



BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DOCKET NO. FMCSA-2017-0330

NOTICE OF PROPOSED RULEMAKING CONCERNING CONTROLLED SUBSTANCES AND ALCOHOL TESTING:
STATE DRIVER'S LICENSING AGENCY NON-ISSUANCE/DOWNGRADE OF COMMERCIAL DRIVER'S LICENSE

COMMENTS OF
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

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I. INTRODUCTION

These comments are submitted on behalf of the National Motor Freight Traffic Association, Inc., (NMFTA) in response to a notice of proposed rulemaking published on April 28, 2020, and entitled “Controlled Substances and Alcohol Testing: State Driver’s Licensing Agency Non-Issuance/Downgrade of Commercial Driver’s License,” FMCSA-2017-0330. FMCSA proposed it is prohibiting State Driver’s Licensing Agencies from issuing, renewing, upgrading or transferring CDLs or CLPs of individuals who have a banned substance violation.

II. STATEMENT OF INTEREST

NMFTA is a nonprofit membership organization headquartered at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Its membership is comprised of approximately 500 motor carriers operating in interstate, intrastate and foreign commerce, primarily specializing in the movement of less-than-truckload quantities of freight (LTL). NMFTA’s mission is to promote, advance and improve the welfare and interests of its members and the motor carrier industry in general. NMFTA presents its members’ position in relevant judicial, regulatory and legislative proceedings. LTL carriers provide service and operate a business model that is distinct from other types of motor carriers.

III. COMMENTS OF NMFTA

FMCSA’s proposal prohibits State Driver’s Licensing Agencies (SDLAs) from taking positive action on commercial driver’s licenses or commercial learner’s permits for individuals who have committed a drug and alcohol violation. FMCSA also proposed two separate alternatives to the non-issuance guideline. The first, FMCSA’s preferred alternative, would require SDLAs remove CDL or CLP privileges from drivers when a “push” notification is received from the Clearinghouse. In contrast, Alternative #2 does not require states receive “push” notifications and if the state opted in, the state would decide how to best use the information provided. It is the opinion of NMFTA and its membership that Alternative #1 offers the most effective solution, as well as provides the greatest benefit to public safety and carrier liability.

FMCSA’s second proposed alternative relies too heavily on the states to determine the correct course of action, especially since it does not require states to receive Clearinghouse information. As previously stated, NMFTA’s membership consists of both inter- and intra-state carriers. If FMCSA left the responsibility of action to the states, a complicated and confused regulatory framework would develop across the country, wherein drivers and carriers operating in states with less stringent CDL and CPL checks would have a competitive advantage over others operating under stricter rulesets.

Additionally, by allowing states to opt-in or out of Clearinghouse “push” notifications, FMCSA is potentially leaving unsafe drivers with valid CMVs and CPLs. It is clear from a public safety standpoint that allowing such drivers to retain valid CMVs and CPLs after having committed a drug or alcohol violation is unacceptable. Not only does this endanger the public, it creates the possibility of bad actors continuing to operate motor vehicles and puts carriers in enormous risk.

As previously noted, NMFTA and its membership prefer Alternative #1. The alternative increases public safety, creates a more effective regulatory environment that is uniform across state lines and decreases a carrier's exposure to liability. Despite its greater price tag, Alternative #1 is clearly the more effective regulatory framework proposed.

IV. FMCSA REQUESTED FEEDBACK AND NMFTA RESPONSES

NMFTA surveyed its members to solicit feedback on a number of issues for which the Agency sought comment. Those questions and NMFTA's responses are included below.

Q: The NPRM proposes that SDLAs be prohibited from completing certain CLP or CDL transactions if the driver is subject to the CMV driving prohibition in § 382.501(a), resulting in non-issuance. Do you agree with that proposal? Why or why not?

A: Drivers who have violated FMCSA drug and alcohol regulations should not be allowed to drive a commercial motor vehicle until they have completed the return to duty requirements. A driver who has violated drug and alcohol regulations is first and foremost a danger to public safety, but is also a severe liability to the carrier. The proposed rule would eliminate the risk of a driver acting in bad faith and continuing to drive with a valid state driver's license.

