

Florida) opposes FMCSA's current regulation at § 391.11(b)(2) "due to a recurring problem in our state as it pertains to enforcement of this regulation." Representative Diaz-Balart states that his constituents have had their CDLs suspended due to enforcement of § 391.11(b)(2). Examples include, * * * "traffic citations to CDL drivers for not commanding the English language to the satisfaction of the law enforcement officer, thereby giving him or her unfettered discretion; suspension of the licenses by judges, magistrates and/or officers of the peace of those drivers for not being able to communicate in English with the judge when appearing in Court; violation of due process and therefore the posing of many civil rights questions." Representative Diaz-Balart urged the agency to revise § 391.11(b)(2) to protect the constitutional and civil rights of drivers, and to end the arbitrary application of the regulation. Another member of Congress stated that the current regulation ought to be retained for safety reasons. The Advocates for Highway and Auto Safety stated its belief that a "performance-based" standard might result in unacceptably low levels of English proficiency that would directly endanger the traveling public.

The ACLU submitted comments explaining why, in its view, the current regulation has a discriminatory impact upon national and ethnic minorities, and invited discriminatory enforcement. The EEOC stated it shared the concern of the ACLU that as "currently written, the FMCSRs' English fluency requirement may conflict with the Federal civil rights laws." The EEOC suggested drafting a qualification standard in broad terms that could be applied in a manner appropriate to a specific job for a specific employer.

Decision

The FMCSA has decided to withdraw the ANPRM. 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 either to require a more stringent or definitive standard or to require State motor vehicle agencies to administer a specific test for English proficiency.

The FMCSA appreciates the analysis provided by the EEOC and the ACLU relating to the requirements of Title VI. However, the information introduced in response to the ANPRM does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based

upon national origin, color or ethnicity. Accordingly, FMCSA believes that the regulation as currently written and properly enforced effectively balances issues of civil rights and highway safety.

In analyzing § 391.11(b)(2) in today's climate, the FMCSA believes that the regulation was, and remains, a requirement imposed to ensure that persons who drive commercial motor vehicles operate safely. As written, the regulation sets forth the qualifications of drivers of CMVs to read and speak the English language and allows each motor carrier employer the flexibility to determine the extent of proficiency needed to enforce it. It provides carriers with the flexibility to individually determine whether a driver has communication skills and English fluency to operate safely on the highway. There is no data available to suggest that this flexibility has caused discrimination or to conclude that motor carriers are employing the English language requirement in anything other than an evenhanded manner, tailored to the requirements of each particular company's operations. Nor do we have evidence to suggest that our State and local partners are subjecting limited English speakers to discrimination based on their race, color or national origin. The intent of the English-only regulation is not to discriminate, but to advance public safety and this is an essential aspect of our program.

Specifically, with regard to concerns about arbitrary or discriminatory enforcement, the FMCSA has found no evidence to suggest that enforcement officers routinely issue citations for lack of English proficiency. To the extent that such enforcement discretion is exercised, the FMCSA believes that such instances are exceedingly rare and may be occasioned by a misunderstanding of the provisions of § 391.11(b)(2). From the comments and the data available, the FMCSA believes that the discretion of enforcement officials to place a driver out of service when he or she constitutes a safety hazard is, and has been used judiciously.

Further, FMCSA finds no inconsistency in its authorization to States to offer CDL tests in languages other than English, while at the same time requiring motor carrier employers to ensure a level of English proficiency for drivers on our public highways. The tests, training and study manuals associated with obtaining a CDL are complex. Therefore, the administration of the CDL test in languages other than English is justified. However, in actual operation on the highway, the CDL

driver must be able, based on the needs of the carrier's operation, to have a sufficient command of English to ensure that safety is not compromised.

After reviewing the comments, the FMCSA is also persuaded that the performance-oriented standard, based on required tasks, as suggested in the ANPRM and advocated by the ACLU and EEOC is, in fact, not substantively different than the current standard to which persons who drive commercial motor vehicles must already adhere. The FMCSA is mindful of the concerns voiced by safety groups and members of the enforcement community that drivers with limited English proficiency may pose a potential safety concern both on the roadway, as well as in situations in which an enforcement officer is conducting a vehicle inspection, weighing a vehicle, or in other routine law enforcement actions. At this time, however, as noted, the FMCSA has no quantifiable data on which to base a proposal that would modify the standards in or scope of the existing regulation at 49 CFR 391.11(b)(2).

One other matter requires comment here. Under Executive Order 13166, titled "Improving Access to Services for Persons with Limited English Proficiency" (65 FR 50121, September 16, 2000), and guidance issued on the same day by the Department of Justice (DOJ), titled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency" (65 FR 50123), the Federal government must ensure that no person with limited English Proficiency (LEP) shall be discriminated against on the grounds of race, color or national origin under any program or activity that receives Federal financial assistance.

Consistent with the executive order, the DOJ guidance, and additional guidance issued by the Department of Transportation titled, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries" (66 FR 6733), we believe that the regulation at 49 CFR 391.11(b)(2) is fully consistent with FMCSA's commitment to provide meaningful access to programs and activities that persons with limited English proficiency would seek. We are confident that the rule fulfills its purpose of advancing safety in a manner wholly in keeping with the terms of the executive order and the corresponding guidance.

In view of the foregoing considerations, Docket No. FMCSA-1997-2759 is withdrawn.