

December 21, 2016

The Honorable T.F. Scott Darling, III  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

## **PETITION FOR RECONSIDERATION**

### **Of The Final Rule On**

### **Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators**

**Published at 81 Federal Register 88732, December 8, 2016, Docket FMCSA 2007-27748**

This is a petition for reconsideration of the final rule promulgated by the Federal Motor Carrier Safety Administration (FMCSA or Agency) establishing minimum training requirements for commercial motor vehicles (CMV) operators (Final Rule).<sup>1</sup> This petition is filed by Advocates for Highway and Auto Safety (Advocates), Owner-Operator Independent Drivers Association (OOIDA), Truck Safety Coalition, and Citizens for Reliable and Safe Highways (CRASH), Petitioners, pursuant to 49 C.F.R. Part 389.35 (Oct. 1, 2004). All of the Petitioners were members of the Entry-Level Driving Training Advisory Committee (ELDTAC) that was convened by FMCSA to engaged in a Negotiated Rulemaking (Reg Neg) to develop the basis for the Final Rule.<sup>2</sup> Petitioners delineate below the numerous reasons why major aspects of the Final Rule are not in the public interest.

### **Recent Regulatory History**

In 2007, FMCSA issued a Notice of Proposed Rulemaking (NPRM) requiring entry-level driving training (ELDT) for all CMV operators but took no further regulatory action for a period of over five years and withdrew the NPRM on September 19, 2013.<sup>3</sup> On August 19, 2014, the agency issued a Notice of Intent to institute a Reg Neg to develop a rule for ELDT.<sup>4</sup> On December 10, 2014, the agency issued a notice announcing the creation of the ELDTAC to conduct a Reg Neg.<sup>5</sup> Based on the consensus reached by the ELDTAC the agency issued an NPRM on March 7, 2016.<sup>6</sup> The agency issued the Final Rule which is the subject of this Petition on December 8, 2016.<sup>7</sup>

The consensus reached by the ELDTAC as well as the NPRM issued by FMCSA in March 2016 included the requirement that applicants for a commercial driver's license (CDL) receive a

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<sup>1</sup> 81 FR 88732 (Dec. 8, 2016).

<sup>2</sup> *Id.* at 88749-88750.

<sup>3</sup> 78 FR 57585 (Sep. 19, 2013).

<sup>4</sup> 79 FR 49044 (Aug. 19, 2014).

<sup>5</sup> 79 FR 73273 (Dec. 10, 2014).

<sup>6</sup> 81 FR 11944 (Mar. 7, 2016).

<sup>7</sup> 81 FR 88732.

minimum number of hours of behind-the-wheel (BTW) instruction (BTW hours requirement) as part of the core curricula approved for applicants seeking either a class A or B CDL.<sup>8</sup> Petitioners concur with the agency's assessment in the NPRM that "...BTW training for entry-level drivers is uniquely suited to an hours-based approach because it ensures that driver-trainees will obtain the basic safe driving skills necessary to obtain a Class A or Class B CDL and to operate their vehicles safely—skills that can only be obtained after spending a reasonable amount of time *actually driving* a CMV [commercial motor vehicle]."<sup>9</sup>

However, the Final Rule issued by the Agency in December 2016 removed the BTW hours requirement. Instead, the Rule simply requires that candidates demonstrate to their instructor that they are proficient in performing a series of maneuvers while operating a CMV.<sup>10</sup> In fact, the agency notes that there is no requirement that a candidate perform each skill more than once.<sup>11</sup> Thus, this so-called performance based standard requires no BTW training at all for drivers who can maneuver a truck trailer combination in an off-road setting included in the CDL skills test, exactly the same bar that CDL candidates have always been required to pass while taking the skills test administered by state licensing agencies. The performance standard in the Final Rule does not ensure that CDL applicants who can pass the state CDL skills test will spend any time actually operating a CMV on public roads with an experienced instructor encountering safety critical situations. This type of real-world training and experience that CDL candidates need, and that several bodies of experts have determined should be required, in order to enhance the ability of CDL applicants to operate a truck-trailer combination vehicle safely and to avoid crashes. Instead, the Final Rule does nothing more than ensure that future CDL candidates will acquire only the most rudimentary skill set needed to pass the most basic of maneuvering tests, as has always been the case, while depriving both future CDL applicants, and the travelling public of, developing better trained, more skilled novice CMV drivers.