Q: In addition to non-issuance, should SDLAs be required to downgrade the license of CMV drivers subject to the driving prohibition, as proposed in FMCSA's preferred alternative? Why or why not?

A: A SDLA should be made to downgrade the license of a CMV driver subject to the driving prohibition. A federally mandated approach would create uniformity across state lines. Leaving the decision to act to the states allows for too much variability in regulation enforcement that would create unfair advantages for drivers or carriers located in states with more relaxed regulatory environments. FMCSA's preferred alternative is both the more effective alternative, but also the fairest.

Q: How would SDLAs choosing to receive notice of a driver's prohibited CMV driving status, as proposed in the second alternative, use the information to enforce the prohibition? For example, would the State enact a law to suspend the CLP or CDL of affected drivers?

A: A state receiving voluntary notice of prohibited CMV driving status would have to create its own laws and procedures on how to best enforce the prohibition. As noted in the Federal Register notice, only three states currently downgrade a CMV when a violation of a drug and alcohol regulation is reported. Therefore, the remaining states would have to enact some manner of enforcement changes. However, this alternative does not require states change their procedures, thus potentially allowing drivers who are in violation of drug and alcohol regulations to continue to drive with a valid state driver's license and creating an unfair regulatory disadvantage to drivers and carriers in states voluntarily querying the Clearinghouse.

Q: The Agency's preferred alternative proposes that SDLAs must complete and record the downgrade on the CDLIS driver record within 30 days after receiving notice that a driver is prohibited from operating a CMV due to a drug and alcohol program violation. Does 30 days

allow sufficient time to complete and record the downgrade? If not, please explain why more time would be needed.

A: Thirty days is sufficient time to allow SDLAs to make the necessary changes to a driver's CDL or CLP status. Extra allotted time may increase danger to the public and liability to carriers.

Q: If the SDLA removes the CLP or CDL privilege, or takes other action on the license or driving record, based on information that FMCSA subsequently corrects or removes from the Clearinghouse, should FMCSA determine how States would reinstate the privilege and/or amend the driving record, or should that process be left to the States? Do SDLAs currently have established processes to correct errors on an individual's license or driving record?

A: In the event that action is taken on erroneous or removed information, FMCSA should create a procedure for states to reinstate the driving privilege and/or amend the driving record of the affected driver. FMCSA has already correctly proposed that states be mandated by federal authority to amend a driver's status in the event of an infraction, and it is logical and consistent with that proposal to provide the states with a framework to rectify mistakes or amend decisions made with erroneous information. Additionally, creating a uniform framework across states eases the regulatory burden on drivers and their carriers when they are affected by such a situation. Allowing states to create their own procedures would complicate a carrier's responsibilities when trying to get an impacted driver back to work.

Q: Based on SDLAs' experience with the medical certification downgrade requirements currently in effect under § 383.73(o)(4), how long does it take to reinstate the CLP or CDL privilege to the driver's license?

A: NMFTA member carriers reported timeframes of 1 to 4 days.

Q: How can FMCSA electronically transmit Clearinghouse information to the SDLAs most efficiently (e.g., by using the existing CDLIS platform, a web-based service, or some other automated means)? What are the pros and cons of these transmittal options?

A: FMCSA should use already established methods of communication to transmit Clearinghouse data to the SDLAs. Development of a new communication system would unduly delay the implementation of this rule, be a wasteful expenditure of federal time and money and would likely not provide any additional regulatory or administrative benefit.

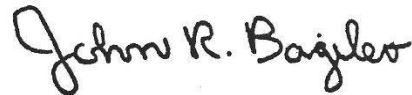
V. CONCLUSION

NMFTA members encourage FMCSA to pursue implementation of the new rule as proposed in Alternative #1. FMCSA should implement a regulatory framework that is consistent across the nation, increases public safety and eases the regulatory burden on carriers and their drivers.

Respectfully submitted,



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