Federal Register

Friday,

May 21, 2004

Part IV

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 380

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380

[Docket No. FMCSA–1997–2199]

RIN 2126–AA09

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) establishes standards for mandatory training requirements on four specific topics for entry-level operators of commercial motor vehicles (CMVs), who are required to hold or obtain a commercial driver's license (CDL). This action responds to a study mandated by the Intermodal Surface Transportation Efficiency Act of 1991 that found the private sector training of entry-level drivers in the heavy truck, motorcoach, and school bus industries was inadequate. The purpose of this rule is to enhance the safety of CMV operations on our nation's highways.

DATES: *Effective Date:* The effective date is July 20, 2004, except for § 380.500, which is effective from July 20, 2004, through June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, CDL Team, Office of Safety Programs (MC–ESS), (202) 366–0647, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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Background

Section 4007(a)(1) of the Motor Carrier Act of 1991 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2151) directed the U.S. Department of Transportation to study ''the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of commercial motor vehicles.'' In preparing the study, the agency had to solicit the views of interested persons. The agency was also required by sec. 4007(a)(2) to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of commercial motor vehicles'' and establish Federal minimum training requirements. This legislation built on the prior authorities of the Federal Highway Administration (FHWA) (the predecessor agency to FMCSA).

The enactment of ISTEA occurred in December 1991. This sec. 4007 rulemaking began before the agency had implemented the CDL regulations fully. The principal regulation of the CDL program did not become effective until April 1992, when CMV drivers could not operate CMVs without first having taken and passed written and driving tests and have the State issue the CDL. When Congress mandated entry-level driver training the full impact of the CDL program on motor carrier safety was not known. FMCSA has had twelve years of experience with testing and licensing CMV drivers. FMCSA now knows the CDL program improved the quality of CMV drivers. Given the impact of the CDL program over the last 12 years, FMCSA has taken a basic approach in this rulemaking to improve safety.

In the early 1980's, FHWA determined that a need existed for technical guidance in the area of truck driver training. Research at that time had shown that many driver-training schools offered little or no structured curricula or uniform training programs for any type of CMV.

To help correct this problem, the agency developed, and in 1985 issued, the ''Model Curriculum for Training Tractor-Trailer Drivers'' (1985, GPO Stock No. 050–001–00293–1), which incorporated the agency's ''Proposed Minimum Standards for Training Tractor Trailer Drivers'' (1984). The Model Curriculum, as it is known in the industry, is a broad set of recommendations that incorporates standardized minimum core curriculum guidelines and training materials, as well as guidelines pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement. Curriculum content includes the following areas: Basic operation, safe operating practices, advanced operating practices, vehicle maintenance, and non-vehicle activities.

The Professional Truck Driver Institute (PTDI) was created in 1986 by the motor carrier industry to certify training programs offered by truck driver training schools. Originally named the Professional Truck Driver Institute of America, the group changed its name in 1998 to reflect the addition of Canada to the organization. The Model Curriculum is the base from which the PTDI's certification criteria were derived. The PTDI, in mid-1988, began certifying truck-driver training programs across the country. As of February 2003, approximately 64 schools in 27 States and Canada have received the PTDI certification. Although many schools have a number of truck driving courses, most have only one course certified by PTDI.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*), although not directly targeted at driver training, was intended to improve highway safety. Its goal was to ensure that drivers of large trucks and buses possess the knowledge and skills necessary to safely operate those vehicles on public highways. The CMVSA established the CDL program and directed the FHWA to establish minimum Federal standards, which States must meet when licensing CMV drivers. The CMVSA applies to virtually anyone who operates a CMV in interstate or intrastate commerce, including employees of Federal, State, and local governments. As defined by the implementing regulation (49 CFR 383.5), a CMV is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle meets one or more of the following criteria:

(a) Has a gross combination weight rating (GCWR) of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds).

(b) Has a GVWR of 11,794 or more kilograms (26,001 or more pounds).

(c) Is designed to transport 16 or more passengers, including the driver.

(d) Is of any size and is used in the transportation of hazardous materials as defined in 49 CFR 383.5.

In accordance with the CMVSA, all drivers of CMVs must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate any of the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93:

(a) Double/triple trailers.

(b) Passenger vehicles.

(c) Tank vehicles.

(d) Vehicles transporting hazardous materials as defined in 49 CFR 383.5.

For all endorsements, the driver is required to pass a knowledge test. The driver must also pass a skills test to obtain a passenger endorsement.

The CDL standards do not require the comprehensive driver training proposed in the Model Curriculum because the CDL is a licensing standard as opposed to a training standard. Accordingly, there are no prerequisite Federal or State training requirements to obtain a CDL.

The agency also completed two projects that contributed to an enhanced understanding of driver training. Although they were not specifically designed to address one type of driver training versus another or to address specific items that would be included in a minimum training standard, they do provide perspective on the importance of driver training and the need for minimum training requirements. The first project took place in December 1994 and involved focus groups to obtain information about highway safety issues relating to commercial motor carriers. The second project was the 1995 National Truck and Bus Safety Summit. A copy of the ''1995 Truck and Bus Safety Summit, Report of Proceedings'' is in the public docket.

Advance Notice of Proposed Rulemaking

Pursuant to section 4007(a)(2) of ISTEA, the agency began a rulemaking proceeding on the need to require training of all entry-level CMV drivers. On June 21, 1993, the agency published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) (58 FR 33874).

The ANPRM stated ''Although transit buses (designed to transport 16 or more passengers) also meet the definition of a CMV, they will not be considered because these vehicles are almost all operated by municipalities or other public agencies. Because the ISTEA specifies that the FHWA [Federal Highway Administration] report on the effectiveness of 'private sector efforts' to ensure adequate training of CMV drivers, we believe Congress intended to exclude training of transit bus drivers from this rulemaking.'' In addition, the ANPRM explained that ''Although the definition of a CMV in the Motor Carrier Safety Act of 1984 included a weight threshold of 10,001 pounds or more (49 CFR 390.5), the FHWA believes any potential CMV training standard should be considered an additional CDL requirement and thus subject to the higher jurisdictional threshold of that program.'' The CDL program's higher jurisdictional thresholds were discussed above.

In the ANPRM, the agency asked 13 questions, which addressed training adequacy standards, curriculum requirements, the CDL, the definition of ''entry-level driver,'' and training, pass rates and costs.

The agency received 104 comments to the ANPRM. There was no consensus among the commenters on the issue of mandated entry-level driver training. The heavy truck and bus industries were against mandated training; the International Brotherhood of Teamsters was in favor. When the agency published a notice on April 25, 1996, reopening the docket (61 FR 18355), it received 48 additional comments on a training adequacy study and cost-benefit analysis. On November 13, 1996, the agency held a public meeting at the Department of Transportation headquarters in Washington, DC, to discuss mandatory training for entry-level CMV drivers. There were 26 persons who participated at the public meeting.

A detailed analysis of the questions in the ANPRM and comments received by the agency appeared in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on Friday, August 15, 2003 (68 FR 48863).

Adequacy of Commercial Motor Vehicle Driver Training

Concurrent with the development of the ANPRM, the agency conducted a study completed in 1995, as required by section 4007(a)(1) of the ISTEA, on the effectiveness of private sector efforts to train entry-level CMV drivers. The agency limited the study to drivers in the heavy truck (26,001 or more pounds), motorcoach, and school bus industries. A copy of the study ''Adequacy of Commercial Motor Vehicle Driver Training'' is in docket FMCSA–1997–2199. The findings are summarized in the NPRM, and indicated that neither the heavy truck, motorcoach, nor school bus segments of the CMV industry were providing adequate entry-level driver training.

Driver Safety Initiatives

This final rule is part of an overall FMCSA effort to improve its driver safety programs. These include improvements to the CDL tests and a study on graduated licensing. Section 4019 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178; June 9, 1998) (TEA–21) requires the agency to determine whether the current system of CDL testing is an accurate measure of an applicant's knowledge and skill needed to operate a CMV.

More specifically, the agency is examining the various CDL skill test components to determine whether testing modifications are necessary. The agency plans to coordinate with the Driver License and Control Committee of the American Association of Motor Vehicle Administrators to determine if the required skill tests can be given in a more efficient and less costly manner.

Section 4019 of TEA–21 also required the agency to identify the costs and benefits of a graduated licensing system. The agency published a notice in the **Federal Register** on February 25, 2003, asking for public comment on whether a graduated licensing system for CMV operators is a workable concept (68 FR 8798). The agency plans to use this information to help determine the costs and benefits of a graduated CDL.

The agency published an interim final rule in the **Federal Register** on May 13, 2002 (67 FR 31978), establishing a process to ensure that new entrant motor carriers are knowledgeable about applicable Federal Motor Carrier Safety Regulations (FMCSRs). Many new entrant motor carriers are entry-level driver owner-operators. The rule requires a safety audit to educate the motor carrier on compliance with the FMCSRs and Hazardous Materials Regulations, and identify areas where the motor carrier may be deficient in terms of compliance. The safety audit examines selected motor carrier records and assesses the adequacy of the new entrant's basic safety management controls. Areas covered include qualification of drivers and hours of service of driver requirements for employers. The agency intends to improve the safety performance of new entrants by providing educational and technical assistance to new motor carriers as they begin their new business. This new entrant process will include the verification of training for entry-level drivers in today's final rule: (1) Driver qualification requirements; (2) hours of service of drivers; (3) driver wellness; and (4) whistleblower protection.

