

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
ADVANCED NOTICE OF PROPOSED RULEMAKING
ON
NEW ENTRANT SAFETY ASSURANCE PROCESS:
PROFICIENCY EXAMINATION AND ALTERNATIVES
(DOCKET #FMCSA-2001-11061)**

SUBMITTED BY:
American Trucking Associations, Inc.
**950 N. Glebe Road
Arlington, Virginia 22203**

October 26, 2009

Primary Contact
David Potts
ATA Safety, Security & Operations Dept.
(703) 838-1848

The American Trucking Associations, Inc. (ATA)¹ is pleased to submit the following comments on the Federal Motor Carrier Safety Administration's (FMCSA or Agency) advanced notice of proposed rulemaking (ANPRM) pertaining to a proficiency examination or alternatives for new entrant motor carriers (hereafter new entrants). ATA is interested in assuring the readiness of motor carriers to safely enter into operation. For this reason, ATA supports methods to ensure each new entrant understands the applicable safety regulations and risk reduction practices. Ensuring that new entrants possess this basic information will benefit a new entrant's safety performance and enhance the overall safety of our nation's highways.

ATA also recognizes that Section 210 (b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) requires FMCSA to "consider the establishment of a proficiency examination for applicant motor carriers as well as other requirements to ensure such applicants understand applicable safety regulations before being granted operating authority."²

To ensure that new entrants possess the basic knowledge required for the safe operation of a trucking company, ATA recommends that owners or principals of new entrant firms, both interstate and intrastate, be required to satisfactorily complete a safety curriculum based on uniform nationwide standards before commencing operation. Upon

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and indirectly through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

² See MCSIA at <http://www.fmcsa.dot.gov/documents/rulesregs/rulemakings/mcsimproveact.pdf>.

completion of the curriculum, new entrants should provide proof of training as part of their application for a U.S. Department of Transportation (DOT) number.

ATA also supports a regulation requiring new entrants to pass a proficiency examination (test). The test would help ensure that owners or principals of new entrant motor carriers have a sufficient understanding of the applicable safety rules and practices through proper training and/or by experience. As explained in the following, ATA believes that FMCSA should (1) require new entrants to satisfactorily complete safety training prior to receiving a DOT number; (2) require a proficiency test of new entrants based on a national curriculum; and (3) develop, fund and administer the test and its delivery process.

1. How feasible is it to establish a proficiency examination as a component of the New Entrant (motor carrier) Safety Assurance Process?

While there are several challenges to establishing proficiency examination as a component of the New Entrant Safety Assurance Process, ATA believes it is feasible for FMCSA to establish such a program. Some of the hurdles to overcome include:

- The large number of the new entrants annually;
- The diversity and physical location of the new entrant population. (New entrant applicants are spread throughout the U.S. and range from small landscape businesses to large trucking operations seeking a new DOT number after an acquisition.);
- The challenge in establishing an examination that actually addresses the MCSIA benchmark that “applicants understand applicable safety regulations before being granted operating authority;”
- The administrative steps needed to assure the utility, integrity, reliability, security and long-term viability of the test and its process;
- The effort to produce solid research and data that will support a conclusion that a proficiency examination is beneficial; and
- The requirement to quantify the total costs of developing and requiring a new entrant examination.

These hurdles do not stand as a bar to FMCSA’s implementation of a proficiency examination as a component of the New Entrant Safety Assurance Process. To protect the public, State licensing agencies already test the proficiency of individuals who seek driver’s licenses, dispense medicines, engage in the sale of real estate, provide legal advice, as well as a host of other professionals that require a minimum level of competency. These proficiency examinations are designed to test whether an individual has sufficiently mastered a particular subject matter *before* the individual is allowed to engage in a certain activity. Similarly, FMCSA could devise an examination that measures whether a new entrant has sufficient knowledge to safely operate a trucking company.

In devising a new entrant proficiency examination, the following subjects should be considered:

- The Federal Motor Carrier Safety Regulations (FMCSRs);
- Hazardous materials (HazMat) regulations, if applicable to their operations;
- Aspects of the new entrant safety audit;
- Safety management practices with a focus on driver issues;
- The consequences of failure to comply with requirements; and
- Governmental and industry methods used to measure safety performance.

