

**Federal Motor Carrier Safety Administration
Consideration of Negotiated Rulemaking Process
Minimum Training Requirements for Entry-Level
Commercial Driver's License Applicants
(Docket # FMCSA-2007-27748)**

Submitted by:
National Advocates for the Advancement of New Drivers

September 18, 2014

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National Advocates for the Advancement of New Drivers (“NAAND”) welcomes this opportunity to submit the following comments to the Federal Motor Carrier Safety Administration (“FMCSA”) in response to the agency’s Notice of Intent that appeared in the Federal Register on August 19, 2014 concerning the agency exploring the feasibility of conducting a negotiated rulemaking (Neg Reg) concerning entry-level training for drivers of commercial motor vehicles (CMVs).

NAAND is a coalition of accredited commercial truck driver training schools from throughout the United States offering comprehensive training programs of 600 clock hours or the equivalent credit hours. These accredited schools and their students are eligible to participate in the federal student aid programs, including the Pell Grant program and are approved for training veterans, active duty personnel, Reservists and National Guardsmen. Since 1985, our programs have trained hundreds of thousands of men and women for entry-level commercial driver positions, which currently earn higher than average annual income plus benefits.

I. Introduction

In 2010, in response to FMCSA’s request that NAAND provide information respecting the relationship between the availability of student financial aid funding and the then proposed rulemaking (“NPRM”) issued by FMCSA to establish minimum training requirements for entry-level commercial motor vehicle operators (72 Federal Register 73226, December 26, 2007) submitted (Docket # FMCSA-2007-27748) an in depth side-by-side comparison of the proposed curriculum and the typical comprehensive curriculum.

Furthermore, NAAND pointed out how the proposed rule did not consider the multiple unintended consequences that such standards posed for driver training schools, their students and the entire trucking industry; and how these consequences would have the aggregate effect of *impairing*, rather than enhancing, the training of entry-level drivers and, consequently, would actually have a *detrimental* impact on highway safety.

Most notably, the then proposed rule could have the unintended consequence of eliminating the availability of federal financial aid under U.S. Department of Education (“USDOE”) rules and would have substantially reduced active duty military and veteran's education benefits for commercial driver training students. These resources provide NAAND students, a large percentage of whom are economically disadvantaged, with the means to enroll in these schools’ comprehensive commercial driver training programs—programs that exceeded the minimum requirements contemplated by the then proposed rule. And how without this financial aid assistance and/or military education benefits, students would be unable to afford, and would thus forego enrolling in these more comprehensive programs. As a consequence, the comprehensive programs would no longer be financially viable and would have, almost certainly, been eliminated by NAAND schools as a result.

II. Feasibility Of Conducting Negotiated Rulemaking (Neg Reg)

NAAND members believe Neg Reg would be beneficial and support the utilization of negotiated rulemaking, as set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.*, as this process will enhance the informal rulemaking process.

The Neg Reg procedures will encourage the affected parties to assemble and communicate, and will avail these parties the opportunity to share information, knowledge, expertise, and technical abilities possessed by all. Negotiated rulemaking offers significant advantages over adversarial rulemaking as the parties who will be largely affected by a rule will participate in the development of the rule.

NAAND members believe negotiated rulemaking will improve the substance of the rule by taking advantage of the experiences, both positive and negative, encountered by the parties that have been training enter-level drivers and those hiring the trainees for decades.

The US Department of Education has successfully used negotiated rulemaking for years. NAAND is pleased FMCSA is considering its utilization for ELDT.

