

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

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COMMENTS OF THE  
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

IN RESPONSE TO A NOTICE OF PROPOSED RULEMAKING

DOCKET NO. FMCSA-2007-27659

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**INTRODUCTION**

The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) submits these comments in support of the April 9, 2008, notice of proposed rulemaking published by the Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA”), at 73 Fed. Reg. 19282, soliciting comments in docket FMCSA-2007-27659 on its proposal to revise the commercial driver’s license (“CDL”) knowledge and skills testing standards and to impose federal minimum standards for mandatory commercial learner’s permits (“CLP”). The proposal includes the following modifications to the current CDL testing and licensing program: all States must issue CLPs and those permits must comply with federal regulations; knowledge testing is required prior to the issuance of a CLP; both knowledge and skills tests must comply with the latest American Association of Motor Vehicle Administrators (“AAMVA”) Model Test package standards; CLP and CDL applicants must demonstrate legal presence in the United States; the use of foreign language interpreters during knowledge or skill testing is prohibited; and existing barriers to testing and training in different states are eliminated. FMCSA’s overall goal is to ensure that only qualified drivers are allowed to operate a commercial motor vehicle (“CMV”) on our nation’s highways.

OOIDA is a not-for-profit trade association incorporated in 1973 in Missouri with its principal place of business located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA is the largest international trade association representing the interests of independent owner-operators, small business motor carriers, and professional truck drivers on all issues affecting their

operations. OOIDA actively promotes the views of these commercial truckers before a broad variety of forums, including federal and state agencies, legislatures, courts, other trade associations, and private businesses, in an ongoing effort to obtain equitable and safe working conditions for them. OOIDA is active in all aspects of highway safety and transportation policy and represents the position of its member truckers on numerous committees on the local, state, national, and international level.

OOIDA's more than 162,000 members collectively own and operate approximately 240,000 heavy duty trucks and small truck fleets. The vast majority of OOIDA's members are truck drivers who need a CDL to engage in trucking on a day-to-day basis. Other OOIDA members, who own trucks or small truck fleets, but do not personally drive those vehicles, employ truck drivers who must obtain CDLs. Accordingly, this rulemaking will have a direct and substantial impact on the operations of virtually all of OOIDA's members. As discussed below, OOIDA enthusiastically supports the FMCSA's proposal because it will strengthen the CDL program and, together with the recently-proposed entry-level driver training rules (Docket No. 2007-27748), will enhance the skills of CMV drivers, making the roads safer for all motorists.

## **DISCUSSION**

### **I. The Proposal Remedies Many of the Shortcomings in the Current CDL Program.**

OOIDA has for decades been a strong proponent of federal government efforts to develop and impose stringent, mandatory commercial driver training and licensing requirements. To this end, OOIDA has promoted a graduated CDL system. OOIDA believes that such a program would allow new truck drivers to gain controlled exposure to progressively more difficult driving experiences as they move through a series of licensing stages, resulting in better trained and more safety-conscious

drivers. The mandatory learner's permit requirement proposed by FMCSA in the present rulemaking would make the CLP the first step in such a graduated licensing system, by allowing CLP holders to operate a CMV on public highways only while accompanied and supervised by a qualified CDL holder. In contrast to the currently existing patchwork of State permit programs, the proposed uniform CLP system, with its pre-screening requirements, the requirement that a CDLIS record be created for each CLP applicant, and the required knowledge testing prior to the issuance of a CLP should prevent unqualified drivers or drivers with false identities from operating a CMV in any State. The requirement that CDL applicants pass a basic knowledge test before they get a CLP should also ensure that all driver-trainees are well prepared to begin the mandatory entry-level driver training recently proposed by FMCSA in Docket No. 2007-27748 and, once that training is completed, will be well qualified to operate a CMV on a public highway. For all these reasons, OOIDA favors the adoption of the proposed CLP regulations.

OOIDA also firmly believes that the current CDL tests are too limited in scope to accurately measure whether CDL holders are able to safely operate a heavy-duty truck on a day-to-day basis. FMCSA's proposed mandatory entry-level driver training requirements will help to fill this gap. The more exacting CLP and CDL Model test standards that FMCSA intends to incorporate by reference, which were drafted by AAMVA with input from a variety of industry stakeholders including OOIDA, will complement the entry-level training by requiring all States to include a greater number of subject-matter areas and specifically-described topics on the knowledge test and to test a greater range of specific skills (including broader testing of pre-trip vehicle inspection, basic vehicle control, and safe on-road driving skills) during the CDL driving skills test. Taken together, the two sets of proposed regulations should create a superior training, testing, and licensing regime.

