

clause title and date, the introductory text preceding paragraph (a), and paragraph (g) to read as follows:

**252.219-7003 Small business subcontracting plan (DoD contracts).**

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**SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (XXX 2006)**

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

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(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of such firms. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

22. Section 252.219-7004 is amended by revising the section heading, the clause title and date, and paragraph (d) to read as follows:

**252.219-7004 Small business subcontracting plan (test program).**

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**SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (XXX 2006)**

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(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 383**

[Docket No. FMCSA-1997-2181]

RIN 2126-AA03

**Commercial Driver Instruction Permits; Withdrawal**

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

**ACTION:** Notice of Proposed Rulemaking (NPRM), withdrawal.

**SUMMARY:** FMCSA withdraws its notice of proposed rulemaking (NPRM) on

additional minimum Federal standards for State-issued learner's permits that allow drivers to be trained in the operation of commercial motor vehicles (CMVs). The NPRM requesting comments was published on August 22, 1990, at 55 FR 34478. The comment period was extended to November 30, 1990 (55 FR 42741, October 23, 1990). FMCSA determined that the issues addressed in the NPRM and the public comments on these issues do not reflect many initiatives and activities that occurred after publication of the NPRM. Therefore, the 1990 NPRM is obsolete and it is in the public interest to withdraw it.

**DATES:** The NPRM with request for comments published on August 22, 1990, is withdrawn as of February 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Senior Transportation Specialist, (202) 366-5014, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

The commercial driver's license (CDL) program, established by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 [Pub. L. 99-570, October 27, 1986, 100 Stat. 3207-170] is an evolving program. Part 383 of Title 49, Code of Federal Regulations, implements the CMVSA (currently codified at 49 U.S.C. 31301 *et seq.*). As of April 1, 1992, it prohibits any person who does not possess a CDL or learner's permit issued by his or her State of domicile from operating a CMV requiring a CDL. The prohibition impacts driver-training activities by limiting trainees to their State of domicile to receive training and behind-the-wheel experience, and take the skills test necessary to obtain a CDL. This creates problems because commercial driver training facilities are not equally available in all States.

To address this and other issues such as lack of uniformity of duration of learners' permits, associated driver history recordkeeping, and test reciprocity between States, the Federal Highway Administration (FHWA) published an NPRM to: (1) Propose standards for issuing a learner's permit; (2) make it easier for out-of-State drivers to obtain on-the-road skills-training operating a CMV; and (3) make it easier for such drivers to obtain a CDL outside their State of domicile. The NPRM proposed additional minimum Federal requirements for a learner's permit,

which was referred to as a commercial driver's instruction permit (CDIP). FHWA's intent was to establish minimum standards, uniformity, and reciprocity for commercial instructional permits and to remove impediments to driver training caused by CDL residency requirements.

Effective January 1, 2000, DOT transferred responsibility for motor carrier functions and operations to FMCSA (64 FR 72959, December 29, 1999). In the discussion below, the governing agency is referred to as FMCSA, regardless of whether the action described occurred before or after this transfer of responsibility.

**Comments Received on the NPRM**

The NPRM requested comments from interested parties by October 22, 1990, and this comment period was later extended through November 30, 1990. As of August 1, 2005, there were 65 submissions to the NPRM docket; the last comment was posted in the docket on October 17, 1995. FMCSA reviewed all comments regardless of submission date. Of the 65 submissions, 58 are directly related to the proposed rule, three are letters addressed to Members of Congress requesting support for the rule, one amended a previous comment, two addressed other issues indirectly related to the proposed rule, and one contains a petition to extend the comment period. The largest single group of commenters was State driver licensing officials. The majority of commenters opposed the proposal put forward by FMCSA, but proposed an alternative approach developed by the American Association of Motor Vehicle Administrators (AAMVA).

**Learner's Permit for Out-of-State Residents**

Two fundamental issues raised in the 1990 NPRM concerned problems obtaining on-the-road skills-training and taking the CDL skills test in a representative vehicle because States are prohibited from issuing a permit or CDL to a driver not domiciled in that jurisdiction. This limits the ability of drivers to obtain required on-the-road skills-training, and obtain a learner's permit or temporary CDL in States where they are not permanently domiciled.

The NPRM proposed amending 49 CFR 383.23 to allow any jurisdiction where the driver receives training, even if it is not the State of domicile, to issue a learner's permit. The intent was to address the problem that commercial driver training facilities are not equally available in all States.

Many commenters argued that implementation of FMCSA's proposal would be complex. The commenters stated that each jurisdiction would need to develop a list of approved training schools for CMV drivers, and only students in such approved programs would be eligible for out-of-State CDIPs and temporary 60-day CDLs. Additionally, many State licensing agencies argued that each out-of-State CDIP issued would create a second driver history record for that driver, one for the basic license in the jurisdiction of domicile, and one for the CDIP in the jurisdiction where the training occurred. The State licensing agencies expressed concern that the proposal would undermine a fundamental concept of the CDL program, "one-license, one-record."