Related to the development and administration of a new entrant proficiency examination is the need to create appropriate training materials designed to educate new entrants prior to taking the examination. This is discussed in more detail in Question 2 under the heading of Mandatory Training below.

2. What other measures can be taken by the Agency to ensure an applicant carrier is knowledgeable about the applicable safety requirements?

To ensure that an applicant is knowledgeable about the applicable safety requirements, FMCSA also should (1) mandate training prior to taking or re-taking the proficiency examination; (2) conduct new entrant safety audits within six months of application for a DOT number; and (3) flag new entrants as high priority for roadside inspections to detect deficiencies.

- A. Mandatory Training: To ensure that applicants are knowledgeable about FMCSA's safety requirements, the Agency could require individuals to complete a certain training program prior to being eligible to sit for the proficiency examination.

In connection with this training requirement, FMCSA must first determine that adequate training and educational materials are available to new entrants through government or privately funded sources. The U.S. Department of Transportation's (DOT) Transportation Safety Institute (TSI)³ or a third party could develop standard curriculum. This training entity could offer classroom courses at easily accessible locations, and/or by web-based or pre-packaged formats, and also provide the curriculum for delivery by other industry training professionals. Supplying listings of supplemental materials such as the Agency's "A Motor Carrier's Guide to Improving Highway Safety" can help new entrants self-study and gain comprehension of the necessary rules, practices and procedures.

- B. New Entrant Safety Audits: Recognizing that a proficiency examination may not fully test a new entrant's implementation of programs necessary to ensure

³ See website <http://www.tsi.dot.gov/>.

compliance with the FMCSRs, FMCSA should conduct new entrant safety audits within six months of the application for a DOT number. These audits would quickly allow FMCSA to go beyond determining whether a new entrant is simply familiar with the FMCSRs and would afford the Agency the opportunity to see how a new entrant is implementing its safety systems and ensuring that its employees operate in full compliance with the FMCSRs.

- C. Roadside Inspections: Roadside inspections are an additional means of verifying whether a carrier is operating in compliance with the FMCSRs. FMCSA should continue to focus roadside inspection resources upon new entrants until at least the period of oversight in the new entrant safety assurance process is completed. If roadside inspections reveal a pattern of non-compliance, immediate steps should be taken to stop the new entrant's operations.

3. What are the costs involved to develop, maintain, implement and administer a proficiency examination? And/or, what would be the estimated costs to create, maintain, and administer the recommended alternative to a proficiency exam?

ATA does not have an estimate of the costs associated with a proficiency examination. These costs of developing and administrating an examination should be determined through a well-documented and cooperative exchange with established national testing organizations.

FMCSA must budget for creation, maintenance, and delivery of the examination and training curriculum. Costs associated with development, periodic revision, and administration of a proficiency examination should be as much as possible borne by the Agency. Specific Congressional funding should be sought to cover the initial development of the training curriculum and proficiency test. Thereafter, the updating of the training curriculum and the administering of the proficiency test should be funded by new entrant application fees. By following this approach, the financial impact on new entrants and therefore, the cost side of the Agency's economic impact analysis, will be minimized.

The Agency should realize that the direct costs of taking the test by new entrants can vary depending on the options considered. If the test is offered at limited locations and/or only on few occasions, then general costs to new entrant applicants could include delay in starting business operations, an examination registration fee and costs of travel and time to take the examination. If a secure, on-line examination is offered then these costs can be significantly reduced. A study should be conducted by FMCSA to determine and project costs for each of the options under the Agency's consideration. FMCSA should bear in mind that most new entrants are new business enterprises. FMCSA's goal in establishing a proficiency examination should be to benefit new entrant compliance and safety performance without imposing unnecessary business startup costs.

4. What types of examinations are used in the motor carrier or other industries that could serve as models for a new entrant proficiency examination?

ATA knows of no proficiency exam that is currently required to be taken by a representative of a business entity prior to receiving operating authority from the Department of Transportation.