OOIDA also supports FMCSA's proposals to modify the rules that currently prevent individuals from obtaining training in States other than the place of their domicile, whether they have gone there for a prospective employer's program, a program that is not available in the State of domicile, or simply a training option that appears to be better or more convenient for their purposes. OOIDA believes that driver-trainees should be able to take advantage of all available training opportunities, provided that this flexibility does not place an undue administrative burden on the States and retains the one-driver/one-license/one-record system that is essential to a uniform testing and licensing system.

Finally, OOIDA supports the FMCSA's efforts in this proposal to cut down on the CDL testing and licensing fraud that has risen to near-epidemic proportions in recent years. The improved background checks for CLPs, creation of CDLIS records for all CLP applicants, enforcement of a legal presence requirement, elimination of foreign interpreters, as well as background checks, formal training, certification, and oversight of State and third-party examiners will all help to eliminate opportunities for fraud. The reduction in fraud has become especially important as an adjunct to other measures taken to address security concerns in the aftermath of 9/11.

For all of these reasons, OOIDA strongly supports the FMCSA's current proposal and favors its adoption. However, there are several areas in which OOIDA believes that FMCSA could and should take additional steps to strengthen the CDL program, which are discussed more fully below.

## II. English Language Testing Should be Mandatory.

FMCSA has proposed that the use of foreign language interpreters be disallowed in the administration of both knowledge and skills tests. 73 Fed. Reg. at 19283, 19284, 19289, 19313. The agency has also proposed that applicants must be able to understand and respond to verbal

commands and instructions in English. *Id.* at 19313. However, the agency would still allow knowledge tests to be offered in foreign languages.<sup>1</sup> *Id.* at 19289, 19312.

The elimination of interpreters should, as FMCSA suggests, reduce this particular avenue for fraud in the CDL testing process and provide some indication that a CDL applicant understands some English. But this change clearly does not by itself prevent individuals from obtaining CDLs even though they can not read or communicate well in English. The understanding of basic commands in the English language from a skills tester does not demonstrate a proficiency in English that would allow an individual to “immediately comprehend” all pertinent road signs and notices, to converse with law enforcement officers, to respond to other official inquiries in case of an accident or emergency, or to make appropriate entries on reports and records.

Experience has shown that a CMV driver’s ability to communicate effectively in English is critical from a safety perspective. Several specific examples amply illustrate the importance of good English skills. In Pennsylvania a driver of a 40-ton truck who could not read English ran into and killed an entire family. The driver had failed to heed warning signs, including one banning trucks over 10 tons from driving on that particular road. *See* [www.humanevents.com/article.php?id=8310](http://www.humanevents.com/article.php?id=8310). In North Carolina a truck driver who understood very little English failed to obey a traffic sign advising drivers to move forward through a second rail line crossing. *See* [www.landlinemag/todays\\_news/Daily/2007/Jul07/072307/072307-03.htm](http://www.landlinemag/todays_news/Daily/2007/Jul07/072307/072307-03.htm). The train crashed into his truck which was resting on an active rail line. In Texas, a bus driver who spoke little English was stopped by a

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<sup>1</sup> Eliminating interpreters without eliminating knowledge testing in other languages could place unanticipated new burdens on the States to offer tests in a host of other languages, adding new financial costs and administrative responsibilities. For example, one group of non-English speakers might raise concerns about fundamental fairness if a State offers the knowledge test in Spanish or a limited range of foreign languages, but not in the language spoken by the applicant.

passing motorist who told him that the rear axle of the vehicle was glowing red. Although it appeared that the driver had some understanding of what was told, his full comprehension was not certain and it was later confirmed that he was unable to communicate with or give instructions to his passengers, primarily elderly nursing home patients who were being evacuated in anticipation of Hurricane Rita, because of his limited English ability. See [www.dallasnews.com/sharedcontent/dws/news/localnews/stories/080906dnmetbushearing.564ecdb.html](http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/080906dnmetbushearing.564ecdb.html). As a result, twenty-three passengers were killed when the vehicle caught fire. *Id.* In Missouri, a commercial vehicle inspector at a roadside inspection facility was struck by a truck because the driver did not understand instructions given to him in English. See [www.nts.gov/events/2006/WilmerTX/Exhibits/348633.pdf](http://www.nts.gov/events/2006/WilmerTX/Exhibits/348633.pdf), at 18-19, 22. These are just a few of many cases where the inability to comprehend or speak English well created unsafe conditions leading to property damage, injury, and death.

