



May 19, 2008

BY ELECTRONIC MAIL

The Honorable John H. Hill
Administrator, Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Electronic Address: www.regulations.gov (Docket No. FMCSA-2007-27748; RIN 2126-AB06)

Re: Proposed Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators Rule

Dear Administrator Hill:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Motor Carrier Safety Administration's (FMCSA's) *Proposed Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators Rule* (Driver Training Rule).¹ The proposed rule would expand federal training requirements for anyone applying for a new or upgraded commercial driver's license (CDL) to include successfully completing both classroom and behind-the-wheel training from an accredited institution or program. Proof of such training would have to be provided to the state CDL issuing authority. The rule would exclude commercial drivers who currently possess a CDL or obtain one prior to the rule taking effect.²

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant

¹ 72 Fed. Reg. 73226 (December 26, 2007). (See also, 73 Fed. Reg. 15471 (March 19, 2008) extending the period to file comments until May 23, 2008.)

² Id.

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272,⁵ which requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a draft rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

Discussion

FMCSA's proposed rule is intended to improve highway safety by requiring additional training for entry-level operators of commercial motor vehicles, motor coaches, and school buses. The proposed rule emanates from a series of studies that purport to link increased driver training with reduced accident rates.⁶ However, FMCSA readily acknowledges that there is a "lack of research findings indicating a relationship between standardized driver training and increased safety."⁷ Accordingly, the agency seeks comment on whether and to what degree these assumptions are valid.⁸ Further, the agency certifies under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities, largely because the agency assumes that individual drivers (not carriers) will incur the cost of the additional training.

In response to the publication of the proposed rule, several small business representatives contacted Advocacy and expressed serious concerns with the proposed rule. In response, Advocacy hosted a small business regulatory roundtable on February 27, 2008 for small business representatives to discuss their concerns. A representative from FMCSA attended the roundtable to provide an overview of the proposed rule, but did not remain for the ensuing discussion. The following comments are reflective of the issues raised during the roundtable and in subsequent conversations with these small business representatives.

1. **Most small business representatives objected to the proposed rule.** Most of the small business representatives at the roundtable objected to the proposed rule. Some felt the rule would cause driver shortages and increased prices. Others felt that existing training practices were adequate and that FMCSA lacked data to justify the expansion of the current rule. Of note, however, were representatives from the owner-operator, independent driver industry who expressed strong support for the rule, stating that an expansion of federal training requirements was beneficial and long overdue. In particular, these representatives stated that their drivers (almost all

⁵ Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 Fed. Reg. 53461) (August 16, 2002).

⁶ 72 Fed. Reg. 73227.

⁷ 72 Fed. Reg. 73231.

⁸ Id. FMCSA states that, "Given the lack of data that would indicate that the training requirements in this proposed rule would result in a reduction in crash rates, FMCSA solicits comments on the analytical basis and justification for this proposed rule."

of whom are small businesses) compete with large companies that employ large numbers of inadequately trained drivers. These representatives stated that increased training would improve professionalism and working conditions in the industry. Further, they stated that because all drivers share the same roads, they supported the expansion of driver training rules to intrastate drivers as well.

2. **The proposed rule would be costly and could lead to driver shortages.** Many small business representatives expressed concern that the proposed rule would be costly and could lead to driver shortages and increased prices. These comments came from many industries (e.g., construction, retail, materials suppliers, etc.) whose drivers are not full-time drivers, but who drive as one aspect of their job. Many are also short-haul drivers who begin and end their work shift at the same location and have responsibilities other than driving (e.g., sales, inventory, deliveries, etc.). The small business representatives stated that they are already having difficulty filling these jobs and that requiring additional training would further erode the supply of drivers and could lead to increased costs for products and supplies. Further, they questioned whether there is evidence to show that these drivers are involved in a significant number of accidents. Accordingly, Advocacy recommends that FMCSA consider special provisions or exemptions for part-time and short-haul drivers.
3. **The motor coach industry does not have training providers and training is usually conducted in-house.** Representatives from the motor coach industry stated that their industry does not have training providers and that training is conducted in-house by the companies themselves. These representatives stated that the motor coach industry is very different from trucking and that the current system works well. They stated that insurance premiums and state commercial driver's licensing requirements already impose proficiency requirements that are adequate, and that increased training will lead to rising costs and driver shortages. Further, they questioned whether there is evidence to show that increased training will result in lower accident rates in the motor coach industry. Finally, these representatives expressed concern about liability of training providers who certify the proficiency of drivers. Advocacy recommends that FMCSA consider how to best structure training requirements for the motor coach industry.
4. **FMCSA should consider a performance-based standard rather than mandating specific timeframes.** Some small business representatives supported increased training, but favor a performance-based approach rather than mandated training timeframes. Under such an approach, FMCSA could establish a series of training parameters for which a driver would have to demonstrate skills and proficiency. Skill and proficiency rather than specific classroom and behind-the-wheel training timeframes would be the standard for determining competency. Because performance-based approaches are often superior to "one-size-fits-all" regulations, Advocacy recommends that FMCSA consider a performance-based approach in this area.