State licensing agencies and AAMVA opposed the prospective administrative burdens associated with an out-of-State CDIP. Seventeen States and AAMVA opposed the out-of-State CDIP proposal, while five States were in favor. There was similar opposition to the proposed subsequent temporary 60-day CDL that would be issued by the State where the training and testing took place. The State of Illinois, for example, claimed the proposals were "ill-conceived and intrusive to the [one-license, one-record per driver] CDL licensing philosophy."

While AAMVA and 11 States opposed the NPRM proposal for addressing this issue, they jointly proposed an alternative approach that would uphold the "one-license, one-record" concept. Their counter proposal would allow the applicant to transfer his or her jurisdiction of licensure to the State where he or she receives training. The applicant could initially obtain the required regular (non-CDL) license and CDIP from the jurisdiction where training is received. Upon completion of training, the applicant could obtain a permanent CDL from that jurisdiction. The driver would then be free to return to the original licensing jurisdiction and apply to transfer the CDL there, subject to the CDL regulations and requirements of that jurisdiction for transferring CDLs. While the States' proposal addresses the issue of "one-license, one-record," it does not deal with the issue of domicile.

#### *Remote Electronic Supervision*

In § 383.23, the NPRM proposed allowing, as an alternative to in-cab supervision, remote electronic supervision via communication with chaperones in accompanying vehicles under strictly controlled conditions. Most commenters opposed that proposal, except for a small number of

public driver training schools and the States in which they are located. The public training schools, in defending their support for this proposed practice, asserted that trainees are allowed on roads and highways open to public travel only after they have proven their competence to instructors on a private range or by in-cab physically accompanied driving.

#### *Vehicles for Which CDIPs Would Be Valid*

The NPRM also proposed allowing the use of CDIPs for all groups of CMVs, including those requiring endorsements. Five State driver licensing agencies opposed granting CDIP applicants the privilege to operate passenger carrying ("P" endorsement) or hazardous material placarded ("H" endorsement) CMVs, even though directly supervised in-cab by a qualified driver.

#### *CDL Knowledge Tests*

AAMVA and nine State licensing agencies recommended adding a safeguard requiring CDIP applicants to pass the CDL knowledge test before receiving a CDIP, and to require the CDIP to display the CMV training group for which the applicant applied to train. In addition, many commenters also proposed that CDIP holders pass the knowledge test for any endorsement prior to operating on roads open to public travel, and that CDIP holders only be allowed to operate vehicles in the class of vehicles covered by the class and endorsements on the CDIP.

#### *CDL Test Reciprocity*

The NPRM proposed authorizing States where training is received to administer CDL knowledge and skills tests to drivers domiciled in other States, and authorizing a license applicant's State of domicile to accept test results obtained in the training State. AAMVA and some State licensing agencies contend FMCSA should not attempt to specify anything about State acceptance of out-of-State tests. The commenters argue that in some very limited instances, States already have agreements with other States to accept their tests, and it is unnecessary for FMCSA to promulgate anything about authorizing such acceptance.

#### *Duration of the CDIP*

The NPRM proposed restricting the time periods for State-issued CDIPs to no longer than one year. There was disagreement among the commenters on the maximum time for which a driver

may hold a valid CDIP.<sup>1</sup> AAMVA pointed out that because the initial CDL rules did not address this issue, a number of jurisdictions did not adopt this aspect of the AAMVA model law, resulting in the use of differing time periods by licensing jurisdictions when issuing CDL learner's permits.

#### *Commercial Driver's License Information System*

In § 383.73, the NPRM proposed requiring States to notify the Commercial Driver's License Information System (CDLIS) central index when it issues a CDIP to drivers who do not hold a CDL. CDLIS is the information system designed to serve as the clearinghouse and depository of information about any person who operates CMVs requiring a CDL. CDLIS contains a driver's identification, licensing history with any convictions (including convictions for any of the disqualifying offenses listed in part 383), and disqualification history. States would not be required to notify the CDLIS central index if the driver already holds a CDL, since the driver would already be recorded on the central index. Most commenters, including AAMVA, expressed support for requiring addition of CDIP holders to the CDLIS central index at the time of issuance of the CDIP. The driver licensing agency for the State of Maryland objected to this proposal, arguing that adding CDIP holders to the CDLIS central index would result in the needless entry of a large number of otherwise non-commercial drivers who may never obtain a CDL.

#### *CDIP Document*

The NPRM proposed that the CDIP document contain all information the CDL contains, including a picture of the holder, except the document would contain the designation "commercial driver's instruction permit" instead of "commercial driver's license." It further proposed including a statement on the CDIP indicating it is invalid without the underlying State driver license, the number of which would be displayed on the CDIP. AAMVA and most State licensing agencies opposed use of a photograph on the CDIP document because it would be redundant and costly to many States. Further, the commenters argued that because the proposed CDIP is a temporary permit that must be presented in conjunction

<sup>1</sup> The original AAMVA CDL model law created to assist jurisdictions in initiating their CDL programs specified 6 months as the maximum length for initial issuance and renewal periods of commercial learners' permits.

with the underlying State license, the photograph is unnecessary.