III. One Size Does Not Fit All

An hour minimum training program standard could have the unintended consequence of causing commercial driving trainees and programs to lose current access to federal student assistance administered by the USDOE and appropriate military educational benefits. Currently, many rigorous driver training programs satisfy USDOE requirements that programs be of sufficient length in order to receive federal student aid, including federal Pell Grants (“FSA funding”). Therefore, if the FMCSA establishes a minimum curriculum length by use of clock hours for entry-level truck driver training, then the USDOE could take the position that under its standards the “maximum” acceptable length of such a program is 150% of those hours. If the length does not meet the minimum thresholds for eligibility for FSA funding, and thus, such programs and the trainees who attend those programs would not be eligible for financial assistance, including Pell Grants. This unintended circumstance has the potential to prevent over 15,000 students, who we believe would otherwise attend a comprehensive accredited driver training program in the next year, from receiving FSA funding for their education. This result also has the similarly significant potential of causing accredited institutions to discontinue their truck driver training programs since those programs, and the attending students, would no longer be eligible for FSA funding; reducing the amount of comprehensively trained new drivers worsening the current driver shortage.

The establishment of an hourly minimum program length for entry-level driver training is arbitrary without a stated basis for its assignment of a set number of hours of training for any subject matter, which as a practical matter is not how most educational institutions deliver their programs.

All members of NAAND offer commercial driver training programs significantly longer than the previously proposed hours of training. These programs are longer because, among other reasons, they are provided in a classroom setting, not in a one-on-one training setting. Classroom training also requires a longer program period to ensure that the majority of trainees receive and grasp the instructional materials. Most significantly, however, our programs tend to be longer because our programs do not focus on providing a bare minimum of instruction in order to pass the CDL exam. Accredited programs are developed under peer reviewed standards with the goal of preparing professional commercial drivers to engage in long-term commercial driving careers. The value offered by comprehensive commercial driver training programs, and the consequential enhancement to highway safety, would be lost if a rule establishes a de facto “maximum” requirement by the FMCSA.

Accredited driver-training schools have been proactively diligent and forward thinking in developing a safe and effective program in advance of a requirement to do so. The typical comprehensive curriculum teaches several important subject matters not sufficiently covered in the prior proposed curriculum, such as the operation of special rigs, cargo documentation, fuel conservation, progressive shifting, transportation operations, principals of first aid, personal health and safety, and public and employer relations. The inclusion of these critical training topics—many, if not almost all of which impact safety issues—is only possible in programs substantially exceeding the prior proposed hourly standard.

It would be more prudent for the final rule to establish materials that should be covered in a comprehensive driver training program and measure performance according to demonstrated trainee learning outcomes. This would create a baseline standard for all training programs and assure the public that drivers applying for a CDL have the necessary on-the-road experience and have achieved requisite performance benchmarks while avoiding establishing what amounts to a “maximum” program length that would prevent trainees from receiving additional training and FSA funding.

Simply creating a minimum hour standard as a means of evaluating a training program or even particular skills within a training program will not help the FMCSA reach its goal of increased highway safety. A performance based approach allows training programs to accurately evaluate trainees on their progress and test trainees on knowledge and skills they have gained throughout the training program. This type of assessment is much more critical to highway safety than counting the hours spent in a classroom.

In summary, commercial driving is difficult and fraught with danger, and the training of these drivers should not be constrained by a least common denominator in the form of an arbitrary, and ultimately counterproductive, threshold for minimum training hours. Instead, driver training should be required to teach a certain set of skills and should be judged based on whether their trainees are able to demonstrate a mastery of those skills. Our schools’ longer programs appropriately provide training beyond that needed to obtain a CDL. This additional training allows graduates to progress more rapidly in their finishing training and ensures that short-distance drivers, for whom finishing training often is not required, are better qualified to immediately command their vehicles and are better prepared to operate these vehicles in a safe manner. Since the goal of ELDT rule is to provide for safer highways, the rule should not require schools to pigeonhole trainees by the length and content of their training programs.

IV. Conclusion

We respectfully request the FMCSA to 1) establish a negotiated rulemaking committee to negotiate and develop a proposed rule; 2) identify interests that will be significantly affected by the rule; 3) a committee be convened with a balanced representation of persons who are willing to negotiate in good faith to reach a consensus on a proposed rule; 4) the agency, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rule as the basis for a rule proposed by the agency for notice and comment.