Unless State licensing agencies offer separate English proficiency tests, the *only* way to ensure that aspiring commercial truck drivers have a sufficiently firm grasp of the English language is by requiring all CDL and CLP applicants to take both the knowledge and skills tests in English. Five States already limit licensing tests to English only and English-only legislation is being pursued in at least seven other States. This requirement must be uniformly applied across the States if the types of accidents described above are to be prevented. Thus, the provision that a knowledge test “can be administered in a foreign language” should be eliminated from the proposed § 383.133(b)(3) and replaced with a requirement that the knowledge test “be administered in English.”

### III. Training and Testing Functions Should be Separated.

In a report issued by the Inspector General’s office (“OIG”) at DOT pertaining to an audit of the CDL testing and licensing programs, the OIG noted that suspected criminal activity has been

identified in at least sixteen State CDL programs. *Improving the Testing and Licensing of Commercial Drivers*, Report No. MH-2002-093 (May 8, 2002), at iii-iv. In Illinois alone nine deaths were directly traced to crashes involving commercial drivers that fraudulently received their CDLs. *See Commercial Driver's License Third Party Testing Anti-Fraud System*, Final Evaluation (FMCSA Nov. 2007), at iv, 1. Indeed, fraudulent schemes to provide “easy” CDL tests and licenses to driver trainees have proliferated under the current system. *See, e.g.,* [stlouis.fbi.gov/dojpressrel/pressrel07/bribery062207.pdf](http://stlouis.fbi.gov/dojpressrel/pressrel07/bribery062207.pdf) (truck driving school owner indicted for bribing third-party CDL administrator to give CDLs to hundreds of students based on shortened road test); [www.doj.gov/usao/mow/news/2006/proffitt.ind.htm](http://www.doj.gov/usao/mow/news/2006/proffitt.ind.htm) (superintendent and owner of truck driving schools partially owned by trucking company indicted in conspiracy involving fraudulent road testing for CDLs); [www.oig.dot.gov/item.jsp?id=1424](http://www.oig.dot.gov/item.jsp?id=1424) (truck driving school owner sentenced in scheme to falsify driving skills test for CDLs). When queried by the OIG, 32 of 51 jurisdictions reported some CDL fraud over the 5-year reporting period, and that it has prosecuted CDL fraud schemes in 23 states. *Oversight of the Commercial Driver's License Program*, Report No. 2006-037 (Feb. 7, 2006) (“*Oversight Report*”), at 2. The OIG also found that the corruption extended to State employees as well as third-party testers and examiners. *Id.* In fact, in Illinois, even the Secretary of State was indicted because of his involvement in the fraudulent sale of state CDLs. *See, e.g.,* [www.chicagotribune.com/news/custom/newsroom/chi-060417ryantrial,0,4525779.story](http://www.chicagotribune.com/news/custom/newsroom/chi-060417ryantrial,0,4525779.story); [www.ilcampaign.org/ryantrial/timeline.asp](http://www.ilcampaign.org/ryantrial/timeline.asp).

The proposed regulations would place badly-needed restrictions upon all CDL examiners and testers. 73 Fed. Reg. at 19292-19293. Third-party testers would be required to use the same materials and procedures as State testers and would be subject to enhanced oversight by the State. *Id.* at 19293, § 383.75. All individual examiners will be subject to more extensive background

checks as well as more stringent training and certification requirements. *Id.* at 19295; § 384.228.