In addition, AAMVA recommended a shorter title for the instruction permit document. AAMVA stated the title "commercial driver's instruction permit" is too long, making it difficult for some States to include this phrase on the CDIP document. AAMVA recommended the term "commercial learner's permit," or "CLP."

#### **Withdrawal of Proposal**

Since publication of the 1990 CDIP NPRM, major changes occurred in the CDL program through other rulemakings, regulatory guidance, legislation and policy decisions. The September 11, 2001, terrorist attacks prompted Congress and FMCSA to expand the scope of the CDL program to include issues related to fraud and security. The issuance of CDLs to unqualified persons and persons with false identities added new dimensions to the program, significantly in the detection and prevention of fraud and considerations of domicile. Some of the major initiatives that affected and transformed the direction of the CDL program are discussed below.

#### *State Compliance With Commercial Driver's License Program*

On May 18, 1994, FMCSA issued a final rule (59 FR 26029) setting standards States must meet to comply with section 12009(a) of the CMVSA and thus avoid any loss of Federal-aid highway funds as provided in section 12011. CMVSA requires States to: (1) Prevent CMV drivers from concealing unsafe driving records by restricting issuance of a CDL to only the State of domicile; (2) ensure all CMV drivers demonstrate the minimum levels of knowledge and skills needed to safely operate the appropriate class of CMV before being licensed; and (3) subject CMV drivers to new, uniform sanctions for certain unsafe driving behavior. In addition, the Act requires an annual certification process for each State to determine whether it is in compliance. In the event of noncompliance, a percentage of highway funds may be withheld.

#### *CDL Standards and Program Improvements*

In 1994, FMCSA initiated a study to evaluate the effectiveness of the CDL program. The final report, submitted to Congress in 1999, documented a number of vulnerabilities within the CDL program and provided corrective recommendations. Congress responded to these findings in the Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Pub. L. 106-159, 113 Stat. 1748), addressing 17 CDL-related vulnerability issues. MCSIA amended many provisions related to the licensing and sanctioning of CMV drivers and required States to correct numerous specific weaknesses in their CDL programs. In response to MCSIA, FMCSA issued a final rule (67 FR 49742, July 31, 2002) incorporating 15 of the 17 new requirements into the CDL regulations. Among other things, the final rule required State CDL programs to include disqualification of a CDL holder for alcohol and drug abuse that occurred while operating a non-CMV, and disqualification of the driver by the FMCSA Assistant Administrator if the driver's driving behavior is determined to constitute an imminent hazard. The rule specifies enhanced driver application procedures and State record check requirements. In addition, the 2002 rule clarifies FMCSA's regulatory relationship to CDLIS by requiring compliance with the current version of the AAMVA "CDLIS State Procedures" manual, which the CDL regulations incorporate by reference.

#### *September 11, 2001*

The terrorists who attacked the World Trade Center towers in New York City and the Pentagon in Arlington, Virginia, fraudulently obtained driver's licenses from several States. Those licenses were presented as identification to board the airplanes used in the attacks. While those licenses were not CDLs, there is a potential risk CDLs or CDIPs could be obtained in the same manner to use CMVs, particularly those loaded with hazardous materials, for acts of terrorism. This potential risk led the States, FMCSA, and Congress to require development and implementation of better means for determining the

identity of license applicants and securing the license document. Other measures to prevent terrorists from using CMVs in terrorist attacks include development and implementation of security threat assessment background checks for drivers to obtain or maintain a hazardous materials endorsement on their CDL, as required by section 1012(b) of the USA PATRIOT Act (Pub. L. 107-56, October 26, 2001, 115 Stat. 397).

In addition, the REAL ID Act of 2005 (Pub. L. 109-13, May 11, 2005, 119 Stat. 231) tightens the verification process for determining a person's identity and legal presence in this country before issuing the person a driver's license. In working with the Department of Homeland Security to implement this Act, FMCSA intends to address the "State of domicile" requirement in regard to student drivers who obtain driver training and want to take their CDL skills test outside their State of domicile.

FMCSA intends to revisit issues addressed in the 1990 NPRM in light of the initiatives and events that have taken place since its publication. FMCSA will take into consideration the commenters' recommendations to the 1990 NPRM, as well as relevant recommendations generated by the DOT Office of Inspector General's May 8, 2002, Audit Report, *Improving Testing and Licensing of Commercial Drivers*, and the new Congressional requirements found in section 4122 of the Motor Carrier Safety Reauthorization Act of 2005.

#### *Conclusion*

Many of the issues addressed in the 1990 NPRM and the public comments to these issues did not consider the initiatives and events that took place after publication of the NPRM. Therefore, the August 22, 1990 NPRM is obsolete and it is in the public interest to withdraw the document.

Issued on February 17, 2006.

**Annette M. Sandberg,**  
*Administrator.*

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