



DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

49 CFR 380

[Docket No. FMCSA–2007–27748]

Minimum Training Requirements for Entry-Level Driver Commercial Motor Vehicle Operators; Establishment of a Negotiated Rulemaking Committee

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Intent to Establish the Entry-Level Driver Training Advisory Committee (ELDTAC); Solicitation of Applications and Nominations for Membership.

SUMMARY: The FMCSA announces its intent to establish a negotiated rulemaking (“Reg Neg”) committee to negotiate and develop proposed regulations to implement section 32304 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) concerning entry-level driver training (ELDT) for commercial motor vehicles (CMV) operating in interstate or intrastate commerce. The committee will include representatives of organizations or groups with interests that are affected significantly by the subject matter of the proposed regulations. The FMCSA anticipates that these parties will include driver organizations, CMV training organizations, motor carriers of property and passengers and their associations, State licensing agencies, State enforcement agencies, labor unions, safety advocacy groups, and insurance companies. This notice provides notice to parties who seek to serve on the committee, and seeks comment on the proposal to establish the Committee and on the proposed membership. To the extent possible, the Agency will select from the nominees individual negotiators who reflect the diversity among the organizations or groups represented.

DATES: The deadline for comments and nominations for Committee members must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2007-27748 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

To avoid duplication, please use only one of these four methods. See the ‘Public Participation and Request for Comments’ portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

Submission of Nominations

All nomination materials should be submitted electronically via email to eldtac@dot.gov. Any person needing accessibility accommodations should contact Ms. Shannon L. Watson, Senior Policy Advisor, FMCSA, at (202) 366-2551.

FOR FURTHER INFORMATION CONTACT: Shannon L. Watson, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 or by telephone at 202-366-2551.

SUPPLEMENTARY INFORMATION

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2007-27748), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2007-27748, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may draft a notice of proposed rulemaking based on your comments and other information and analysis.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2007-27748, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

BACKGROUND

On August 19, 2014, FMCSA announced by notice in the Federal Register that it had retained a neutral convener, Mr. Richard Parker, a professor of law at the University of Connecticut School of Law, through a contractor, Strategic Consulting Alliances, LLC to speak with interested parties (from the organizational interests delineated above) about the feasibility of conducting of a Reg Neg on ELDT [79 FR 49044, August 19, 2014; and 79 FR 56547, September 22, 2014]. As part of the first step in this process, Mr. Parker conducted these

interviews and is preparing a report to the Agency regarding the feasibility of conducting a negotiated rulemaking. Based on the convener's recommendation and on the statutory factors in the Negotiated Rulemaking Act (5 U.S.C. § 563), FMCSA has decided to establish a negotiated rulemaking committee (5 U.S.C. § 564). The convening report will be available both in the rulemaking docket at FMCSA-2007-27748 and on the Internet at eldtac.fmcsa.dot.gov.

The FMCSA has prepared a draft charter to govern the activities of the Committee in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. In accordance with section 14 of FACA, the draft charter provides up to 2 years for the Committee's duration. However, FMCSA intends to complete the Reg Neg for the proposed rule within the first half of 2015 and publish a Notice of Proposed Rulemaking (NPRM) the same year, followed by a Final Rule in 2016.

On September 19, 2013, FMCSA withdrew its December 26, 2007, NPRM that proposed new ELDT standards for individuals applying for a commercial driver's license (CDL) to operate CMVs in interstate commerce [78 FR 57585, September 19, 2013]. The Agency withdrew the 2007 proposal because commenters to the NPRM, and participants in the Agency's public listening sessions in 2013, raised substantive issues that led the Agency to conclude that it would be inappropriate to move forward with a final rule based on the proposal. In addition, since the NPRM was published, FMCSA received new statutory authority on ELDT from Congress in MAP-21, which added § 32304(c) (codified at 49 U.S.C. 31305 and 31308). Finally, the Agency tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide ideas the Agency should consider in implementing the MAP-21 requirements. In consideration of the above, the Agency concluded that a new rulemaking should be initiated in lieu of completing the 2007 rulemaking.

FMCSA's Intent

This negotiated rulemaking committee will be engaged in a consensus-based process regarding, but not limited to, the following issues:

- (1) Development of minimum training requirements for individuals applying for a CDL for the first time or upgrading from one class of CDL to another class;
- (2) Determining the amount of behind-the-wheel training and classroom instruction;
- (3) Gathering and provision of data to quantify the costs and safety benefits of training;
- (4) Accreditation vs. certification of ELDT programs and schools;
- (5) Contents of driver training curricula, including separate course modules for motorcoach and passenger carriers, as well as hazardous materials carriers;
- (6) Instructor qualifications and requirements; and
- (7) A performance-based approach vs. a minimum hours of training approach, as well as simulation training and special considerations.

The Committee's scope will exclude certain issues that were discussed by the convener with the parties in developing the convener's report. The Agency acknowledges the views and concerns of the participants in the convening process. However, FMCSA believes the scope of the rulemaking should focus on the MAP-21 provisions with a commitment to address other issues if and as appropriate in subsequent rulemaking or other actions. Based on the comments provided in the convening report, FMCSA is aware that interested parties sought clarification regarding the scope and organization of issues within the Reg Neg. Set forth below is the agency's view on these issues:

- (1) 10,001 – 26,000 lbs. vehicles – The inclusion of this category is not a MAP-21 requirement. Attempting to address this issue in the ELDT rulemaking would add

significantly to both the rulemaking's cost and complexity. Drivers of these vehicles are not required to have a CDL. At this time, the Agency is not aware of any data to suggest that imposing the CDL requirements on this class of drivers would have quantifiable safety benefits or that imposing rigorous driver training standards on this class of drivers is necessary.