Finally, the Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States, the District of Columbia, and eligible territories to conduct roadside inspections and other enforcement activities designed to improve CMV safety. The goal of the MCSAP is to reduce the number and severity of crashes and hazardous materials incidents involving CMVs through uniform, consistent, and effective safety programs. Investing grant funds in appropriate safety programs increases the likelihood that CMV safety defects, driver deficiencies, and unsafe motor

carrier practices will be detected and corrected before they become contributing factors to crashes. Since 1984, the MCSAP has provided an effective forum for FMCSA and States to work cooperatively to improve motor carrier, CMV, and driver safety. Even though roadside inspections remain the primary activity under the program, the States also perform a variety of other enforcement activities including compliance reviews of motor carrier operations. The compliance review provides the agency with an additional opportunity to verify motor carrier compliance with driver entry-level training requirements.

This final rule represents FMCSA's most recent action to improve driver safety. It establishes minimum training standards by requiring entry-level drivers to receive training in driver qualification requirements, hours of service of drivers, driver wellness, and whistleblower protection. These training areas are not covered by the CDL tests. Each of these areas focuses on the CMV driver, who the agency believes is key to promoting safety on our nation's highways. FMCSA believes that training in these four areas will serve to set a floor of safety for entry-level drivers.

Summary of NPRM Provisions

For purposes of the NPRM, FMCSA defined an entry-level driver as a person with less than two years experience operating a CMV that required a CDL. However, drivers with one-year experience operating such a CMV, who have a good driving record, would be grandfathered and therefore would not have to take the proposed training. The proposal did not specify what a good driving record would look like.

In the NPRM, the agency proposed training for entry-level drivers based on three main principles. First, the agency directed the NPRM to drivers included in the 1995 study discussed above, *i.e,* only drivers in the heavy truck, motorcoach, and school bus industries. Excluded were: (1) Transit bus drivers subject to Federal Transit Administration regulations; (2) drivers operating property-carrying CMVs with gross vehicle weight ratings under 26,001 pounds; (3) drivers operating hazardous material laden CMVs not required to placard the CMV in accordance with 49 CFR part 172, subpart F (§§ 172.500 through 172.560); and (4) drivers operating CMVs laden with any quantity of a material listed as a select agent or toxin in 42 CFR part 73. Second, the agency focused the NPRM to drivers who operate in interstate commerce subject to the Motor Carrier Safety Act of 1984. Third, the agency narrowed the NPRM to those training topics that extend beyond the scope of the CDL test.

The NPRM thus addressed: (1) Driver medical qualification and drug and alcohol testing, (2) driver hours of service rules, (3) driver wellness, and (4) whistleblower protection. The agency believed that training in these four areas would serve to set a floor of safety for entry-level CMV drivers, and at the same time represent a reasonable cost investment for drivers or employers to implement. The NPRM did not specify a required number of hours for the training, but the agency's cost-effectiveness estimate was premised on 10.5 hours of training for heavy truck and motorcoach drivers and 4.5 hours of training for school bus drivers. The NPRM proposed only two training topics for school bus drivers: driver wellness and whistleblower protection. The NPRM included a specific discussion of what would be covered in each of the four areas of this training.

The NPRM proposed that the employer would have to maintain evidence of the instruction for review by an FMCSA official seeking to verify that the training requirement had been met. Informal, unverifiable, or undocumented communication between the entry-level driver and his or her employer would not be acceptable. A training certificate that a driver had received the training would be maintained in the driver's personnel file. Employers would have had to ensure that currently employed entry-level drivers, who did not qualify for grandfathering, receive the required training no later than 90 days after the regulations go into effect.

Discussion of Comments to the NPRM

The FMCSA received 38 written comments on the NPRM. Commenters included motor carriers, associations, training organizations, a union, a public interest organization, and individuals.

General Support

Eleven commenters generally support the FMCSA's proposal. For example, the American Trucking Associations (ATA) states, ''ATA generally supports the proposed minimum training requirements and FMCSA's overall efforts to improve the Commercial Driver's License (CDL) program.'' The National Private Truck Council, Inc. (NPTC), Consolidated Safety Services, Inc. (CSS), American Moving and Storage Association (AMSA), the Tree Care Industry Association (TCIA), McLane Company, Inc. (McLane), Tri-State Semi Driver Training, Inc. (Tri-State), the Commercial Vehicle Training Association (CVTA), American Bus Association (ABA), the Commercial Vehicle Safety Alliance (CVSA), and the International Brotherhood of Teamsters (IBT) make similar statements. CVTA states that it ''believes that the Proposed Rules represent a first step in recognizing the need for formal training for entry-level drivers.'' The ABA states, ''we believe that minimum training requirements for entry-level drivers are long overdue.'' The CVSA states, ''We would like to first acknowledge the agency's continued commitment to safety—and the fact that training is a critical component. The commercial vehicle industry indeed is a profession. Highly skilled workers are required, both in industry and enforcement. Thus, we support this rulemaking because we believe it will save lives.'' The IBT states, ''most motor carrier employers do not provide their entry-level drivers adequate training or instruction. The IBT thus supports FMCSA's efforts to correct this problem.''

Several commenters endorse the proposal to require training in the four prescribed areas. CSS endorsed rules that mandatory training in (1) driver qualifications; (2) driver hours of service rules; (3) driver wellness; and (4) whistleblower protection are important additions covering areas not treated by CDL testing. AMSA, McLane, and Tri-State state that they or their members already include some or all of these topics in their training.

In addition to providing general support, most of these commenters provide comments and suggestions on specific provisions in the proposed rule, which are described below.

The Proposal Is Too Burdensome

Central Tech states that, except for whistleblower protection, most good driver training schools already cover the four proposed topics. However, the NPRM places the burden for training in these subject areas back on the trucking companies. Central Tech questions how companies would comply with the certificate requirement if these companies rely on the training provided by the schools. The commenter asks, are the ''schools that already train in these areas going to be required to issue a separate certificate?'

The Petroleum Marketers Association of America (PMAA) states that requiring 10.5 hours for the proposed training would be an unreasonable amount of time for PMAA members. The commenter states, ''PMAA members are small companies with sometimes only a few employees. If one of those employees is unavailable for over a day,

this will have a serious financial impact on our member's operations.''

FMCSA Response: Although the proposal does not specify a required number of hours for the training, the agency estimates that an employer or other training provider would need to devote about 10 hours of training for all heavy truck, motorcoach, and private contractor school bus drivers. These are nationwide estimates of the average length of time needed to train drivers in the four required subject areas.

Today's final rule allows employers to provide the required training in a range of settings. Various entities can provide the training, including the employer, a training school, or a class conducted by consortia or associations of employers. The proposal discussed that currently employed drivers will be entitled to a 90-day grace period. The FMCSA has determined that drivers that began driving CMVs within 10 months before today's final rule and two months after today's final rule will be considered currently employed drivers subject to this 90-day grace period. These drivers are permitted to operate a CMV during the 90-day period pending the completion of training. The agency also believes that employers can train these entry-level drivers in shifts.

In response to Central Tech's question about whether schools that already train in the areas made final today will be required to issue a separate certificate, the training provider would not have to issue the entry-level driver a separate training certificate. However, the training school's certificate or diploma given to the driver must have wording that is substantially in accordance with the wording of the training certificate contained in this final rule.

The Proposal Will Not Ensure Safety

Six commenters state that the proposals in the NPRM will not ensure better driver safety training or improve safety in general.

The United Motorcoach Association (UMA) states that, along with school buses, the motorcoach industry is the safest mode of ground passenger transportation. ''There is no evidence either in existing data or anecdotal evidence that shows that the proposals in this NPRM will do anything to improve our already superior safety record.''

The National Solid Wastes Management Association (NSWMA) states that the proposed training may divert training time and resources away from more meaningful methods of improving safe driving, such as on-the-job observations by route supervisors. Similarly, C. R. England, Inc. states that, ''training in current topics that may be more effective in deterring the types of target accidents may be displaced to accommodate the proposed mandated hours. The overall effect may result in an increase in accidents.''

The Truckload Carriers Association (TCA) states that information on the four topics is already being voluntarily provided to drivers by many carriers.

The National Association of Publicly Funded Truck Driver Schools (NAPFTDS) and the National Ground Water Association (NGWA) make similar comments.

FMCSA Response: FMCSA believes this final rule will promote safety because it covers new areas not covered by the CDL tests and it places a training responsibility on employers and entry-level drivers. However, the rule does not mandate training hours. The FMCSA believes motor carriers must address training needs to properly train inexperienced drivers. FMCSA is emphasizing that these requirements are a training responsibility by placing the entry-level driver training requirements in part 380. Compliance will be checked at the carrier's place of business during a compliance review. Because the requirement is not a driver licensing issue to be administered by the State licensing agency, enforcement officials will not check for compliance at roadside.