While FMCSA concludes in the NPRM that "...Congress intended that the BTW training requirements be more extensive than a simple one-time demonstration of skills" the agency explicitly concedes that under the Final Rule the instructor will have flexibility to require the specific means or methods by which the applicant can demonstrate "proficient performance of required BTW skills[.]"<sup>12</sup> Thus, the demonstration of proficient performance is entirely based on an arbitrary decision of the trainer. Although the final rule says that "one and done" demonstration of skills proficiency is not acceptable, it is left entirely in the hands of the instructor as to when a candidate has shown proficiency thus a "one and done" standard is not precluded.<sup>13</sup> Yet, the Final Rule notes approvingly of the comments of the Truckload Carriers Association (TCA) to the effect that "repetition and practice will almost certainly increase a driver's awareness and performance when operating equipment on our highways."<sup>14</sup> Furthermore, the agency states that "safe CMV driving, like many other skills, requires some level of repetition and practice. Repetition of required skills also increases the likelihood that

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<sup>8</sup> 81 FR 11945.

<sup>9</sup> *Id.* at 11957.

<sup>10</sup> 81 FR 88751.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 88750-88751.

<sup>13</sup> *Id.* at 88750.

<sup>14</sup> *Id.*

driver-trainees will have the opportunity to demonstrate their proficiency under a wide array of road and weather conditions than a “one time” demonstration, particularly with regard to public road training[.]”<sup>15</sup> However, nothing in the Final Rule in any way requires some minimum level of repetition, practice or on-the-road demonstration of skills. Without a minimum BTW hours requirement, sufficient to provide the training exposure in actual operation of equipment, the Final Rule, as published, includes no measurable means or minimum metric to ensure CDL applicants will attain some minimum training and experience, both on the road and range, as the agency admits Congress intended. Since the minimal Final Rule “performance” statement is not anchored in any measureable or quantifiable performance metric, the final rule provides no means for ensuring many instructors will not take the easy, “one-and-done” alternative and render the final rule ineffective. Moreover, even if only some trainers choose to do this, those instructors will develop a reputation and attract CDL applicants away from more demanding instructors and, ultimately, undermine the any reliance the Final Rule places on the individual judgment of the instructors.

### **Final Rule Stripping Behind-The-Wheel Training Requirement Disregards Congressional Mandates, Federal Court Precedent and Recommendations by Expert Panels Convened by the Agency**

In 1995, the Federal Highway Administration (FHWA) released a report entitled, “Assessing the Adequacy of Commercial Motor Vehicle Driver Training” (Adequacy Report).<sup>16</sup> The Adequacy Report was produced by a group of experts from the trucking, motorcoach and school bus industry brought together by the agency.<sup>17</sup> The experts “were asked to define the minimum acceptable curricula for entry-level heavy truck, motorcoach, and school bus training.”<sup>18</sup> The groups reached consensus on minimum criteria on eight factors including...behind-the-wheel-time...” which was 38.5 hours for heavy trucks and motor coaches as well as 9 hours for school buses.<sup>19</sup>

In 2005, the United States Court of Appeals for the District of Columbia Circuit rejected a proposed rule for ELDT for being woefully deficient specifically because it failed to require BTW hours, noting the findings of the Adequacy Report. The Court held, “The Adequacy Report determined that effective training for CMV drivers required practical, on-the-road instruction on how to operate a heavy vehicle.”<sup>20</sup>

In response to the decision of the U.S. Court of Appeals, FMCSA in 2007 issued a NPRM “to revise the standards for mandatory training requirements for entry-level operators of commercial motor vehicles (CMVs) in interstate operations who are required to possess a commercial

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<sup>15</sup> *Id.*

<sup>16</sup> Federal Highway Administration (FHWA), *Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report*, July 1995, available at: <http://www.regulations.gov#!docketBrowser;rpp=25;po=25;dct=SR%252BO;D=FMCSA-2007-27748>

<sup>17</sup> 72 FR 73226, 73228 (Dec. 26, 2007).