In general, third-party testing is essential to ease the burden on the States and allow all applicants for CDLs to take the requisite tests in a timely manner. However, it is critical that the third-party examiners not only be qualified to conduct the skills tests, but that they also be independent and unbiased providers. A number of large carriers who hire aspiring drivers, sometimes lease them a truck, then provide them with training and, when training is complete, test the drivers they have just trained. *See* 73 Fed. Reg. at 19293 (FMCSA notes that some states have approved motor carriers as third-party testers for their own employees). Over the years, OOIDA has learned that C.R. England, Prime, CRST, and North American Van Lines, are among the carriers that have worn all three hats – trainer, tester, and employer. There are also quite a few driver training schools advertising their ability to provide the driving skills tests for their graduates, generally on the school's trucks. *See, e.g.,* [www.isoothermal.edu/truck/Truck%20Guide%2008.pdf](http://www.isoothermal.edu/truck/Truck%20Guide%2008.pdf) (Isothermal Community College, Spindale, NC); [www.allstatecareer.edu/pittsburgh.html](http://www.allstatecareer.edu/pittsburgh.html) & [www.allstatecareer.edu/lester.html](http://www.allstatecareer.edu/lester.html) (All-State Career in Pittsburgh and Philadelphia, PA); [www.commercialdriversvcs.com/index.htm](http://www.commercialdriversvcs.com/index.htm) (Commercial Driver Services in Lakewood, WA).

It should be obvious that the party that trains a driver, whether it is a motor carrier or an independent training facility, has an undeniable conflict of interest that would prevent objective evaluation of that driver's skills for CDL test purposes. An examiner is simply not likely to fail a driver that he or his co-workers have trained, as such an action would be tantamount to an admission that the training offered was inadequate. Training and testing must be separated if the integrity of the licensing process is to be maintained. To ensure this separation OOIDA would propose that Section 383.75 on third-party testing be revised to include a provision that precludes a third-party

tester from testing a CDL applicant trained by that tester.

IV. FMCSA Should Assume Overall Responsibility for Enforcing the CLP and CDL Regulations.

Under the proposed regulations, the States have been given the primary authority to take steps to combat fraud, including the obligation to establish and operate oversight systems for all State or third-party examiners. 73 Fed. Reg. at 19292, 19295, § 384.228. However, such an approach gives the State agencies that have failed so thoroughly in the past to eliminate fraud as well as the employees that may actually have participated in the fraudulent CDL schemes, the responsibility for eliminating that fraud. The poor performance of the States to date should raise significant doubts about their ability to effectively police themselves under the new regulations. Until there is some concrete evidence that CDL fraud has been minimized, the FMCSA itself must assume full responsibility for ensuring compliance with its new regulations.

OOIDA recognizes that the proposed anti-fraud measures will be incorporated into the requirements of Part 384 of the regulations, which would allow the FMCSA when it is conducting compliance reviews to investigate whether they are being properly applied. However, the mere possibility of such a compliance review is not sufficient to ensure that the situation will be turned around. In the OIG's 2006 *Oversight Report*, at n.5, it was noted that FMCSA conducts only about 15 on-site compliance reviews of State CDL programs annually. This means that a State program is audited for substantial compliance only once every 3 or 4 years. Even more importantly, to the best of OOIDA's knowledge, notwithstanding the wealth of evidence of widespread fraud, these infrequent compliance reviews have **never** resulted in the withholding of Federal funds, the withdrawal of the State's right to issue CDLs, or the imposition of any other sanctions against a State

for non-compliance. There is no reason to believe that such a compliance program without any teeth will be any more effective in the future than it has been in the past in keeping the States in line. Thus, FMCSA not only needs to assume the primary enforcement role with respect to the new CLP and CDL-related requirements, but needs to display a real willingness to take action against State agencies found not to be in compliance with the new fraud-prevention regulations.

### CONCLUSION

As discussed above, OOIDA strongly supports the FMCSA's proposed changes to the CDL program. The proposed regulations, particularly when combined with the recently-proposed entry level driver training requirements, should result in better trained commercial truck drivers which should, in turn, make our nation's highways safer for all motorists. However, OOIDA believes that several additional modifications to the regulations would do more to eliminate problems that have plagued the CDL program since its inception. These include a requirement that both knowledge and driving skills tests be given in English and a requirement that an aspiring driver be trained and tested by different parties. It is also essential that the FMCSA assume overall responsibility for enforcing the new regulations and then aggressively do so if the changes are to have the desired effect.

Respectfully submitted,



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