The CMV driver is key to truck and bus safety. The rule is part of FMCSA's overall effort to improve its safety programs. These efforts include improvements to the CDL tests, a graduated licensing study, the new entrant motor carrier standards, and the MCSAP program. Viewed in this overall context, the FMCSA believes this overall effort will improve the safety of entry-level drivers and meet the Congressional directive for rulemaking. This final rule is one prong of the overall effort. See also the FMCSA's discussion above in reference to Central Tech's comments.

The Proposal Does Not Comply With the Statute

The Advocates for Highway and Auto Safety (AHAS) strongly object to the proposed rule on the basis that it does not comply with Section 4007(a) of the ISTEA. AHAS states, ''Although the FMCSA was directed by Congress in Section 4007(a) of the Intermodal Surface Transportation Assistance Act of 1991 (ISTEA), Public Law 102–240 (December 18, 1991), to conduct rulemaking on the need for entry-level driving training, the agency in this notice clearly seeks to evade that legislative directive.''

AHAS states that in the review of the effectiveness of private sector entry-level driver training required by section 4007(a), the FHWA found that private sector efforts at transmitting basic CMV driver skills and knowledge training are fundamentally inadequate, yet in the NPRM preamble FMCSA stated ''the CDL gives the novice driver the basic knowledge and skill necessary to operate a CMV.''

AHAS also states that under section 4007(a) FMCSA is required to submit a report to Congress if it determines that entry-level driver training is not necessary. The report is to explain why such training is not needed and must include a benefit-cost analysis to justify the decision. AHAS states:

> Neither the FMCSA nor the FHWA has issued a study to support such a negative finding. On the contrary, the results of the research conducted to [sic] show that basic skills and knowledge training in the private sector are inadequate. Yet the FMCSA has proposed leaving these inadequate efforts undisturbed by federal regulation designed to advance the quality of entry-level commercial driver skills and knowledge. Instead, the agency only proposes to require that novice drivers receive instruction in four additional areas: driver qualifications, hours of services governing commercial driver duty time, driver wellness, and whistle blower protection. * * * No baseline training of any kind is required in this notice; the agency is content to allow currently inadequate approaches to ensuring basic driver competence in the operation of large trucks and buses to remain unchanged. * * * The proposed novice driver training is a legally insufficient response to the statutory mandate and clearly violates legislative intent.

The Sage Corporation (Sage) states that the proposed training program will have little impact on whether entry-level drivers are receiving adequate training.

FMCSA Response: The FMCSA believes its proposal meets the requirements of the statute to improve private sector training. The agency stated in the CDL final rule on July 21, 1988 (53 FR 27628) that at least ''20 States waive testing if the classified driver's license applicants meet certain conditions, such as certification of training and testing by their employer, and two States recognize training schools.'' The States also have had the liberty to impose more stringent public sector training efforts than the minimum necessary to pass their CDL tests.

The agency requires four minimum training areas for operating in interstate commerce. FMCSA does not believe it should duplicate training that the public and private sectors provide a driver to operate a CMV before taking the CDL

tests. The agency believes that the four additional areas in today's final rule will provide entry-level drivers with fundamental knowledge necessary for beginning operations in interstate commerce: (1) Driver qualification requirements; (2) hours of service of drivers; (3) driver wellness; and (4) whistleblower protection. The ongoing FMCSA efforts to address the adequacy of CDL testing is the better place to focus training issues over the actual operation of CMVs than in this rulemaking.

Proposal Should Be Performance Based

C. R. England comments that instead of mandating the hours required for training, the FMCSA should set standards and allow drivers and employers to determine the most appropriate methods for meeting those standards. CVSA also stated that the training should be performance-based to accurately reflect the level of understanding by the participants.

FMCSA Response: The agency proposed a set of standards that would allow drivers and employers to determine the most appropriate methods for meeting those standards. The agency believes the entry-level training in this rule is performance-based because the agency specifies the general content of the four topic areas of required training. However, the agency believes CVSA's comments imply a testing format that the agency cannot oversee and does not want to require of an employer. Employers, however, may test their entry-level drivers or have them tested. The required training does not specify the number of hours of training, but provides estimates that the agency used as averages across the heavy truck, motorcoach, and private contractor school bus industries. Further information on the estimates may be found in the cost-effectiveness analysis in the docket, and is summarized in the NPRM.

Training Topics Should Be Part of CDL Program

Nine commenters state that the goal of improving driver safety would be better realized if the training topics contained in the proposed rule were made part of the CDL curriculum. The commenters are: NRMCA, PMAA, Colorado Ready Mixed Concrete Association/Colorado Rock Products Association (CRMCA/CRPA), National School Transportation Association (NSTA), C.R. England, Inc., AMSA, UMA, ABA, and NPTC. Most of the commenters believe that this would be the least costly way to accomplish the desired training in the four subject areas proposed. Several of the commenters make the further point that the responsibility for ensuring that this training has occurred should be with the State licensing agency rather than the employer. NPTC states that making the new training requirement part of the CDL licensing process would mean that an employer could assume that a driver with a valid CDL has received the appropriate training.

NPTC believes that incorporating the driver training into the CDL would assist employers in the event of litigation arising from a vehicle collision where the adequacy of the driver's training is at issue. Similarly, C.R. England, Inc. states that if the proposed requirements are not added to the testing requirements of the CDL, ''the CDL competency is undermined to the point of putting carriers at legal risk for using inexperienced drivers.''

FMCSA Response: FMCSA believes that requiring the State to administer, and enforce at roadside inspections, the entry-level driver training requirements would add an unnecessary complication to the CDL program. FMCSA believes the training certificate in the driver personnel or qualification file is sufficient documentation that a driver has met the entry-level driver training requirement.

The FMCSA believes motor carriers should address training needs to properly train inexperienced drivers. By placing the entry-level driver training requirements in part 380, FMCSA is emphasizing that these requirements are a training responsibility and that compliance will be checked at the carrier's place of business during a compliance review. Because the requirement is not a driver licensing issue to be administered by the State licensing agency, enforcement officials will not check for compliance at roadside. (Roadside enforcement officials may, however, check an entry-level driver's CDL to verify the presence of proper endorsements, such as passenger or school bus endorsements.)

Mandatory Training Standards

Among the nine commenters that address the issue whether training should be made mandatory, seven favor mandatory training, and two oppose it.

NADA and Tri-State oppose mandatory training. Tri-State expresses concern at what it labeled a ''one size fits all'' approach. This commenter favors an approach that identifies competencies expected of a safe driver and then measures those competencies through outcome testing. NADA believes that entry-level drivers would collectively benefit from a more rigorous training regime. It also believes that the Model Curriculum should be declared ''the basis for training adequacy,'' and that the four areas covered by the NPRM could then be added to the Model Curriculum. At the same time, NADA objects to a Federal mandate for entry-level training. Similarly, McLane ''urges FMCSA to revise the existing Model Curriculum or develop a new supplemental curriculum to reflect these new minimum training requirements.''

The eight commenters who favor mandatory training give reasons similar to those discussed earlier under the topic ''Current CDL training inadequate.'' [Daecher, NATFTDS, FVTC, Future Truckers of America (FTA), Tri-State, CVTA, CVSA, and CSS.] That is, most believe that a minimum mandatory training requirement is needed because, as NADA states, ''mere acquisition of a CDL does not properly prepare a potential driver for safe operation of CMVs on the nation's highways.'' CVTA suggests that the rule require that a CDL applicant complete all Model Curriculum courses. Training in all courses should total at least 160 hours, CVTA recommends.

FVTC requests FMCSA to withdraw the current proposal and to act on the FHWA's July 1995 report, ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training.'' The commenter states that the report concluded that ''of those heavy truck carriers that hire entry-level drivers only one in 10 would be expected to provide adequate training.''

Daecher states that the Model Curriculum fails to include training on the use of anti-lock brake systems or engine retarders.

FMCSA Response: FMCSA is making the training standards mandatory. The agency believes the standards have to be mandatory to be effective at improving interstate driver proficiency in the four topics selected. FMCSA has identified the four competencies expected of a safe driver operating in interstate commerce. FMCSA is leaving the outcome testing to the employers. The FMCSA believes the 160-hour Model Curriculum training course is too burdensome. However, if an employer believes its drivers need that amount of training, it may provide that amount.

FMCSA did not include engine retarders, as Daecher suggests, because there is no requirement that vehicles be equipped with such a device. Training in anti-lock brake systems is covered on the CDL test. The required skills test in § 383.113 lists the ability to stop the vehicle, as well as air brake application. FMCSA believes CDL examiners will

test entry-level drivers on anti-lock brake application and inspection of the anti-lock brake system in State CDL tests.

Comments on Specific Issues in Proposed Rules

General Applicability

Several commenters ask for clarification on applicability or make suggestions as to whom it should apply. TCIA seeks confirmation that the rule only applies to CDL drivers and not to commercial drivers who drive vehicles under 26,001 gross vehicle weight rating (GVWR). UMA objects that FMCSA bases its entry-level driver training almost solely on the heavy truck industry, but applies the rule to the motorcoach industry, which has a better safety record. In addition, UMA believes that including motorcoach drivers in the NPRM, but exempting transit bus drivers from the training standards, is flawed. UMA states that the premise that transit operations are somehow safer than motorcoach operations is not borne out by the data. UMA urges FMCSA to exempt the motorcoach industry.