<sup>18</sup> Adequacy Report, Volume I: Executive Summary at pg 15.

<sup>19</sup> *Id.*

<sup>20</sup> *Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, No. 04-1233, consolidated with No. 04-1236 and No. 04-1418, 429 F.3d 1136 (D.C. Cir. 2005).

driver's license (CDL).<sup>21</sup> The NPRM included a requirement of 44 BTW hours for Class A applicants and 32 BTW hours for Class B applicants.<sup>22</sup>

In July 2012, as part of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Act, Congress once again directed FMCSA to issue a rule mandating ELDT for all CDL applicants "addressing the knowledge and skills that...are necessary for an individual operating a commercial motor vehicle to safely operate a commercial motor vehicle."<sup>23</sup> Congress also required that the training include a requirement of "behind-the-wheel instruction."<sup>24</sup> The lack of inclusion of a BTW hours requirement in the Final Rule is a complete disregard of Congressional mandate. The Final Rule does nothing more than require a candidate have the most basic abilities to pass a skills test, not safely operate a CMV on public roads.

Subsequently, in December 2012, the FMCSA's Motor Carrier Safety Advisory Committee (MCSAC), comprised of transportation and safety experts, was tasked by FMCSA "with identifying ideas and concepts the Agency should consider in moving forward with a rulemaking on entry-level driving training..."<sup>25</sup> The MSCAC report noted "the majority of the group (though not all) believes FMCSA should mandate both some minimum behind-the-wheel training hours, along with performance-based requirements that achieve competency."<sup>26</sup> The Final Rule ignores decades of recommendations by safety experts convened specifically to make recommendations on this topic and which have always concluded that in order for a CDL candidate to learn the skills necessary to safely operate a CMV a rule instituting ELDT must include a requirement for a minimum number of hours of BTW training.

### **Requiring Commercial Driver's License Candidates Receive a Minimum Hours of Behind-The-Wheel Training Will Reduce Crashes Involving Inexperienced Truck Drivers**

In 1991, Congress, concerned with the unacceptable level of truck crashes and the quality of training being given to CDL applicants, initially directed the FHWA (the predecessor agency to FMCSA with authority over commercial driver training regulation) to issue a rule requiring ELDT.<sup>27</sup> Twenty-five years later that Congressional mandate remains unfulfilled. Every year on average, over 4,000 people are killed and nearly 100,000 are injured in large truck crashes.<sup>28</sup> In

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<sup>21</sup> 72 FR 73226 (Dec. 26, 2007).

<sup>22</sup> 72 FR 73226, 73233 (Dec. 26, 2007).

<sup>23</sup> Safe Roads Act of 2012, Division C, Title II, Subtitle C, Sec. 32304, of the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Act, Pub. L. 112-141 (2012).

<sup>24</sup> *Id.*

<sup>25</sup> Letter from Motor Carrier Safety Advisory Committee (MCSAC) to The Honorable Anne S. Ferro, Administrator, Federal Motor Carrier Safety Administration (FMCSA), June 17, 2013, , available at [http://mcsac.fmcsa.dot.gov/Documents/June2013/FINAL%20Task%2013-01%20MCSAC%20Report%20ELDT\\_6%2011%202013.docx](http://mcsac.fmcsa.dot.gov/Documents/June2013/FINAL%20Task%2013-01%20MCSAC%20Report%20ELDT_6%2011%202013.docx)

<sup>26</sup> *Id.* at pg 6.

<sup>27</sup> 72 FR 73226 (Dec. 26, 2007); Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Section 4007, Pub.L. 102-240 (1991).

<sup>28</sup> Traffic Safety Facts: 2014 A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, DOT HS 812 261, Table 11, pp. 38-39 (NHTSA), accessed at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812261> (2014 Annual Report).