5. **The accreditation requirements would freeze the number of training providers.** Small business representatives from the training industry pointed out that because the accreditation process is only available to firms that already have been conducting training for two years, no new training providers would ever be able to enter the market, essentially freezing the number of training providers to those currently in business. This unintended consequence could increase the cost of training and restrict the number of new drivers that would be trained. Advocacy recommends that FMCSA consider altering or abolishing the accreditation provision so that the agency does not unintentionally limit the supply of training providers and drivers. Another approach might be to allow training providers to self-certify to particular standards.
6. **The proposed rule could actually reduce the amount of training that entry-level drivers receive.** Small business representatives from the training industry expressed concern that the proposed rule could actually reduce the amount of training that drivers receive by establishing a federal standard that is lower than what many programs currently provide. For example, one training representative noted that their current 480-hour training course could actually be reduced because federal financial aid is tied to course length and these longer courses would not be eligible for federal financial aid. Advocacy recommends that FMCSA revise the rule to avoid the outcome of reducing training to the federally-mandated minimum.
7. **Neither the Regulatory Evaluation nor the Regulatory Flexibility Analysis includes costs for training providers to obtain accreditation.** Small business representatives from the training industry stated that the cost of obtaining accreditation will be substantial, but none of these costs are included in the Regulatory Evaluation or the Regulatory Flexibility Analysis. The small business representatives stated that a significant number of unaccredited training providers are small businesses that could be forced out of business if accreditation is required. These reasonably foreseeable costs should have been included in the Regulatory Evaluation and the Regulatory Flexibility Analysis as well. The Regulatory Flexibility Analysis should have also included a discussion a significant alternatives that would meet the agency's objectives in a less burdensome manner.⁹
8. **The proposed rule may not comport with the Federal Information Quality Act (FIQA).** Several small business representatives raised questions about the quality of data underlying the proposed rule, and, specifically, whether it comports with the Federal Information Quality Act (FIQA).¹⁰ The FIQA and the guidelines¹¹ implementing it require that information meet certain quality thresholds before it can

⁹ See, 5 U.S.C. § 603(c).

¹⁰ Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; HR 5658).

¹¹ See, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, Office of Management and Budget, 67 Fed. Reg. 8452 (February 22, 2002) (available at <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>) and *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Transportation*, August 2002 (available at <http://docketsinfo.dot.gov/ombfinal092502.pdf>).

be disseminated, used, or relied upon by a federal agency. The preamble to the proposed rule contains a lengthy discussion about the studies upon which the proposed rule is based.¹² However, FMCSA readily acknowledges that the analyses do not establish a clear link between increased training and reduced accident rates.¹³ As such, FMCSA should carefully evaluate the data used to support this proposed rule prior to proceeding. Further, because of the preliminary nature of the findings in the proposed rule, it might have been beneficial to have published the proposal as an advanced notice of proposed rulemaking rather than a proposed rule. As such, Advocacy recommends that FMCSA consider publishing a supplemental proposed rule for additional public comment once the agency makes more conclusive findings about the data and assumptions underlying the proposed rule.

Conclusion

Advocacy appreciates the opportunity to comment on FMCSA's *Proposed Driver Training Rule*. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 (or bruce.lundegren@sba.gov) if you have any questions or require additional information.

Sincerely,

/s/

Thomas M. Sullivan
Chief Counsel for Advocacy

/s/

Bruce E. Lundegren
Assistant Chief Counsel for Advocacy

Copy to: The Honorable Susan E. Dudley, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

¹² 72 Fed. Reg. 73227.

¹³ See, Footnotes 7 and 8, above.