It is known that the Kansas Corporation Commission (KCC) is conducting a training course⁴ and examination⁵ for new entrants on an intrastate basis. FMCSA can contact the KCC for insights on how an examination process can improve safety performance and also learn how such an exam can be administered.

Furthermore, FMCSA could also draw upon various examinations that are administered to individuals that the government has determined must possess a requisite level of knowledge prior to authorizing the individual to engage in the regulated activity. Such proficiency examinations are common for professionals such as lawyers, doctors, pharmacists, real estate agents, financial brokers, and certified public accountants. Certain trades also require individuals to receive training and pass a proficiency examination (*e.g.*, professional truck drivers, electricians, and aircraft mechanics).

5. If there is a requirement for a proficiency exam, how should FMCSA administer a proficiency examination for applicants seeking new entrant authority?

ATA believes the examination must realistically evaluate the knowledge required of a motor carrier to safely operate in the public highway environment. Controls need to be established by FMCSA to assure (1) satisfactory completion of the training requirements and (2) the integrity the examination process. FMCSA should consider using an independent, nationally recognized testing organization to physically administer and grade the test. The employee(s) of the new entrant company that will be taking the test should obtain a score that indicates they are fully familiar with the FMCSRs and likely to establish company-wide systems to ensure full compliance with the regulations. *See also* ATA's response in Question 2 under the heading Mandatory Training for additional recommendations.

6. Which motor carrier employees should be required to take a proficiency exam?

The owner or chief operating officer of a new entrant should take the examination. Alternatively, a designated full-time employee, who has the primary responsibility in managing the safety program of that company, could take the test on behalf of the company.

⁴ See website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

⁵ See website http://www.kcc.state.ks.us/trans/gen_com/testa.pdf.

This possible delegation to the safety officer would not relieve upper management from understanding and assuring the ultimate direction of the safety program. All levels of supervision and drivers must be knowledgeable in the aspects of the FMCSRs that affect their areas of responsibility in keeping with 49 CFR 390.3(e).⁶

7. What would be the feasibility of motor carriers retaining those employees through the duration of the New Entrant Safety Assurance Process?

Employee retention is a human resources issue and is beyond the scope of the Agency's authority; however, the new entrant should not be allowed to circumvent the intent of the examination by using a temporary, contract employee to take the test. There is an obvious need for a new entrant to have a safety officer and top management that is knowledgeable in the FMCSRs at all times. A direct employee must have the knowledge to guide the company through the New Entrant Safety Assurance Process and thereafter. Following the examination step, FMCSA will continue to assess the new entrant by:

- Whether any of the sixteen critical regulations has been violated;⁷
- Passage or failure of the new entrant audit;
- On-going roadside inspections; and
- The Comprehensive Safety Analysis (CSA) 2010 evaluation system that the Agency plans to fully implement next year.

Absent a direct employee that has adequate knowledge of the regulations and industry safety practices, it becomes less probable that a new entrant will be able to maintain the necessary level of safety performance.

8. How will a proficiency examination help or hinder new entrant motor carriers that are beginning operations?

The proficiency examination and completion of the training curriculum would help new entrants establish the appropriate management systems that are necessary to operate in compliance with the FMCSRs and protect the public on our nation's highways. It would add a preliminary step to obtaining operating authority that would ensure a basic understanding of motor carrier safety. The proficiency examination also would increase the likelihood that new entrants would prosper by avoiding the significant costs associated with non-compliance and preventable crashes. Any perceived inconvenience to the new entrant is more than offset by assuring the public safety and preventing losses from crashes and mismanagement that could put a new entrant out of business, while maintaining a level playing field with existing motor carriers.

⁶ See FMCSA webpage: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?chunkKey=0901633480023891>.

⁷ See FMCSA webpage: <http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/E8-29253-New-Entrant-Safety-Assurance-Process-Final-Rule-12-16-08.pdf>.