CVSA disagrees with the proposed rule applying only to ''drivers who drive in interstate commerce and are subject to the CDL requirements.'' It believes the safety related standards should be the same for all CDL drivers whether they are interstate or intrastate drivers. The CDL requirements should be applied evenly across the board.

FMCSA Response: The final rule is applicable to all persons subject to the CDL requirements in 49 CFR part 383 operating in interstate commerce, as defined in 49 CFR 390.5. It will include all motor vehicles, trucks, motorcoaches, buses, school buses, or combinations of motor vehicles used in interstate commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 (§§ 172.500 through 172.560), or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

The rule will not apply to persons subject to the Federal Transit Administration's jurisdiction or to persons excepted by 49 CFR 390.3(f), including transportation performed by the Federal government, a State government, any political subdivision of a State, any agency that has been established under a compact between States that has been approved by the Congress of the United States, or any school bus operations as defined in 49 CFR 390.5.

The agency chose not to include drivers subject to Federal Transit Administration regulations and other Federal, State, and local government agencies in the rulemaking because these vehicles are almost all operated by municipalities or other public agencies. ISTEA specified that the agency report on the effectiveness of ''private sector efforts'' to ensure adequate training of CMV drivers. Therefore, FMCSA believes Congress intended to exclude training of transit bus drivers and other Federal, State, and local government agencies from this rulemaking. *See* 58 FR 33874 (June 21, 1993).

Non-transit motorcoach operations are included in today's final rule because Congress specifically wanted the agency to study the effectiveness of ''private sector efforts'' to ensure adequate training of CMV drivers. The agency studied the motorcoach industry's private sector training efforts and found them to be inadequate. FMCSA believes that the training adequacy study had a sufficiently diverse group of cargo and passenger carriers to be representative of the CMV industry the agency regulates.

Exempt School Buses

National School Transportation Association (NSTA) urges the FMSCA to exempt school bus drivers from the required driver training outlined in this rule. NSTA does not oppose meaningful driver training for school bus drivers, but disagrees with the agency's arguments to include school bus drivers. NSTA explains that its industry is 40 percent safer than transit drivers who are exempt from this rule. As justification for exempting transit operators (and for exempting some school bus operators from two of the requirements), the NPRM cites the fact that those entities are not subject to parts 350 through 399 of the FMCSRs. NSTA claims this is a disingenuous argument, because FMCSA does subject these entities to CDL requirements (part 383) and to drug and alcohol testing requirements. NSTA submits that training requirements could be tied to the CDL just as the drug and alcohol requirements are, ensuring that all drivers receive training in topics the agency considers essential for safe driving.

NSTA states that ''the agency also cites FTA training materials as a reason to exempt transit operators * * * '' There is no indication that the materials cover the areas proposed in this rule; in fact, the FTA training materials appear to be less comprehensive than much of the State-required school bus training. Therefore, if it is reasonable to exempt transit operations from the requirements, then it is reasonable to exempt all school bus operations as well. On the other hand, if the agency believes that the proposed training requirements will reduce crashes, then all drivers should be subject to them.

Regarding proposed entry-level driver training standards for school bus drivers, a school bus contractor opposes federally mandated driver training standards and believes the process should be left to the States, and enforced by the States. In addition, it states that the cost of training would be a hardship on already over-stretched public school budgets.

FMCSA Response: FMCSA believes private sector school bus operations must be included in today's final rule. The ISTEA directed the agency to study the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of CMVs. The agency limited the study to those drivers required to hold a CDL to operate a CMV, including private sector school bus drivers. The study found training for this type of CMV driver to be inadequate. Sec. 4007(a)(2) required the agency to do the rulemaking.

The agency must also clarify a possible misunderstanding. The statutory mandate underpinning this rulemaking focuses the agency to address only ''private sector efforts.'' The agency is clarifying the applicability for the final rule. Today's final rule applies only to private school bus contractors, *e.g.*, employers and drivers operating school buses in the private sector. Thus, the exceptions provided by § 390.3(f)(1) and (2) apply to today's final rule.

In response to the NSTA comment, the NPRM incorrectly stated that government transit drivers are exempt from parts 350 through 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The reference in the NPRM to the exemption to parts 350 through 397 of the FMCSRs should have included the phrase ''except as otherwise provided.'' Section 390.3(f)(1) and (2) provide that unless otherwise

specifically provided, the rules in 49 CFR parts 350 through 399 do not apply to—

(1) All school bus operations as defined in 49 CFR 390.5; and

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States * * * The agency has corrected the NPRM misstatement in the final rule.

FMCSA disagrees with the school bus contractor which opposes federally-mandated driver training standards and believes the process should be left to, and enforced by the States. The agency is changing the training topics for school bus drivers in this final rule. The specifics will be discussed later under the heading Training Topics.

If the NSTA has suggestions that it believes will improve the FTA's training materials for alcohol and controlled substances testing, the agency suggests NSTA contact the FTA directly. The agency believes that FTA is the best qualified to comment on the comprehensiveness of its training materials.

FMCSA is encouraged by the NSTA statement that school bus drivers receive pre-service training of at least 40 hours and in-service training of at least 10 hours. The agency believes this shows that the additional amount of time spent learning about driver qualifications, hours of service, driver wellness, and whistleblower protection would not be unduly burdensome.

Entry-Level Driver Definition and Grandfathering

The proposal defined an entry-level driver as a driver with less than two years experience operating a CMV with a CDL. One commenter agrees with this definition. However, several commenters suggest that the definition should be a driver with one year or less of such experience. ATA and several other commenters stated that by using this definition, the need for a grandfathering clause for drivers with between one and two years of driving experience would be eliminated. This would save employers and drivers time and money without sacrificing safety. In addition, employers would no longer have the burden of ensuring that an individual claiming eligibility for the grandfathering provisions is actually eligible, and Certificates of Grandfathering would not be necessary.

Several commenters recommend a definition based on miles or hours that a commercial vehicle has been driven. The proposed definition does not allow for quantifying operating hours or miles. Several commenters stated that safety comes through practical application of knowledge learned and improves with experience. If experience is quantified with actual miles or hours of operation in a vehicle, then a driver is more likely to develop and refine safe operating practices. Conversely, without a quantifying measure, one could not determine how much operating experience a CDL holder would have who occasionally operated a CMV within the two year time period. Under this quantifying measure, the grandfathering clause may not be necessary.

TCA believes that ''carriers should only have to train drivers newly entering the industry. A review of the preamble to the rule demonstrates clearly that FMCSA's proposal to require training for all drivers in the industry for less than one year was based on the arbitrary comments it received in response to the ANPRM and public meeting and not based on any scientific study. In TCA's opinion, there is no scientific justification.'' The IBT, however, recommends that all drivers with less than two years of driving experience be subject to the mandatory training requirements and that drivers with less than five years experience be required to receive written information on the subject matter covered in training.

Several comments were received regarding the grandfathering provision proposed at § 380.505 in the NPRM. For example, CSS recommends that an individual must certify and provide evidence in order to be grandfathered. CVSA believes that a few items should be changed in the grandfathering clause requirements. The recommendations include: (1) Altering § 380.505(b)(3), which as proposed read, ''No suspension, revocation, or cancellation of his/her CDL,'' to include the term disqualification; (2) including a definition of the term ''at fault''; (3) changing § 380.505(c)(1) from ''Is regularly employed in a job'' to ''Is employed in a job'; and (4) giving the employer the choice of either grandfathering a driver, if he or she meets the requirements, or requiring the driver to attend an entry-level training course. CVSA also remarks that a grandfathered driver is required to prove that he or she meets the grandfathering requirements before an employer can allow him or her to operate a CMV, while the entry-level driver is allowed to operate a CMV for 90 days before receiving the required training. CVSA believes the standard should be uniform and consistent. AMSA recommends allowing eligible drivers to waive the training requirements through the grandfather provision for 14 or 16 months following the effective date of the rule to allow for an adequate time to communicate the grandfather provisions to potential drivers and to give carriers the time necessary to establish internal certification and reporting systems.

FMCSA Response: FMCSA believes that operating experience helps CMV drivers reduce crashes caused by driver error. In today's final rule, the agency adopts the ATA's comment to change the definition of entry-level driver to a driver with less than one-year experience operating CMVs. The agency believes safety will continue to be served by allowing only one year of experience rather than two years of experience. FMCSA will also have a much simpler rule for employers to follow. FMCSA has no reason to believe based on comments and other available data that defining an entry-level driver as one year or less will have a negative impact on safety.

The agency also agrees with the ATA that a grandfather provision is unnecessary, in view of the decision to change the definition of entry-level driver to a driver with less than one-year experience. The change in the definition of entry-level driver will reduce the burden on employers to train currently employed drivers.

The agency believes an employer can more readily determine if a driver is an entry-level driver from the one-year experience criteria than by counting hours or miles driven, as suggested by the Future Truckers of America, CVTA, NEI, and Tri-State. The employer may not have access to accurate information on hours or miles driven by the driver.

The NPRM contained the requirement that the driver ''is regularly employed in a job'' to ensure that drivers have adequate experience in order to qualify for grandfathering. Upon further reflection of the comments by CVSA and AMSA, FMCSA has decided to eliminate the grandfathering provision from the final rule. However, the agency still must specify who is a currently employed entry-level driver for today's final rule.