2015, 4,067 people were killed in crashes involving large trucks.<sup>29</sup> This is an increase of more than 4 percent from the previous year and a 20 percent increase from 2009.<sup>30</sup> Further, this is the highest fatality number, and the first time truck crash deaths have exceeded 4,000, since 2008.<sup>31</sup> Further, early release data for 2015 shows that 116,000 people were injured in crashes involving large trucks -- an increase of 57 percent since 2009.<sup>32</sup> In fatal two-vehicle crashes between a large truck and a passenger motor vehicle, 97 percent of the fatalities were occupants of the passenger vehicle.<sup>33</sup>

A minimum training requirement to afford CDL applicants on road driving experience prior to taking the CDL test will improve safety and reduce crash statistics among novice CMV drivers. Ensuring that new truck drivers receive crucial behind-the-wheel training with a seasoned instructor will help to reduce the high crash rate for these inexperienced operators. The Insurance Institute for Highway Safety (IIHS), citing numerous studies, has stated that “age is a strong risk factor for truck crash involvement.”<sup>34</sup> In fact, age is the most important factor in the high rate of involvement of younger CMV drivers in fatal crashes. The general pattern of over-involvement in fatal crashes for younger CMV drivers dominates all other factors.<sup>35</sup> Studies of young CMV drivers show that as the age of the driver decreases, large truck fatal crash involvement rates increase.<sup>36</sup> CMV drivers under the age of 19 are four times more likely to be involved in fatal crashes, and CMV drivers between the ages of 19-20 are six times more likely to be involved in fatal crashes than all truck drivers.<sup>37</sup> Younger CMV drivers are involved in a higher rate of fatal crashes until about the age of 27.<sup>38</sup> Moreover, CMV drivers aged 19-20 are about 6 times more likely to be involved in police reported injury and fatality crashes per 100 million vehicle miles traveled compared to all other truck drivers age 21 and older.<sup>39</sup> These young inexperienced, novice CMV drivers are exactly the cohort of CMV operators that would benefit (in terms of lower crash rates) from spending time with a seasoned instructor and learning how to navigate safety critical events. Yet, the Final Rule does not ensure that these drivers will receive the knowledge that can only be acquired through BTW training.

Graduated driver licensing laws that include supervised driving hours have reduced crashes.

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<sup>29</sup> Traffic Safety Facts: 2015 Motor Vehicle Crashes: Overview, DOT HS 812 318 (NHTSA), accessed at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812318>.

<sup>30</sup> 2014 Annual Report, Table 11, p. 38.

<sup>31</sup> *Id.*

<sup>32</sup> Large Truck and Bus Crash Facts 2015, Federal Motor Carrier Safety Administration, Analysis Division, Trends Table 7. Large Truck Injury Crash Statistics, 1995-2015, p. 13, FMCSA-RRA-16-021 (Nov. 2016).

<sup>33</sup> 2014 Annual Report, Table 74, p. 127.

<sup>34</sup> Insurance Institute for Highway Safety, Comments to the docket, FMCSA-2000-8410-0515; citing Christie, R. and Fabre, J. 1999. Potential for fast-tracking heavy vehicle drivers. Melbourne, Australia: National Road Transport Commission; Blower, D. 1996. The accident experience of younger truck drivers. Ann Arbor, MI: University of Michigan Transportation Research Institute; Frith, W.J. 1994. A case-control study of heavy vehicle drivers' working time and safety. *Proceedings of the 17th Australian Road Research Board Conference*, 17-30. Queensland, Australia: Australian Road Research Board; Stein, H.S. and Jones, I.S. (1988).

<sup>35</sup> Campbell, K. L., *Fatal Accident Involvement Rates By Driver Age For Large Trucks*, *Accid. Anal. & Prev.* Vol 23, No. 4, pp. 287-295 (1991).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; Data on CMV drivers under the age of 21 is likely restricted to intra-state operations.

