Therefore, the FHWA will not pursue the existing rulemaking dealing with technical interoperability at this time. Any further action to address national interoperability for commercial vehicles would be the subject of a separate rulemaking if necessary.

**Conclusion**

For the reasons stated above, the FHWA is terminating this proposed rulemaking and closing the docket.

**Authority:** 23 U.S.C. 315 and 502 note; sec. 6053(b), Pub. L. 102-240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105-178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: May 12, 2003.

Mary E. Peters,

Federal Highway Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 391

[Docket No. FMCSA 1997-2759]

RIN 2126-AA31 (Formerly RIN 2125-AE19)

#### English Language Requirement; Qualifications of Drivers; Withdrawal

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); withdrawal.

**SUMMARY:** The FMCSA withdraws its advance notice of proposed rulemaking (ANPRM) requesting comments on potential changes to a provision in the Federal Motor Carrier Safety Regulations (FMCSRs) involving the English language. That provision requires that drivers of commercial motor vehicles (CMVs) operating in interstate commerce be able to "read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records." After analysis and review of the comments, FMCSA has concluded that at this time there is no quantifiable data on which to propose modifying the regulation to require a more stringent or definitive standard, or to require State motor vehicle agencies to administer a specific test for English proficiency.

**DATES:** The advance notice of proposed rulemaking published on August 26, 1997, at 62 FR 45200 is withdrawn as of July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Moehring, Driver and Carrier Operations Division, (202) 366-4001, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 26, 1997, the Federal Highway Administration (FHWA), predecessor agency to the FMCSA, published an ANPRM in the **Federal Register** (at 62 FR 45200) requesting comments on potential changes to 49

CFR 391.11(b)(2) of the FMCSRs. This provision requires that drivers of CMVs operating in interstate commerce be able to "read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records."

The ANPRM was published in response to a letter from the American Civil Liberties Union (ACLU) to the U.S. Department of Transportation's Office of Civil Rights indicating that this English language requirement may conflict with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, as amended, that prohibits discrimination against applicants and beneficiaries in the administration of federally funded programs and activities based on race, color and national origin. In this letter, the ACLU also alleged that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with the constitutional guarantees of due process and equal protection.

In the ANPRM, the FHWA stated that § 391.11(b)(2), as promulgated by the former Interstate Commerce Commission (ICC) in 1936, was intended to be enforced through the motor carrier employer. As noted in the ANPRM, the ICC specifically stated that it was the motor carrier employer's responsibility to evaluate the driver's proficiency in the English language. In addition, FHWA noted that the regulation was not intended to be enforced at the roadside. The employer was presumed to know what communication skills may be necessary for the type of cargo handled, the route taken, and the public contact required. The FHWA went on to say that it had never made speaking the English language a specific pre-requisite for obtaining a Commercial Driver License (CDL), and in fact proposed, and later authorized, administration of the CDL test in foreign languages.

The ANPRM asked the following 5 questions:

"1. Are there known instances in which a safety problem occurred which could be attributed, in whole or in part, to the driver not being able to read and speak English sufficiently to understand traffic signs or written or verbal instruction relating to the operation, loading or unloading of the vehicle? \* \* \*

2. Do any of the States require drivers who operate commercial motor vehicles exclusively in intrastate commerce to read and speak the English language? \* \* \*

3. How do States typically determine whether or not a driver or motor carrier is in violation of § 391.11(b)(2) or an equivalent

State provision? Are there particular English phrases or terms that are used to test the driver's comprehension of the English language? Are there specific highway signs or messages that are shown to the driver?

4. Are there any cases in which State officials, exercising their authority under State law, have placed drivers out of service for being unable to read or speak the English language, after making a determination that the driver's inability to comprehend the language created a safety risk that was too great to be ignored? \* \* \*

5. How does one measure an individual's level of 'English proficiency' or whether that individual has a 'working knowledge of English'? \* \* \*\*

#### Comments

Fifty-eight comments were received. These came from 9 States, the U.S. Equal Employment Opportunity Commission (EEOC), the ACLU, individual citizens, associations representing various segments of the trucking industry, insurance associations, several trucking companies, individual drivers and trucking industry management, associations representing State and Provincial enforcement and motor vehicle administrators, associations and unions representing drivers, and safety advocates.

Very few of the comments addressed the questions asked in the ANPRM. The vast majority of those commenting viewed the ANPRM as a proposal to lower the current English proficiency standard. The comments from groups representing the trucking industry, labor groups representing drivers, insurance companies and associations, and individual companies and drivers all recommended retaining the current provision. Nine States submitted comments that either recommended retaining the current standard or promulgating a more stringent standard. Of the members of the public who commented, 20 commenters recommended that the FMCSA either retain the current English language standard or enact a more stringent standard.

Mr. Victor Morales submitted a copy of a motion filed by counsel on his behalf in the County Court for Palm Beach County, Florida requesting the Court to declare § 316.302, Florida Statutes (1997), relating to the English proficiency requirement for CMV drivers, unconstitutional on the basis that it was vague, overly broad, and subject to arbitrary enforcement. Two commenters believed that the agency should revise the regulation to require a performance-based standard. Representative Lincoln Diaz-Balart (who represented Congressional District 21 in