- (2) Interstate vs. intrastate drivers – MAP-21 makes it clear that FMCSA must cover both interstate and intrastate drivers. As was presented in the Agency's 2007 NPRM [72 FR 73226], the Agency's previous decision on the scope of the 2007 NPRM is superseded by the explicit language in MAP-21.
- (3) Bus Curriculum Committee – Due to costs and logistical challenges, the Agency will not establish a separate plenary committee to address bus issues. As delineated in the charter, the Agency may establish subcommittees to the ELDTAC. FMCSA supports fully establishing a passenger-carrying CMV driver training subcommittee to explore how best to handle the bus/motorcoach/school bus issues.
- (4) Post-CDL "Finishing School" instruction requirements – As the focus of this Committee is to implement the MAP-21 requirements, the Agency will not explore post-CDL training requirements in this rulemaking, except with regard to CDL upgrades and obtaining passenger and hazardous materials endorsements.

The establishment of the ELDTAC is necessary for the Agency to carry out its mission and is in the public interest. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of that Act.

This notice also requests nominations for members of the Committee to ensure a wide range of member candidates and a balanced committee.

REQUEST FOR NOMINATIONS

The Department of Transportation is hereby soliciting nominations for members of the ELDTAC. The FMCSA Administrator will appoint approximately 20 Committee members, including representatives of FMCSA, who will each serve for up to one two-year term. Members will be experts in their respective fields and appointed as Special Government Employees or representatives of entities or interests including but not limited to the following: CMV driver training organizations; industry representatives; representatives of driver training schools; motor carriers (of property and passengers) and associations; State licensing agencies; State enforcement agencies; labor unions; safety advocacy groups; insurance companies; and others selected with a view toward achieving varied perspectives on ELDT. The Committee will seek to balance these interests to the extent practicable.

Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in this notice may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule. FMCSA invites comment and suggestions on whether the following list identifies an accurate and reasonably comprehensive pool of affected interests and stakeholders for purposes of composing a negotiated rulemaking committee:

Federal Motor Carrier Safety Administration (Larry W. Minor, Associate Administrator for Policy);

Advocates for Highway and Auto Safety;

- American Association of Motor Vehicle Administrators (AAMVA);
- American Bus Association (ABA);
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO);
- American Trucking Associations (ATA);
- Citizens for Reliable and Safe Highways (CRASH);
- Commercial Vehicle Safety Alliance (CVSA);
- Commercial Vehicle Training Association (CVTA);
- International Brotherhood of Teamsters;
- National Association of Publicly Funded Truck Driving Schools (NAPFTDS);
- National Association of Small Trucking Companies;
- National Association of State Directors of Pupil Transportation Services;
- National Private Truck Council;
- National School Transportation Association;
- Owner-Operator Independent Drivers Association (OOIDA);
- Professional Truck Drivers Institute (PTDI);
- Truckload Carriers Association;
- Truck Safety Coalition;
- United Motorcoach Association;
- Women in Trucking;
- A large motorcoach operator with a pre-CDL driver training program;
 - A large trucking company with a pre-CDL driver training program;
 - A State licensing agency;
 - A representative of the CMV insurance industry.

The list provided above includes stakeholders that FMCSA has identified tentatively as either being a potential member of the committee or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests. The list is not presented as a complete or exclusive list from which committee members will be selected. Nor does inclusion on the list of potential parties mean that a listed party has agreed to participate as a member of the committee or as a member of a coalition. The list merely indicates parties that FMCSA tentatively has identified as representing significantly affected interests in the proposed rule establishing ELDT requirements. If anyone believes their interests will not be adequately represented by these organizations, they must demonstrate and document that assertion through an application. FMCSA requests comments and suggestions regarding its tentative list of potential members of the Committee.

The Committee is expected to meet from February – June 2015 for approximately 1-2 days every 2-3 weeks, or as necessary. Subcommittees may be formed to address specific ELDT issues. Such subcommittees will report back to the parent ELDTAC and not report any advice or work products directly to the Agency. Some Committee members may be appointed as special Government employees and will be subject to certain ethical restrictions, and such members will be required to submit certain information in connection with the appointment process. The FMCSA's Office of Policy will provide appropriate funding, logistics, administrative, and technical support for the Committee. And FMCSA subject matter experts, attorneys and economists will also provide support to the Committee.

Process and Deadline for Submitting Nominations

Qualified individuals can self-nominate or be nominated by any individual or organization. To be considered for the ELDTAC, nominators should submit the following information:

- (1) Name, title, and relevant contact information (including phone and email address) and a description of the interests such a person seeking consideration shall represent;
- (2) A letter of support from a company, union, trade association, or non-profit organization on letterhead containing a brief description why the nominee should be considered for membership and is authorized to represent parties related to the interests such person proposes to represent;
- (3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration;
- (4) Short biography of nominee including professional and academic credentials;
- (5) An affirmative statement that the nominee meets all Committee eligibility requirements;
- (6) The reasons that the parties identified in the above list of affected interests and stakeholders do not adequately represent the interests of the person submitting the application or nomination.

Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, DOT staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the Internet.

Nominations may be emailed to eldtac@dot.gov. Nominations must be received before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Nominees selected for appointment to the Committee will be notified by letter of appointment by return email.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Administrator take into account the needs of the diverse groups served by DOT, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Issued on: December 4, 2014

T. F. Scott Darling, III
Acting Administrator