Therefore, drivers that began driving CMVs between 10 months before today's final rule and the effective date will be considered currently employed entry-level drivers subject to today's final rule and must obtain the training required by this rule no later than 90 days after the effective date of the rule. These drivers are permitted to operate a CMV during the 90-day period pending the completion of training. A student entry-

level driver, an individual who will begin operating a CMV in interstate commerce after the effective date of this final rule July 21, 2004, must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

After the effective date, a driver or potential driver having less than one year experience operating a CMV for which 49 CFR part 383 requires a CDL must receive the training required by this subpart before operating a CMV defined in § 383.5 in interstate commerce.

Entry-Level Driver Training Topics—General

The training topics covered in the proposal were driver qualification, hours of service, driver wellness, and whistleblower. In general, CVSA believes that the listed training requirements may have merit on their own. However, it does not believe the topics address all of the training areas necessary for an entry-level driver. CVSA suggests that a training program for entry-level drivers should include a minimum required number of hours of training in parts 383, 391, 392, 393, 395, and 396. CVSA also suggests that the training program include skill training. CVSA realizes ''that some of these areas may be covered while preparing for the CDL tests, but if the objective is to improve the safety of our highways, reinforcing the safety regulations will only do more to help us achieve our goal.''

FMCSA Response: CDL tests cover driving skills and the driver-applicable parts of 49 CFR parts 392, 393, and 396 of the FMCSRs. Part 392 is entitled ''Driving of Commercial Motor Vehicles.'' Part 393 is entitled ''Parts and Accessories Necessary for Safe Operation'' and part 396 is entitled ''Inspection, Repair, and Maintenance.'' The Interstate Commerce Commission, another predecessor agency of the FMCSA, based each of these three parts on ''State motor vehicle laws and regulations * * *'' *See* the NPRM for these parts of July 8, 1936 (1 FR 738). Also, 49 CFR 383.111(a) requires each of these parts be covered in the CDL knowledge test.

The agency does not believe mandating hours for training will achieve the desired goal of the agency, performance-based regulations. An employer or training provider able to train a potential driver in less time than mandated may believe it must fill in extra material that will be burdensome to the driver and employer, but may not raise the driver's safety to any measurable extent. The FMCSA has included training in Parts 391 and 395 of the FMCSRs, because training in these areas will be most beneficial to entry-level drivers who will operate in interstate commerce.

The agency believes today's final rule and the other FMCSA safety program initiatives discussed elsewhere will improve overall entry-level driver safety. These include the agency's graduated licensing rulemaking, the MCSAP program, its crash causation study (which may assist in determining the need for future driver training topics), its new motor carrier entrant program, and its active CDL fraud program.

In addition, FMCSA notes that there are other Federal requirements that address security-related training, which will benefit entry-level and other CMV drivers. These include: (1) The Research and Special Program Administration's security awareness and in-depth security training requirements at 49 CFR 172.704; (2) the hazard communication program training required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) and the Environmental Protection Agency (40 CFR 311.1); and (3) LCV training requirements in 49 CFR 380.201 through 380.205 published on March 30, 2004 (69 FR 16722). Although entry-level personnel are not eligible to drive LCVs, motor carriers that operate these vehicles may well extend security training to the rest of their driver population.

These programs and requirements will result in improved entry-level driver highway safety in the CMV industry and will help to improve the safety of those seeking to drive CMVs in the future.

Driver Qualification

The IBT supports the inclusion of driver qualifications as a new training topic. The IBT explains that on the issue of driver qualifications, many drivers are unfamiliar with or misunderstand the medical qualifications required by the FMCSA. This problem is exacerbated by the fact that these qualifications may change periodically. For example, changes have recently been made regarding cardiovascular and diabetes requirements, and the conditions of drivers themselves will change over time. In this respect, the IBT thinks entry-level drivers would benefit from an explanation of the requirements and the importance of being aware of current requirements. In fact, the IBT suggests that drivers would also benefit from continuing training and updates in this area.

FMCSA Response: The FMCSA agrees with the IBT that many drivers are unfamiliar with or misunderstand the required medical qualifications. The agency published a final rule on October 5, 2000, in the **Federal Register** (65 FR 59363) which updated on one form the instructions for performing and recording physical examinations, the medical examination report, the instructions to the medical examiner, the advisory criteria, and the medical examiner's certificate. The consolidated form contains information on cardiovascular conditions and diabetes which should be included as part of a training presentation on driver qualification requirements. Drivers will be better informed on medical qualification requirements through a combination of the revised medical form and the training requirements in today's final rule.

The types of subjects employers should cover include the following medical topics: Loss of a limb; impairment of a limb; diabetes mellitus standard for drivers currently requiring insulin for control; cardiovascular disease standards for conditions known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure; respiratory dysfunction standards; procedures for the clinical diagnosis and treatment of high blood pressure; standards for rheumatic, orthopedic, muscular, neuromuscular, or vascular disease; epilepsy standards including conditions likely to cause loss of consciousness; psychiatric disorders including mental conditions which affect the driver's operation of the CMV, vision standards, hearing standards, and diagnosis of alcoholism as a disease; alternative physical qualification standards for the loss or impairment of limbs; and vision and diabetes exemption program requirements.

The following drivers must be medically examined: new drivers, drivers with expired medical cards, and drivers whose ability to perform their normal duties has been impaired by a physical or mental injury or disease.

Additional types of subjects employers should cover in driver qualification should include the following: A discussion of driver qualification standards under § 391.11, driver responsibilities under § 391.13, and disqualifications based on various offenses, orders, and loss of driving privileges under § 391.15.

Hours of Service

The IBT strongly supports training in hours-of-service regulation. Given the

recent changes to the regulation, IBT agrees that drivers would benefit from instruction on the requirements set forth in the regulation. ABA recognizes that hours of service of drivers is certainly an important element of training for entry-level drivers, but it believes that fatigue management is an element of basic hours-of-service training and should not be treated as a separate item or section for training purposes. The NGWA believes training may already exist for hours-of-service compliance. They want to know whether FMCSA will be adopting different rules and application in this area, and if so, what would it be.

FMCSA Response: The FMCSA has shown that crashes occur as a result of CMV driver error caused by inattention. Inattention can be the result of driver fatigue. Hours-of-service training should teach fatigue prevention strategies and the causes of fatigue. Hours-of-service training will help the driver learn how to maintain good sleep hygiene. Training should include the new hours-of-service regulations for truck drivers. Motor carriers began complying with the new rule earlier this year.

The FMCSA agrees with the ABA that fatigue management should be a part of hours-of-service training. Today's rule lists fatigue management as one example of what should be included in hours-of-service training. The others would include: the hours a driver is allowed to drive and work each shift; the mandatory off-duty times between shift periods; record of duty status preparation and filing; and exceptions to the rules.

The FMCSA is unaware of the specific HOS training that the NGWA references in its comment. The NGWA, however, may use any training it believes complies with the intent of this final rule to teach interstate CMV drivers how to comply with the requirements of 49 CFR part 395.

Driver Wellness

Driver wellness is another entry-level training topic. Most commenters are strongly opposed to the addition of this topic. Specifically, commenters question how this topic falls under the auspices of DOT and FMCSA. Commenters argue that this topic oversteps the agency's bounds with respect to individual driver privacy. For example, CRMCA/CRPA states, ''while driver qualifications, hours of service, and whistle blower protection are valid areas of training, driver wellness, including personal behavior of diet and exercise, although important, is not within the purview of the FMCSA.'' NGWA asks, ''On what legal grounds do you [FMCSA] justify the invasion of individual privacy to regulate employees' non-working time?'' ABA criticizes the addition of this training, claiming that part 382 already mandates drug/alcohol training. Requiring further training in this area is repetitive and costly with no additional benefit. Training regarding the monitoring of specific medical conditions is best left to medical professionals.

The IBT supports the new training and comments that driver wellness is a very important issue to the IBT and its members. The IBT believes that driver welfare can be improved with training and instruction on the health threats faced by long-haul drivers, such as heart disease and diabetes, as well as the connection between those medical conditions and the potential for disqualification. The IBT explains that if drivers more fully understand both the health risks and the risk of job loss, many preventable diseases could potentially be avoided.

FMCSA Response: The agency's authority to require entry-level driver training on driver wellness can be found in 49 U.S.C. 31131, 31133, and 31136, in addition to ISTEA Sec. 4007(a). Sec. 31131(b)(3) states that Congress finds ''enhanced protection of the health of CMV operators is in the public interest'' and Sec. 31133(a) provides in relevant parts that the agency may:

(8) Prescribe recordkeeping and reporting requirements;

(9) Conduct or make contracts for studies, development, testing, evaluation, and training; and

(10) Perform other acts the Secretary considers appropriate.

Sec. 31136 specifically requires that the FMCSRs ensure that driving conditions do not impair the driver's physical condition.

