

QA/28102

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VIA MESSENGER

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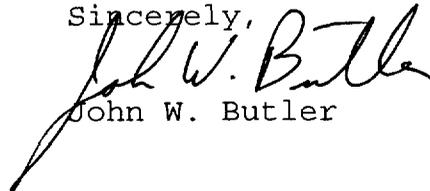
Re: Docket No. FHWA-97-2759 -37

Dear Sir/Madam:

Enclosed for filing are the original and fifteen (15) copies of the initial comments of the International Brotherhood of Teamsters in response to the August 26, 1997, Advance Notice of Proposed Rulemaking in Docket No. FHWA-97-2759.

Also enclosed is an extra copy that we ask that you date-stamp as received and return via our messenger.

Sincerely,


John W. Butler

JWB/cah
Enclosures
11459.0088.01.00.01



BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

DEPT. OF TRANSPORTATION
DOCKET SECTION
97 OCT 27 PM 2:10

DOCKET NO. FHWA 97-2759

ENGLISH LANGUAGE REQUIREMENT;
QUALIFICATIONS OF DRIVERS

COMMENTS OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

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**COMMENTS OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS IN RESPONSE TO ADVANCE NOTICE
OF PROPOSED RULEMAKING IN DOCKET NO. FHWA-97-2759,
ENGLISH LANGUAGE REQUIREMENTS; QUALIFICATIONS OF DRIVERS**

The International Brotherhood of Teamsters ("Teamsters") hereby submits these comments in opposition to any modification of 49 C.F.R. § 391.11(b) which would reduce the English language requirements applicable to drivers of commercial motor vehicles.^{1/} Such a modification is under consideration by the Federal Highway Administration ("FHWA") because the American Civil Liberties Union ("ACLU") has questioned whether this regulation is consistent with Title VI of the Civil Rights Act of 1964, which prohibits discrimination against any person on the ground of race, color or national origin under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d.

While the Teamsters support efforts to eliminate discrimination against minorities, the ACLU's concerns with 49 C.F.R. § 391.11(b) are misguided.^{2/} This regulation is first

1/ 49 C.F.R. § 391.11(b) provides in relevant part as follows:

Except as provided in Subpart G of this part, a person is qualified to drive a commercial motor vehicle if he/she --

...(2) can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

2/ Indeed, it is questionable whether 42 U.S.C. § 2000d has any application to FHWA's safety regulations as a matter of law. In this regard, that statute is intended "to cover only those

(continued...)

and foremost a regulation designed to promote safety and protect all users of our nation's highways from unnecessary safety risks. With increased globalization and the implementation of the North American Free Trade Agreement ("NAFTA"), this is the worst possible time to be considering a relaxation of English language proficiency requirements for drivers of commercial motor vehicles. American citizens are demanding more, not less, stringent safety regulations for our highways. Indeed, the ACLU's proposal to weaken 49 C.F.R. § 391.11(b) is in direct conflict with the resolution adopted in 1995 by Working Group One of the Land Transportation Standards Subcommittee established by NAFTA. That resolution recognized that drivers of motor vehicles had to be able to communicate in the country where the driver was operating so that safety was not compromised.

The regulations applicable to the operation of commercial motor vehicles obviously are and should be more onerous than those applicable to passenger vehicles. For example, the drivers of commercial motor vehicles must maintain log books reflecting their hours of service and they must fully understand federal and state requirements applicable to vehicle

2/ (...continued)

situations where federal funding is given to a non-federal entity which, in turn, provides financial assistance to the ultimate beneficiary." Steptoe v. Savings of America, 800 F. Supp. 1542, 1548 (N.D. Ohio 1982), citing Soberal-Perez v. Heckler, 717 F.2d 36, 38 (2nd Cir. 1983), cert. denied, 466 U.S. 929 (1984). There is no federal funding to a non-federal entity involved here, nor is there any financial assistance provided to anyone pursuant to the regulation at issue.

length and weight restrictions and the transportation of hazardous materials.

Commercial drivers must be able to speak English in order to communicate with shippers and receivers with respect to the loading and unloading of goods, the preparation of bills of lading, other shipping papers and possible emergency response and other safety measures for particular types of cargoes. Roadside inspections of commercial motor vehicles by state authorities are not unusual and an increase in such inspections is supported by many safety advocates. The drivers must be able to communicate with the state authorities if these inspections are to be effective and done efficiently.

Aside from having to understand highway signage, drivers must be able to read electronic messages of weather and highway conditions. The use of these electronic message boards is increasing across the country and particularly in some of the larger border states. Some English language proficiency is necessary to understand and respond to these messages.

49 C.F.R. §391.11(b) is not unduly vague or unnecessarily broad given the safety risks and conditions presented. It requires proficiency in the English language sufficient to be able to converse with the general public. Such a requirement, as noted, is necessary so that drivers can communicate with state highway officials, as well as the persons who are tendering, loading and receiving goods from the drivers.

A proficiency in the English language sufficient to understand highway signs and signals, to respond to official inquiries and to make entries on reports and records is entirely appropriate. Clearly, it would not promote the accurate and honest recording of log book information to have someone other than the driver record the data.

For all the foregoing reasons, the Teamsters oppose any change to 49 C.F.R. § 391.11(b).

Respectfully submitted,



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