



DEPARTMENT OF PUBLIC SAFETY  
INTRA-DEPARTMENTAL CORRESPONDENCE



---

DATE: MARCH 18, 2020

FROM: CHIEF TIM Q. JOHNSON <sup>TQJ</sup>  
DPS DEPUTY SECRETARY - OPERATIONS

TO: ALL COMMISSIONED PERSONNEL

SUBJECT: DIRECTIVE 2020-03 ENFORCEMENT OF CMV DRIVER  
FMCSA ENGLISH PROFICIENCY REQUIREMENT (Amended)

---

The purpose of this directive is to provide officers with guidelines to follow in enforcing Federal Motor Carrier Safety Act ["FMCSA"] regulation, 49 C.F.R. § 391.11 (b) (2) which requires the driver of a commercial motor vehicle ["CMV"] to be able to "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."

FMCSA Memorandum MC-ECE-2016-006 states:

***...formal driver interviews to confirm English Language Proficiency (ELP) will not be conducted during roadside inspections.*** If the driver can communicate sufficiently to complete the inspection or investigation, he/she should not be cited for violations of 391.11 (b)(2). If the driver cannot read, write, or speak English but can communicate sufficiently with the inspector/investigator, he/she should not be cited for a violation of 391.11 (b)(2). Tools to facilitate communication such as interpreters, I-Speak cards, cue cards, smartphone applications, and On-Call Telephone Interpretation Service may be used when interacting with drivers. Federal Highway Administration Recipients (primarily State Departments of Transportation) are required to have developed Language Access Plans under their Title VI Programs and may be useful resources to contact regarding available LEP tools and resources. Use of these devices does not constitute a violation of 391.11 (b)(2) ...

(Emphasis added)

New Mexico State Police has not adopted, a set standard for determining whether a driver can or cannot "sufficiently" communicate in the English language.

Effective immediately, any officer who determines a CMV driver is in violation of 49 C.F.R. § 391.11 (b) (2), should note this deficiency on the inspection report. However, because English proficiency is not specifically identified as a driver qualification in Section 65-3-7, NMSA, 1978, the officer shall not issue any citation for violation of this statute due to the driver's perceived lack of English proficiency.