<sup>38</sup> *Id.*

<sup>39</sup> Blower, D.; Lyles, R.W.; Campbell, K.L.; and Stamatiadis, P. 1990. The Michigan heavy truck study. Lansing, MI: Michigan Office of Highway Safety Planning (1990).

Motor vehicle crashes are the number one killer of American teens.<sup>40</sup> The Insurance Institute for Highway Safety (IIHS) notes that “teenagers’ lack of experience behind the wheel makes it difficult for them to recognize and respond to hazards.”<sup>41</sup> As such, 42 states and the District of Columbia have enacted graduated driver licensing (GDL)<sup>42</sup> laws that include a minimum number of hours of supervised driving behind-the-wheel before a novice driver can earn a full or unrestricted license.<sup>43</sup> Research conducted by IIHS has shown that GDL laws reduce overall crashes among teen drivers by about ten to thirty percent.<sup>44</sup> Furthermore, the Highway Loss Data Institute (HLDI) has determined that increasing required practice hours by 40 hours was associated with a 10 percent lower rate of insurance collision claims among 16-17 year old drivers.<sup>45</sup> These GDL laws have shown that requiring new drivers to spend time behind-the-wheel ensuring that they encounter real world situations on the road while gaining insight from a seasoned instructor or driver is effective in reducing crashes.

### **Requiring CDL Candidates Receive a Minimum Amount of BTW Hours Does Not Violate Executive Order 12866**

FMCSA states in the Final rule that Executive Order (EO) 12866 requires that the agency adopt a performance standard for BTW instruction instead of a minimum hours requirement because such a standard is less burdensome.<sup>46</sup> While Executive Order (EO) 12866 does mention performance objectives the EO specifically states that performance objectives are preferred “to the extent feasible.”<sup>47</sup> Thus, in some instances, it may not be feasible to achieve the express intent of Congress to improve safety without imposing some minimum burdens. In this case, the requirement for minimum BTW hours is necessary and not particularly burdensome. Three separate panels of CMV, highway and safety experts, those who authored the FHWA Adequacy Report, the MCSAC, and the ELDTAC, have all come to the conclusion that some minimum hours of BTW driving experience is needed to improve CMV operating safety. The agency does not include any data in the Final Rule to show that the conclusion of these three panels is incorrect. The lack of data to specifically show a cause and effect relationship between a

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<sup>40</sup> Centers for Disease Control And Prevention, Teen Driver: Fact Sheet, citing Centers for Disease Control and Prevention. Web-based Injury Statistics Query and Reporting System (WISQARS) [Online]. (2012). National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (producer). [Cited 2014 Sept 29], available at [http://www.cdc.gov/motorvehiclesafety/teen\\_drivers/teendrivers\\_factsheet.html](http://www.cdc.gov/motorvehiclesafety/teen_drivers/teendrivers_factsheet.html).

<sup>41</sup> Insurance Institute for Highway Safety (IIHS), Teenagers, Q&As, *Why is teenage crash involvement so high?*, available at: <http://www.iihs.org/iihs/topics/t/teenagers/qanda>.

<sup>42</sup> IIHS, Teenagers, State Laws, available at: <http://www.iihs.org/iihs/topics/laws/graduatedlicenseintro>.

<sup>43</sup> GDL laws requiring supervised driving hours are different than a traditional “driver education” class taken in a classroom. As IIHS notes, “evaluations of U.S. high school driver education programs indicate little or no reduction in crashes per licensed driver.” However, IIHS and HLDI studies have shown that GDL laws that require students to spend time behind the wheel while supervised by an instructor or seasoned driver have reduced crashes. See: IIHS, Teenagers, Q&As, *Do driver education programs make teenagers safer?* available at: <http://www.iihs.org/iihs/topics/t/teenagers/qanda>. Therefore, arguments that driver education courses for teen drivers show no safety benefits are wholly inapposite to the discussion of entry-level driver training requirements for those over age 20 seeking to enter the demanding occupation of a professional truck driver.

<sup>44</sup> IIHS, *Graduated Licensing Laws and Fatal Crashes of Teenage Drivers: A National Study*, June 2010.

<sup>45</sup> Trempel, R.E., Highway Loss Data Institute, *Graduated driver licensing laws and insurance collision claim frequencies of teenage drivers* (2009), available at: <http://www.iihs.org/frontend/iihs/documents/masterfiledocs.ashx?id=2022>.

<sup>46</sup> 81 FR 88749.

<sup>47</sup> Executive Order 12866, Section 1(b)(8) (Oct. 4, 1993) (Executive Order).

specific number of hours of training and a specific amount of crash reduction does not prove that there is no such connection. In fact, the only direct data the agency received it has discounted.<sup>48</sup> Furthermore, the agency has no quantifiable data to show that the BTW minimum hours requirement would actually be a burden on any CDL applicant. In fact, the Final Rule states that “FMCSA expects that, based on the extensive experience of CMV driver training organizations represented on the ELDTAC, most driver trainees will spend approximately 30 and 15 hours BTW demonstrating proficiency...”<sup>49</sup>

In addition, the EO further states that “[i]n setting regulatory priorities, each agency shall consider, to the extent reasonable, the *degree and nature of the risks posed* by various substances or activities within its jurisdiction.”<sup>50</sup> The grave risks associated with large truck crashes are incontrovertible. On average, 4,000 people are killed and 100,000 more are injured in truck crashes annually.<sup>51</sup> In a crash with a passenger vehicle and a truck, 97 percent of the fatalities are in the car.<sup>52</sup>

Moreover, large truck and bus crashes impose enormous economic costs on society; the annual cost to society from crashes involving commercial motor vehicles is estimated to be over \$110 billion.<sup>53</sup> Furthermore, although the agency stripped the BTW hours requirement from the Final Rule, the FMCSA has retained the minimum BTW hours requirement for estimating the costs of the rule in the Regulatory Impact Analysis (RIA).<sup>54</sup> As a result retaining the BTW hours requirement in the Final Rule will not impose any additional costs above those already included in the RIA and will serve to significantly strengthen the benefits the rule provides to CMV drivers, industry and the public through ensuring that CDL applicants are better trained and more experienced when they begin their driving career.

FMCSA also argues that requiring a minimum number of hours of BTW training will burden that small percentage of candidates who can master the skills before acquiring the required hours.<sup>55</sup> Yet, the agency admits such students actually represent a small number of candidates.<sup>56</sup> Furthermore, as FMCSA also notes, the ELDTAC based the BTW hours requirement on the number of hours an average candidate would need to master the curriculum outlined by the Committee.<sup>57</sup> Thus, FMCSA has rightly concluded that the BTW hours requirement reached by and agreed to by the ELDTAC and included in the NPRM ensures that the vast majority of candidates receive adequate BTW training. In addition, the small number of extraordinary students who the agency believes will be burdened by receiving training will be even more proficient drivers after receiving their CDL. Such a desired result is hardly a detriment to an established federal driver training safety standard especially considering the backdrop of

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<sup>48</sup> 81 FR 88749.

<sup>49</sup> *Id.* at 88750.

<sup>50</sup> Executive Order at Section 1(b)(4) (emphasis added).

<sup>51</sup> Traffic Safety Facts 2013: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, DOT HS 812 139.

<sup>52</sup> *Id.*

<sup>53</sup> 2016 Pocket Guide to Large Truck and Bus Statistics, FMCSA, May 2016.

<sup>54</sup> 81 FR 88750.

<sup>55</sup> *Id.* at 88749.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 88749-88750.

increasing truck fatalities and injuries occurring on our roadways. In fact, the agency has not quantified any burden imposed on a CDL applicant by instituting a BTW requirement or shown that such a provision would impose an actual burden. Any claim to contrary is purely speculative. The vast majority of individuals covered by the Final Rule will be new CDL applicants with no prior driver training or previous CMV operating experience so they will in all likelihood need and benefit from the BTW hours requirement.

Mandating that CDL candidates receive a minimum number of BTW hours also aligns with FMCSA's primary mission of ensuring public safety. In the agency's enabling statute, Congress expressly directed that "[i]n carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation."<sup>58</sup> With this Final Rule, the agency falls far short of meeting its safety mission. Both CMV drivers and all motorists sharing the roads with them were not well-served by the FMCSA with this decision which has far-reaching and long-lasting implications.

### **The Diverse Membership of the ELDTAC Reached Broad Consensus on Requiring Candidates Receive a Minimum Number of Hours of Behind the Wheel Instruction**

The FMCSA convened the ELDTAC to bring together "interested parties that are likely to be affected by a regulation to work with each other and the agency on a negotiating committee to develop a consensus draft of a proposed rule."<sup>59</sup> As the agency notes, "ELDTAC membership is balanced and is composed of twenty-six members appointed by the FMCSA Administrator..."<sup>60</sup> Moreover, "members are chosen from a field of experts in their respective fields, including driver organizations, DMV 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."<sup>61</sup> All but two members of the ELDTAC supported a requirement that ensures candidates would receive a minimum amount of BTW training. The vote was unanimous as to the members of the Committee representing safety groups, training schools, law enforcement, the motorcoach industry and individual drivers.<sup>62</sup>

Consensus was reached by the ELDTAC regarding the BTW requirement because this provision ensures that candidates will be given a minimum amount of time actually operating a vehicle to competently learn the numerous skills outlined in the curricula. In fact, the Class A curriculum requires that candidates learn 20 different topics while on the range and/or road while the Class B curriculum includes 19 topics.<sup>63</sup> Requiring that candidates receive a minimum amount of BTW training is a common sense and essential component of the performance based standard adopted by the ELDTAC. It is intended to ensure that all CDL candidates receive a minimum amount of practical experience and reflects the consensus determination of the ELDTAC about

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<sup>58</sup> 49 U.S.C. § 113(b) (1999).

<sup>59</sup> 79 FR 49044 (Aug. 19, 2014).

<sup>60</sup> FMCSA, ELDTAC, available at: <http://www.fmcsa.dot.gov/eldtac>

<sup>61</sup> *Id.*

<sup>62</sup> Federal Minimum Standards for CMV Entry-Level Driver Training Written Statement, June 5, 2015 (Final Statement).

<sup>63</sup> Final Statement, Annex 1 and Annex 2.



the lowest level of BTW training that is necessary under the training curriculum recommended by the ELDTAC.

### **Credible CDL Training Organizations Require a Minimum Number of Behind the Wheel Training Hours**

The leading CDL training schools already require that their students complete a minimum number of hours of BTW training. The Commercial Vehicle Training Association (CVTA) which “is the largest trade association representing the interests of truck driving schools, students and the businesses that depend on their services” consists of over 55 members schools, 20 motor carrier members, and 35 associate member businesses that work in the transportation industry.<sup>64</sup> CVTA requires that its members provide 40 hours of BTW training.<sup>65</sup> The National Association of Publicly Funded Truck Driving Schools (NAPFTDS) represents 110 publically funded schools from 32 states across the nation.<sup>66</sup> The national average for NAPFTDS members is 74 BTW hours.<sup>67</sup> In addition, the standards of the Professional Truck Driving Institute (PTDI) which is “North America’s foremost advocate of truck-driver training standards, driver professionalism, and safety” require 44 hours of BTW training.<sup>68</sup> Numerous states also require that licensed CDL training schools provide a minimum number of BTW hours.<sup>69</sup> For example, Illinois requires 40 hours of BTW; Kentucky requires 45 hours of BTW; Maine proscribes 44 BTW hours for Class A applicants and 20 hours for Class B applicants; and, Ohio requires at least 40 hours of BTW for candidates seeking a Class A license and 28 hours for those obtaining a Class B license.<sup>70</sup>

### **Mandating that Candidates Complete a Minimum Number of Hours to Enter a Profession is a Widely Accepted Practice Throughout Transportation Modes and Other Occupations**

Pursuant to regulations promulgated by the Federal Aviation Administration (FAA), candidates seeking a commercial pilot’s license must have accumulated approximately 250 hours of flight time.<sup>71</sup> The FAA requires pilots who work for passenger airlines to have approximately 1,500 hours of flight time.<sup>72</sup> Furthermore, in 2013, the FAA announced that it would require first

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<sup>64</sup> Commercial Vehicle Training Association (CVTA), About CVTA, available at: <https://cvta.org/about.html>

<sup>65</sup> Spatocco, C, *CVTA Membership Requirements*, Presentation to ELDTAC, March 19, 2015, available at: <https://cms.fmcsa.dot.gov/advisory-committees/eldtac/cvta-membership%0Brequirements>

<sup>66</sup> Garsee, M, National Association of Publicly Funded Truck Driving Schools, Presentation to ELDTAC, March 19, 2015, available at: <https://cms.fmcsa.dot.gov/advisory-committees/eldtac/napftds-presentation-pdf>

<sup>67</sup> *Id.*

<sup>68</sup> Professional Truck Driving Institute (PTDI), available at: <http://www.ptdi.org/index.aspx>; PTDI, *Curriculum Standards and Guidelines for Entry-Level Commercial Motor Vehicle Driver Courses*, Minimum Training Hours, p. 5, available at: <http://www.ptdi.org/errata/CURRICULUM%20STANDARDS%20ENTRY%20LEVEL%20052011.pdf>.

<sup>69</sup> Federal Motor Carrier Safety Administration, *State Licensing Requirements, CDL Schools*, Presentation to ELDTAC Committee, March 19, 2015, available at: <https://cms.fmcsa.dot.gov/advisory-committees/eldtac/state-licensing-requirements-cdl-schools>

<sup>70</sup> *Id.*

<sup>71</sup> 14 CFR § 61 Subpart F.

<sup>72</sup> 14 CFR § 61 Subpart G.

officers or co-pilots to have the same amount of flight time as pilots.<sup>73</sup> Previously, co-pilots were only required to meet the standards of a commercial pilot.<sup>74</sup> U.S. Department of Transportation Secretary Anthony Foxx, announcing the new rule and acknowledging the benefits of training that includes actual time behind the stick stated “[w]e owe it to the traveling public to have only the most qualified and best trained pilots.”<sup>75</sup> This recognition by Secretary Foxx that training in actual operating situations is necessary for public safety should also be applied to American motorists, who deserve the same consideration for operator training and proficiency and public safety.

It must also be pointed out that transportation occupations are not alone in requiring that new entrants gain practical experience before earning a license. Texas requires a journeyman plumber to have 8,000 hours of experience while Oklahoma requires 4,000 verifiable hours of on the job experience for a residential electrical journeyman.<sup>76</sup> In addition, barbers licensed in Virginia must accumulate 490 hours of minimum performances and nail technicians must have 275 hours.<sup>77</sup> These standards represent a common sense measurement to ensure that a new entrant has the minimum skills needed to operate in their chosen occupation. And, generally speaking, these occupations are not charged with life-or-death decisions on a daily basis.

## Conclusion

Petitioners request a stay of the effective date of the 2016 Final Rule until the Administrator can render a decision on this Petition for Reconsideration. The 2016 Final Rule is not in the public interest because it does not advance safety beyond current practice in which any and all untrained CDL applicants can perform basic minor movements of CMVs and obtain a CDL without being exposed to the real-world experience of driving a CMV on public roads while receiving instruction from a qualified instructor.

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<sup>73</sup> Federal Aviation Administration, *Press Release-FAA Boosts Aviation Standard with New Pilot Qualification Standards*, July 10, 2013, available at: [https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=14838](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=14838)

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Tex. Occ. Code Ann. § 1301.002 (2003); Okla. Stat. tit. 158 § 40-7-2 (2014).

<sup>77</sup> 18 VAC 41-20-220 (2014), available at:

[http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/BarberCosmo/A425REGS\\_BarberCosmo\(1\).pdf](http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/BarberCosmo/A425REGS_BarberCosmo(1).pdf)