9. How and to what degree will a proficiency examination increase carrier knowledge of applicable regulations?

The amount of knowledge that a new entrant will acquire during the training and proficiency examination will depend upon the scope of the training curriculum established by FMCSA and the preexisting knowledge of the person(s) taking the examination. On balance, we would assume that most new entrants will acquire a significant amount of safety knowledge through the training and testing process. In the absence of a proficiency test, some new entrants would not devote the amount of time necessary to completely familiarize themselves with the FMCSRs and gain a true understanding of the importance of establishing safety management systems in their companies.

10. How, if so, will the increase in knowledge of applicable regulations brought about by the proficiency exam lead to improved motor carrier safety?

As discussed in our response to question 9, above, by virtue of completing the training curriculum and passing the proficiency test, new entrants will have a greater understanding of the FMCSRs. The primary purpose of the FMCSRs is to improve safety on our nation's highways. By ensuring new entrants are familiar with the FMCSRs, it is more likely that these companies will operate in compliance and therefore safety would be improved. Adequate knowledge and proper application of the regulations and safety management practices does lead to improved safety performance when coupled with aggressive implementation steps. This is revealed in the Agency's evaluation systems, such as SafeStat, that shows that conscientious and informed motor carriers have better safety performance.

FMCSA should conduct additional research on how a proficiency exam can improve new entrant safety performance. Some possible approaches that FMCSA can take to determine whether an examination leads to improved performance are:

- Conduct a study with TSI. TSI offers a "U. S. DOT Motor Carrier Safety Compliance Course" and conducts an examination at the end before issuing a certificate of completion.⁸ TSI could identify new entrants that are taking the course. FMCSA could then monitor whether those taking the course and examination have a better safety performance than new entrants that do not take the examination. Part of the measurement of who is more "knowledgeable" would include which group is more successful in completing the New Entrant Safety Assurance Process. This could be supplemented by also comparing the SafeStat (future Comprehensive Safety Analysis 2010) scores of those tested with the control group.

⁸ The TSI Course provides instruction in the application of Federal Motor Carrier Safety Regulations (FMCSR) to fleet operations. The course emphasizes the practical side of regulatory compliance from the level of regulations to the acute, critical and serious safety violations identified by the U. S. DOT Federal Motor Carrier Safety Administration.

- FMCSA could in cooperation with certain states conduct a pilot program involving a proficiency examination. Again, differences could be monitored in the safety performances between those new entrants taking the exam and those that do not.
- FMCSA could gather background and data on improved performance from national testing organizations that conduct proficiency exams for certain professions.

Undertaking such research should also reveal how to best design and administer an examination, while providing important insights into the costs of development and delivery.

11. How will the requirement of a proficiency exam impact small entities? How would an alternative have less impact?

If the Agency funds the development, maintenance, and delivery of the examination and offers training aids and other educational resources, there should be almost no additional costs for new entrants except the time and expense to take the test. New entrants should already be investing the time necessary to be familiar with the FMCSRs – for those companies that do the additional costs associated with the requirement to take a proficiency test will be de minimis. For the new entrants that do not devote the time necessary to gain an understanding of the FMCSRs, the requirement to complete training and take a proficiency test will be a much needed barrier to entry that will improve safety on our public highways. As stated in Question 6 motor carriers are already required to be knowledgeable in the FMCSRs. For a new entrant not to be prepared to safely enter into operation is not an option.

Conclusions

ATA appreciates the opportunity to offer these comments on the concept of a new entrant proficiency examination. The requirements to complete a training curriculum and proficiency exam are necessary to ensure that new entrants have the requisite knowledge to operate in compliance with the FMCSRs.

In summary, ATA recommends that FMCSA:

- Require training based on standardized curriculum and provide educational resources to aid new entrants in successfully passing the examination;
- Require owners or principals of new entrants to take a proficiency examination;
- Develop with a nationally recognized testing organization a proficiency examination that addresses the regulatory requirements and industry safety practices;
- Ensure the utility, integrity, reliability, security and long-term viability of the test and its process; and

- Fund through Agency resources the creation, maintenance, and delivery of the examination to minimize the cost impact on new entrants, particularly, small entities.

ATA looks forward to working with FMCSA on the development and administration of a new proficiency test for new entrants. We believe that this process will greatly improve highway safety and will increase the likelihood that a new entrant will become a productive, safe and profitable member of our industry.