The agency agrees with the IBT that driver welfare could be improved with training and instruction in many areas, including heart disease and diabetes. The purpose of driver wellness training is to provide medical information to the driver so that the driver can make informed life style choices. The agency is not attempting to regulate a driver's off-duty activities. FMCSA respects the fact that the driver may have his or her personal idea on the meaning of maintaining a healthy lifestyle. Moreover, this training does not require drivers to self disclose personal medical information to anyone. Nonetheless, FMCSA recognizes drivers who operate CMVs cross country may be away from their primary care providers a substantial part of the year and can benefit substantially from a heightened understanding of driver wellness issues.

Driver wellness topics could include stress, sleep apnea, how to maintain healthy blood cholesterol, blood pressure, and weight, as well as the importance of periodic health monitoring and testing, diet, and exercise. Many of these items could also be combined with the driver qualification training requirements that require a doctor to inquire about and test for numerous physical conditions. Driver wellness, however, should inform the driver what should be considered on a daily and monthly basis to maintain a healthy lifestyle. For example, in discussing topics about blood pressure, diet, and exercise, an employer may want to address the benefits of a healthy lifestyle, but also mention that the medical qualification requirements are written in terms of minimum standards for safe driving, including guidelines for blood pressure and diabetes mellitus.

The current requirement in § 382.601 to provide a policy on the misuse of alcohol and use of controlled substances does duplicate the proposed requirement in 380.503(a) to provide training in Part 382 drug and alcohol testing. Because training in drug and alcohol testing is already required in § 382.601, the FMCSA has removed that requirement from the required wellness training in today's final rule.

Whistleblower Protection

The last proposed entry-level training topic was whistleblower protection. Several commenters remark that there are other methods for drivers to learn about whistleblower protection besides instituting new training. For example, TCIA comments that training on this subject already exists in one form or another. Because the protection already exists by statute, TCIA also believes it is redundant to require that documentation of this training be placed in the driver qualification file. Brown-Line, Inc. comments that a statement read and signed during orientation would accomplish the same goal as training. ABA suggests that the whistleblower provision does not appear to fit into this rulemaking action.

The IBT, however, agrees that drivers should be made aware that whistleblower protections exist, and also be made aware of the exact nature and extent of the protections offered.

The NGWA believes training may already exist for OSHA (Occupational Safety and Health Administration) compliance with whistleblower protection. It wants to know whether FMCSA will be adopting different rules and application in this area, and if so, what would it be.

FMCSA Response: The agency agrees with the IBT that drivers should be aware that whistleblower protection exists, and also be made aware of the exact nature and extent of the protections offered. Training informs the driver and other employees of the right to question the safety practices of an employer without the employee's risk of losing a job or being subject to reprisals. The requirement allows an employer to use existing training if it meets the requirements of § 380.503. The agency believes that a statement read and signed by the employee may not give the employee the complete understanding that can come from training. Acceptable alternatives include training provided by a school and exposure of the entry-level driver to a professionally-prepared audio or video covering the required topics.

The FMCSA is unaware of any specific OSHA training that the NGWA refers to in its comment, other than the OSHA ''Truck and Bus Poster'' number 3113, available from OSHA. The NGWA, however, may use any training it believes complies with the intent of this final rule to teach interstate CMV drivers how to meet the whistleblower requirements of 49 U.S.C. 31105 and the Department of Labor's rules in 29 CFR part 1978 about how to send in a complaint blowing the whistle on a violator.

Answers to Questions About Other Training Areas

In the NPRM, FMCSA requested comments about entry-level training in other areas such as operation of fire extinguishers. ATA responds that motor carriers typically cover topics like fire extinguisher training in their general safety programs. Requiring such training is not necessary. However, NGWA supports fire extinguisher training.

FMCSA Response: FMCSA agrees with the ATA that many employers already cover fire extinguisher training in their general safety programs. Therefore, FMCSA has not mandated fire extinguisher training in this final rule.

Responsibility To Conduct Training

NGWA asks, ''Precisely what entity will be considered appropriate to conduct the training?'' This commenter asks whether the employer is required to fund the training done by an outside entity, or instead may conduct the training. It also asks whether training offered by other motor carrier outlets would be sufficient to fulfill the requirement.

TCIA considers it extremely important that their member companies have the ability to administer and implement the training. TCIA states that without this ability, this entire proposed mandate will become extremely cumbersome, and difficult to comply with. Therefore, TCIA requests that the authority to conduct the mandated training be retained by the employer.

FMCSA Response: This final rule allows the employer considerable latitude in determining what entity can provide the required training. Examples include the employer, a training school, or a class conducted by a consortium or association of employers. The question of who pays for the required training is an employer/employee issue. FMCSA has no ability to pay for training because the Congress did not appropriate funds for that purpose.

FMCSA believes most employers will bear the training costs for currently employed entry-level drivers. Most entry-level drivers, however, will probably bear most of the training costs after October 18, 2004, because the FMCSA believes most employers will not hire a driver unless the entry-level driver has had the training by a third party training provider's school.

Employer Recordkeeping Responsibilities—General

Under the rule, several provisions establish new recordkeeping responsibilities for employers. For example, employers must maintain a proof of training certificate. CVSA asks:

> What safeguards are available to prevent the falsification of the training certifications? How long are the third party training providers required to maintain records on their students? What is the reason for requiring third party trainers to provide the original and a copy to the driver? Why can the driver not be responsible for making their own copies?

FMCSA Response: The FMCSA has made specific changes to clarify today's final rule. The first change ensures that FMCSA places requirements only on employers and drivers. Another change is the training certificate now contains the name, address, and telephone number of the training provider. The final rule has removed the proposal for copies to be made by a specific entity or person. Civil penalties are available for violations of 49 CFR 390.35(b) and (c). The employer may contact the training provider if he or she has a question about the authenticity of the training certificate provided by the driver. FMCSA considers the civil penalties and the ability of the employer to contact the training provider to be sufficient safeguards against falsification.

Third party training providers are not subject to the jurisdiction of the agency. Therefore, the training providers may implement their own recordkeeping requirements. The FMCSA has changed the final rule to require employers to ensure that drivers obtain a training certificate if the driver meets the requirements to obtain an original certificate by a training provider.

Training Documents Should Follow Driver

Daecher and ABA both comment that training and the training certificate should follow the driver. If a driver completes training that meets the minimum requirements specified by the agency, he or she should not be required to be retrained by a subsequent employer. ABA explains that proper documentation of previous training should be provided to the new employer and should be maintained in the driver's qualification file. A employer may choose to retrain the driver at its discretion.

FMCSA Response: Today's final rule allows a subsequent employer to accept a copy of a training certificate from a previous employer or other training provider. The certificate or diploma must then be maintained in the driver's personnel or qualification file. The rule does not require the employer to retrain a driver who has received the training required by § 380.503 and who has a training certificate meeting the requirements of § 380.515.

Paperwork Burden/Recordkeeping

Four commenters address the paperwork and recordkeeping requirements in the proposed rule. NRMCA agrees that the four training subjects are valuable topics for entry-level drivers, but believes that ''requiring employers to record and file documentation of training on these subjects would only create more costs, paperwork and administrative burdens to employers in our industry.'' Similarly, a commenter involved in school bus transportation states that time spent on recordkeeping interferes with a company's ability to perform its duties.

NRMCA, PMAA, and CRMCA/CRPA object to the proposed requirement that training records be kept for three years after the driver's employment has ended. These commenters cite the high turnover rate in their industry and state that this requirement would create a burdensome amount of paperwork.

FMCSA Response: FMCSA is requiring the employer to record and file documentation of training on these subjects so that the employer may

demonstrate that the employer's entry-level drivers received the required training. The employers subject to this rule already must have driver qualification or personnel files to store the documents required by §§ 382.401, 383.31, 383.33, 383.35, and 391.51. Record retention is not new to employers subject to the FMCSRs. For example, the records required by § 382.401 are required to ''be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.'' *See* § 382.401(b)(4). In addition, the records required by § 391.51 are required to ''be retained for as long as a driver is employed by that motor carrier and for three years thereafter.'' *See* § 391.51(c). However, FMCSA has considered the comments of NRMCA, PMAA, and CRMCA/CRPA and its need to review records during a compliance review at an employer's principal place of business. The FMCSA believes it will only need the employers to maintain training certificate records for, at most, one year after the driver leaves the employer's operation.

Thus, FMCSA believes it is reasonable to change the record retention period to as long as the employer employs the driver and for one year thereafter. This will allow FMCSA to adequately enforce the requirement.

Training Certificates

CVSA suggests two changes to make the training certificate a more effective document. First, the proposed requirements should be stated as ''requirements in accordance with § 380.503.'' Second, CVSA suggests adding the driver's license number, the e-mail address of the training provider, and the date of issuance to the training certificate.

FMCSA Response: Section 380.515 now requires the training certificate to contain a statement that the driver has completed the training in accordance with § 380.503. The agency agrees that the date of issuance of the training certificate is important information to include on the training certificate and has added this requirement to the final rule. The agency disagrees that the driver license number should be added to the training certificate because the number may change if the driver transfers his or her CDL to another State. Likewise, the agency believes a training provider's email address is not necessary on the training certificate because it already contains the name, address, and telephone number of the training provider. The employer should have sufficient information to contact the training provider if he or she has a question about the authenticity of the training certificate. FMCSA believes it should prescribe only the minimum necessary to allow the employer to check the entry-level driver has received the training. The agency believes training providers will put this information on the form as a good business practice.

Effective Date and Compliance Date

In the NPRM, FMCSA proposed to make the final rule effective 60 days after the date of publication in the **Federal Register** and that employees who do not qualify for grandfathering must receive the required training within 90 days of the effective date. The CVSA, NGWA, NSTA, and McLane believe that two months will be an insufficient period of time to develop a compliant training curriculum, particularly if no new Model Curriculum is issued by FMCSA on or before the effective date of the rule. NSTA believes it will take six months to a year from the time the final rule is published for it to develop high-quality training materials and educate instructors to deliver new training for school bus drivers.

NSTA, NGWA, McLane, and TCA state that requiring drivers who are not grandfathered to receive the training within 90 days would strain the resources of many employers, depending on the time of year and the size and scope of the carrier's operations. These commenters request at least six months within which to comply with the training requirement.

TCIA requests that the grace period be no less than 90 days, stating that ''the ninety day window to conduct, document, and record the additional training laid out in this proposal is an absolute necessity.''

Daecher believes that a 90-day period is adequate for providing the required training.

FMCSA Response: The agency disagrees with TCIA, CVSA, NGWA, NSTA, and McLane that employers need more time to develop training materials. The agency believes training materials and courses on the four areas are commercially available today. Motorcoach and private contractor school bus drivers are subject to the same driver qualification file requirements as truck drivers, and the hours-of-service regulations for motorcoach and school bus drivers did not change earlier this year, as they did for truck drivers. Thus, the training commercial sources have developed for HOS and driver qualification are already available for the motorcoach industry and will not need to be further developed.

The agency also agrees with Daecher that a 90-day period for providing the training is adequate because only those CMV drivers that began operating in interstate commerce within the past 10 months are subject to training within this 90-day grace period. An entry-level driver that began driving CMVs in interstate commerce 10 months before today's final rule will have one-year's experience on the effective date of this rule, thereby subjecting the entry-level driver to this rule's training requirement. Such a driver must be trained within the 90-day grace period. Other entry-level drivers that began driving CMVs in interstate commerce less than 10 months before today's final rule up to the effective date will also have to have the training within the 90-day grace period. A ''student entry-level driver'' who will begin operating a CMV in interstate commerce after the effective date of this final rule July 21, 2004, must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

Enforcement

Three commenters ask how FMCSA plans to enforce the new requirements. NSWMA is concerned about the employer's responsibility for maintaining evidence of the training content if its drivers obtain the required training at a driver training school. The commenter asks whether the carrier must keep a copy of the training manual from each training school.

CVSA comments that a roadside enforcement officer would not have access to any document that indicates the driver is an entry-level driver. That information would only be available through a compliance review or safety audit.

FMCSA Response: FMCSA is not requiring the employer to keep a copy of the training manual from each training school. Agency field staff will verify driver entry-level training by reviewing the training certificate in the employer's possession during safety compliance reviews and new entrant safety audits of motor carrier records. In addition, today's final rule requirements will be added to the checks the agency's staff already does for compliance with hazardous material training requirements required by the Research and Special Programs Administration (RSPA) under 49 CFR part 172, subpart H (§§ 172.700 through 172.704) that are similar in form to what today's final rule requires. RSPA requires employers to

check the content with the training provider and documentation that each person has received the training.

Economic Analysis

All of the nine commenters that addressed the economic analysis raise concerns about the estimated costs and benefits in the NPRM and about the methodology used in estimating those costs and benefits.

Brown Line, Inc. says that mandated training of all new entrants would create an unnecessary burden on motor carriers. TDI/CDI believes that extending its training program hours ''would cause severe economic stress to trainees who are training usually away from home, as well as taking care of family.'' NSWMA, C. R. England, Inc., TCIA, UMA, NGWA, and CVSA, all raise questions about the methodology used by FMCSA in estimating the costs and benefits of the proposed rule. NSWMA says that FMCSA appears to have come up with numbers to meet a predetermined outcome instead of using data based on facts and science. ATA questions how FMCSA plans to evaluate the true impact of the regulation given its estimate that 285 crashes would have to be avoided each year for the rule to be beneficial. C. R. England raises numerous questions and concerns related to the economic evaluation. It questions what crash statistics were evaluated, the sample size, number of programs analyzed, how they were selected, and how the crashes were correlated with the training received. C. R. England states that its average cost per crash is at least 30 percent less than FMCSA's assumed cost.

C. R. England also questions the study cited to support the return on investment (ROI). England stated that the study cited to support the ROI (Schneider National, Inc.), indicated that driver training reduced accidents by 40 percent and used training specific to hazardous driving conditions. It believes this is not the type of training FMCSA proposed and therefore the study should not be used to support the ROI for the proposal. It also states that the ROI is based on the assumption that implementing this rule would deter between 285 and 315 truck-related crashes each year, but that it was never established that the type of training being required has any direct effect on these specific types of accidents. It states that auditing costs were not included in the ROI calculation.

C. R. England further states that if it was able to eliminate all avoidable crashes in a year it would only recover 8 to 13 percent of the cost of implementing the proposed training and that the funds expended could be used more effectively in other ways to prevent crashes.

UMA points out that because no motorcoach driver schools exist, and because only the largest motorcoach companies have in-house driver training programs, costs to its smaller members would be high. UMA states that there was a disconnect in the data used to justify inclusion of the motorcoach industry because that data included transit crashes and it is FMCSA's intent to exempt transit buses from the proposed rules.

TCIA says that because its member drivers are trained arborists their estimated hourly rate is much higher (in the $20 to 25 range) than the rates used by FMCSA, and further that TCIA members were not even considered in the NPRM's cost estimates.

CVSA says that FMCSA's hourly estimates are woefully inadequate because most training programs range from two to nine weeks depending on the category of training.

FMCSA Response: FMCSA believes that clarifying language added to this final rule will alleviate some of the specific concerns and questions raised by Brown Line, Inc., on mandating training for all new entrants that would create an unnecessary burden to carriers. Additionally, FMCSA revised its economic evaluation in developing the final rule (changes are documented in the section entitled, ''Summary of Costs and Benefits'' elsewhere in this document), and these changes, which affected the total costs and threshold analysis of the rule, should alleviate some concerns. Brown Line, Inc. did not offer specific examples or data on what it deems to be an unnecessary burden and as a result, FMCSA was unable to review its evaluation or consider specific changes in response. Likewise, the agency was unable to review its evaluation or consider specific changes in response to TDI/CDI comments on extended training program hours causing severe economic stress to trainees who are training away from home. TDI/CDI provided no supporting data or specific examples.

In response to CVSA's comment that FMCSA's hourly estimates are woefully inadequate because most training programs range from two to nine weeks, as well as TDI/CDI comments, FMCSA has stated that it is not mandating a specific number of training hours as part of the final rule. The 10 hours of additional training anticipated for entry-level truck, motorcoach, and school bus drivers, are estimates that were derived for the purposes of estimating the economic impacts. They were based on guidelines established by the PTDI for its instructors on the amount of time it suggests should be dedicated to teach this content and conversations with the FMCSA CDL program staff. It is conceivable that the actual time required for an individual employer or its trainer may vary according to individual operating circumstances.

The FMCSA stated in its evaluation that while ''the impact of truck drivers'' training is presumed to be positive,'' it also noted that ''a few studies have revealed ambiguous results'' with regard to the relationship between driver training and safety. Many stakeholder comments to the ANPRM stated or implied that the relationship is positive, and a number of case studies have estimated a positive relationship. However, given the ambiguity of past research results, the FMCSA approached the benefits analysis in terms of the number of crashes the proposed rule would have to deter to be cost beneficial (or what is sometimes referred to as ''threshold analysis'').

Responding to C. R. England's statement ''that its average cost per accident is at least 30 percent less than FMCSA's assumed cost,'' and TCIA's assertion that ''because its members'' drivers are trained arborists their estimated hourly rate is much higher (in the $20–25 range) than the rates used by FMCSA,'' the agency's preliminary regulatory evaluation used average crash cost statistics and wage rates taken from national-level studies and/or data sources. Specifically, the agency obtained crash cost data from a study entitled, ''Costs of Large Truck- and Bus-Involved Crashes,'' developed for FMCSA by Dr. Eduard Zaloshnja, Dr. Ted Miller, and Rebecca Spicer, which comprehensively estimated crash costs as a function of the medical, emergency services, property damage, lost productivity and pain, suffering, and quality of life-related costs associated with large truck and bus crashes. The Zaloshnja, Miller, and Spicer study estimated these costs for all large truck and bus crashes at a national level. In its NPRM evaluation, FMCSA estimated the anticipated impacts of its proposal to society, which includes the affected industry, state and local governments, and the traveling public. Given this focus, FMCSA usually initiates these types of evaluations at the national level, and generally uses, when available, average wage, crash, and crash cost statistics that represent the industry and society as a whole. As such, FMCSA is not able to estimate the impacts of a rule to very small subsets of the industry, such as a particular carrier or a unique segment, and is

unlikely to use estimates provided by a single organization in its calculations, unless the agency is unable to locate more nationally representative data. FMCSA does not dispute that C. R. England's crash costs may be 30 percent less than FMCSA's national level estimates or that TCIA's average wage rates may be higher than the industry as a whole.

Responding to UMA's statement that there was a disconnect in the data used to justify inclusion of the motorcoach industry because that data included transit crash data, again, FMCSA generally uses national-level crash cost estimates to evaluate the impacts of its rules on society. The crash cost estimates used in this evaluation are aggregated averages, and are not useable if FMCSA tries to exclude one particular subset of the larger industry. As such, the agency reports the average crash costs for crashes involving large trucks. Additionally, contrary to UMA's belief that the crash cost data were used to justify the motorcoach industry's inclusion in the rule, the crash cost data were simply used to estimate the level at which the rule would become cost-beneficial if implemented (based on the average cost of a large truck crash). FMCSA uses such an approach (sometimes referred to as threshold analysis) because of the above-noted uncertainty with trying to estimate specific, quantitative benefits of a training-related rule. This approach helps the reader and policy makers gain a broader understanding of how likely the rule is to be cost beneficial, given the number of crashes motor carriers would have to avoid. As noted above, the agency included the ''private sector'' portion of the motorcoach industry in its original training adequacy study, as well as in the NPRM and in the final rule, because the agency had interpreted that Congress intended to include only ''private sector efforts.''

Regulatory Flexibility Act—Small Business Concerns

The NGWA strongly disagrees with agency statements that its NPRM imposes a modest burden on small entities because it largely proscribes the actions of drivers rather than motor carriers. NGWA states the small business owner-operator is still the person doing the paperwork. While that individual is doing paperwork, he or she cannot be working safely at the drill site and creating revenue. Also, NGWA cites FMCSA's statement that there are no current state or tribal regulations that overlap with the proposal, asking ''How do you plan to ensure that if various states and tribes adopt similar statutes, they will be uniform with the federal regulations—avoiding the likelihood of misinterpretation by enforcement officers?'

UMA states that FMCSA's assumption in its Regulatory Flexibility analysis that only companies with six or fewer drivers are to be considered small businesses is in error. According to UMA, the Small Business Administration (SBA) considers motorcoach companies to be small based on the North American Industry Classification System (NAICS) coding. Under the NAICS codes (Subsector 485) a motorcoach company is considered to be a small business if its annual revenues are $6 million or less. For truck companies (Subsector 484) the threshold is significantly higher at $21.5 million. The number of employees is not used by the SBA in the determination for small business ''size.'' According to UMA, if the SBA definitions are incorporated into the NPRM size determination, the universe of businesses affected becomes much greater. UMA and the SBA have determined that as much as 95 percent of the motorcoach industry meets the SBA definition of ''small business.''

FMCSA Response: In reference to NGWA comments about the inclusion of employer paperwork costs, the FMCSA did estimate the ''opportunity cost'' of this rule to the driver (whether owner-operator or not). This is the cost of the driver/owner-operator participating in training, and thereby unable to use this time to generate revenue for the company. Traditional estimating techniques for opportunity cost base these on an hourly cost equal to the driver's wage rate. In the NPRM analysis, the agency used a national-level average wage rate for truck and bus drivers, including fringe benefits. The wage data make no distinction between those drivers who are owner-operators and those drivers working for an employer.

In response to the UMA comment, ''FMCSA's assumption in its Regulatory Flexibility analysis that only companies with 6 drivers or less are to be considered small businesses is in error,'' FMCSA has revised its regulatory flexibility analysis to evaluate the impact on companies by SBA's definition using annual revenue class. FMCSA presents the results elsewhere in today's final rule under the heading ''Regulatory Flexibility Act.''

The agency's authority to promulgate entry-level driver training requirements can be found in 49 U.S.C. 31131, 31133, and 31136, and Sec. 4007(a)(2) of ISTEA. States do not have the authority to preempt Federal safety regulation of employers engaged in interstate commerce. The agency recognizes the right of Indian tribes to promulgate training requirements for entry-level drivers of their tribe while these drivers are operating on Indian territory. However, these tribal entry-level drivers are subject to FMCSA jurisdiction if they operate in interstate commerce.

Miscellaneous

CVSA suggests that the proposed rules should be located in part 383, which contains other CDL driver related regulations. Locating these rules in a new part 380 will create confusion for both enforcement officials and industry, according to CVSA. CVSA also suggests correcting a typographical error in § 380.509 by changing ''the employer or potential employee'' to ''the employer or potential employer.''

FMCSA Response: FMCSA is correcting the typographical error. FMCSA, however, does not agree with the CVSA's comment about co-locating the training requirements in 49 CFR part 383. The training requirements are similar to the training requirements for drivers of longer combination vehicles that are located in 49 CFR part 380, and the agency believes this part should include all general driver training requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of E.O. 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to CMV safety and training of certain CMV drivers. The final rule has been reviewed by the Office of Management and Budget under E.O. 12866.

The agency is adding § 380.500 to specify when employers and drivers must comply with this final rule. The effective date cited in the **DATES** heading at the top of this document is the date that the final rule amendments affect the current Code of Federal Regulations published by the Government Printing Office. Employers and drivers may begin to comply with this final rule on or before the effective date for this final rule.

FMCSA is making the effective date 60 days after the date of publication in the **Federal Register**. Drivers who first

began operating a CMV in interstate commerce requiring a CDL between 10 months before today's final rule and five months after today's final rule must receive the training required no later than the end of the five-month period. The agency will be using the **Federal Register**'s date calculation method and the date may be slightly longer depending upon whether a weekend or Federal holiday occurs at the end of the 90-day period.

After the five-month period, a driver or potential driver having less than one year experience operating a CMV for which 49 CFR part 383 requires a CDL, must receive the training required by this subpart before operating a CMV defined in § 383.5 in interstate commerce.

Section 380.500 is only necessary for a limited period until all affected employers learn about the new rule, begin complying with it, and the 90-day grace period have passed. Therefore, the FMCSA has added language to the **DATES** section that will only make this section effective in the Code of Federal Regulations temporarily from the effective date through June 30, 2005. After June 30, 2005, the Government Printing Office will remove this section from the Code of Federal Regulations. Thus, the October 1, 2005, edition and all subsequent editions of the Code of Federal Regulations will not contain § 380.500.

Summary of Costs and Benefits

Background

This final rule is required by the Intermodal Surface Transportation Efficiency Act of 1991. The FMCSA proposed that entry-level commercial drivers receive mandatory training in the following content areas: driver qualifications, hours of service of drivers, driver wellness, and whistle blower rights. This final rule will require an applicant to complete entry-level driver training that includes these four content areas and furnish a copy of the training certificate to the employer in cases where someone other than the employer provides the training. An employer could not allow an entry-level driver to operate a CMV on the public road in interstate commerce unless the driver has received the required training and the employer receives the documentation of training. The one exception would be within the first three months of the rule, when existing drivers with 12 months of driving experience within the industry would be allowed 90 days from the effective date to acquire the mandated training.

The FMCSA has conducted a regulatory evaluation of this final rule in accordance with Executive Order 12866, ''Regulatory Planning and Review.'' The FMCSA estimates today's final rule to cost $26 million in the first year of implementation and $14 million annually thereafter (undiscounted). The higher costs in the first year are the result of this rule's impact on some existing drivers (*i.e.*, those with less than 12 months of experience), who must undertake the required training within the first 90 days of the rule's implementation. Total discounted costs of this rule are $121 million over 10 years. If the higher first-year costs are spread out evenly over the 10-year analysis period to achieve the same total discounted cost of $121 million, the average annual cost of the final rule is $16 million (undiscounted). The FMCSA derived this $16 million average annual undiscounted cost estimate so that it could estimate the number of crashes that would have to be avoided each year for the rule to be cost beneficial (*i.e.*, threshold analysis) and for use in the small business impact, or regulatory flexibility, analysis.

At an average cost per truck-related crash of $79,873 (including fatal, bodily injury, and property-damage-only crashes) in 2002 dollars, this final rule would have to prevent 201 truck-related crashes in each year of the analysis period to be cost-beneficial. For the 32,400 entry-level drivers that must receive training in any given year, the agency estimates this represents a 5-percent reduction in the anticipated crashes they would have had, if it assumes their crash risk is roughly equal to that of the industry average. Because the crash risk profile of entry-level drivers is likely to be significantly higher than the overall driver population (due to their lack of driving experience relative to all other drivers), it is reasonable to assume that less than a 5-percent reduction in crashes by this driver group would be required for this rule to be cost-beneficial. The 201 crashes represent five one-hundredths of one percent (or 0.05 percent) of the average total number of truck-related crashes reported annually (estimated at 445,000 in 1999 and 2000).

Analytical Revisions Between NPRM and Final Rule Stages

FMCSA notes here that its estimates of the costs associated with this rule have been revised since the issuance of the NPRM analysis. Specifically, while its estimates of the first year costs are higher ($26 million for the final rule versus $25 million in the NPRM), the total discounted costs associated with the rule are lower ($121 million for the final rule versus $173 million in the NPRM). The increase in first-year costs and decrease in total costs are due to several revisions made to the analysis as FMCSA obtained, or was presented with, additional or new information between the NPRM and final rule stages.

Regarding first-year costs, FMCSA initially failed to include the first-year costs associated with training existing drivers with less than 12 months of driving experience. