



AMERICAN TRUCKING ASSOCIATIONS

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September 8, 2009

Rose A. McMurray
Acting Deputy Administrator
Federal Motor Carrier Safety Administration
U.S. Dept. of Transportation
1200 New Jersey Avenue, S.W.
Suite W60-300
Washington, DC 20590 *by mail and on-line at www.regulations.gov*

Dear Acting Deputy Administrator McMurray:

We, the five industry representatives on the Board of Directors of the Unified Carrier Registration Agreement (UCRA), are writing you to request an extension of time for public comment on Federal Motor Carrier Safety Administration (FMCSA) Notice of Proposed Rulemaking No. FMCSA-2009-0231 (the NPRM), published September 3, 2009, at 74 *Federal Register*, pages 45583-97.

Robert C. Pitcher is Vice President, State Laws, at the American Trucking Associations (ATA). The American Trucking Associations of Arlington, Virginia, is a national federation of all types and sizes of motor carriers, as well as allied industries, individual-member councils, affiliated conferences of specialized carriers, and fifty affiliated state trucking associations, representing altogether some 37,000 motor carrier members. Mr. Pitcher also serves as Vice Chair of the UCRA Board of Directors.

Richard P. Schweitzer serves as General Counsel to the National Private Truck Council (NPTC), an organization representing the interests of over 400 companies operating truck fleets in furtherance of a non-transportation primary business. These NPTC members include both Fortune 100 entities and smaller local and regional distribution companies in a variety of manufacturing, wholesale, and retail operations.

Rick Craig is Treasurer and Director of Regulatory Affairs at the Owner Operator Independent Drivers Association (OOIDA) of Grain Valley, Missouri. OOIDA is the international trade association representing the interests of independent owner-operators and professional drivers by actively promoting the views of small business truckers through its interaction with state and federal government agencies, legislatures, the

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courts, other trade associations, and private businesses to advance an equitable environment for commercial drivers. The more than 160,000 members of OOIDA are small-business men and women in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks and small truck fleets.

Robert A. Voltmann is President and Chief Executive Officer, Transportation Intermediaries Association (TIA). TIA is the professional organization of the \$162 billion third party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials, and international organizations. TIA members include motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and non-vessel-operation common carriers), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and freight payment companies. TIA is the U.S. member of the International Federation of Freight Forwarder Associations (FIATA), the worldwide trade association of third party logistics companies representing more than 40,000 companies in virtually every trading country.

Craig Sharkey is the Associate General Counsel for Walmart's Logistics Division. Walmart's private fleet is one of the Nation's largest fleets and is consistently recognized by ATA and other organizations as one of the safest.

The NPRM allows only fifteen days for the public to comment on what is in effect a significant tax increase on the trucking industry and allied industries at a time when these industries are under intense economic pressures. In addition, the NPRM involves legal and political issues of considerable importance in the Nation's federal system, since it would by an act of a federal government agency increase the level of a system of business taxes in effect in most of the states. The present NPRM is quite unlike NPRM No. FMCSA-2007-27871, published May 29, 2007 (*see 72 Fed.Reg.*, pages 29472, *et seq.*), which set the UCRA fees for calendar year 2007, and which was largely uncontroversial. That rulemaking merely adopted a unanimous recommendation of the UCRA Board of Directors. The current rulemaking, because it does not correspond to a UCRA Board recommendation, will be highly controversial. Many parties will wish to comment, and, indeed, the nature of the issue is such that FMCSA should welcome comments on it.

However, not only the short comment period allowed by the rulemaking, but its timing as well, will serve to preclude many motor carriers and allied businesses, especially smaller ones, from submitting comments on this matter. Owner-operators and smaller motor carriers in particular spend weeks at a time away from home on the road. They have limited opportunity to draft and file comments, and, indeed, may not become aware of this issue, important as it is, until such a short period is almost or entirely past. That consideration would apply at any time of the year. In addition, the comment period granted the public by FMCSA includes Labor Day weekend and the preceding week, one of the prime vacation times of the year, when a large proportion of those who would

otherwise be drafting comments to the NPRM will be away from their businesses and unable to do so. Finally, most motor carriers are very small, with the average fleet size being only six vehicles. Such entities do not customarily watch closely for *Federal Register* notices, such as the current NPRM. It requires time for them to become aware of emergent issues, and then to respond to them adequately. A fifteen-day deadline will effectively preclude most of these small businesses, and many larger ones as well, from submitting their views.

We recognize that FMCSA has discretion in the matter of extending the period of time for public comment on the NPRM. The federal Administrative Procedures Act (see 5 U.S. Code §553) does not specify a time period in this respect, nor do the regulations promulgated by the Department of Transportation (see 49 C.F.R. Part 5) and FMCSA itself (see 49 C.F.R. Part 389) appear to specify such a period. The area would seem to be governed, therefore, by Presidential Executive Order 12866, entitled *Regulatory Planning and Review*, published at 58 *Fed.Reg.*, at pages 51735, *et seq.* Paragraph 6(a)(1) of that Order, under Agency Responsibilities, has the following to say (*emphasis supplied*):

Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with *meaningful participation in the regulatory process*....
[E]ach agency should afford the public a *meaningful opportunity to comment* on any proposed regulation, which in most cases should include a comment period of *not less than 60 days*....

As we have urged above, the provision in this NPRM of a comment period of only 15 days will effectively deprive a great many interested parties of any meaningful opportunity to participate in this process or to comment on the proposal.

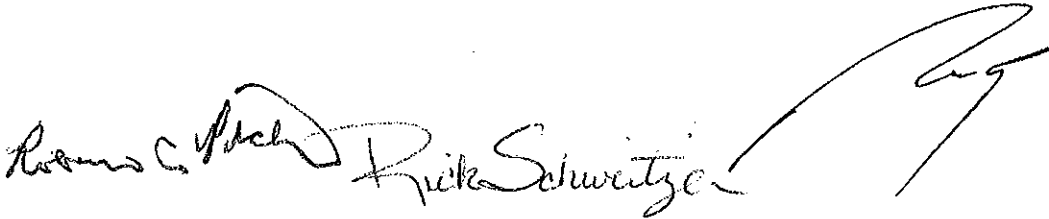
We recognize that FMCSA may feel the need for haste in completing this rulemaking, since the Unified Carrier Registration Act, 49 U.S. Code §14504a(d)(7)(B), prescribes that FMCSA set UCRA fees within 90 days following a recommendation from the UCRA Board in that regard. However, that time period has in this instance already passed. The Board presented FMCSA with its recommendation on April 3, 2009, and has not presented any other. (In this connection, the characterization by the NPRM of a July 15, 2009 letter to FMCSA by the Chair of the UCRA Board is inaccurate and misleading.)

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We believe, therefore, that the potential costs of a reasonable extension of the comment period on the NPRM – if in fact there are any such costs – will be outweighed by the opportunity such an extension would give to many motor carrier and other businesses to comment on this significant tax increase under the UCRA program.

Thank you for your consideration.

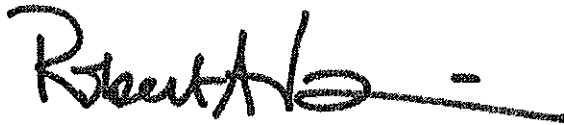
Sincerely,



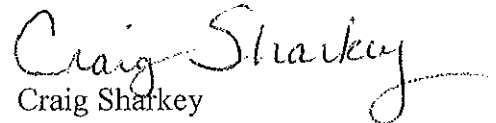
Robert C. Pitcher
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Richard P. Schweitzer
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cc: Kevin Neyland, Acting Admin., OIRA

by fax and email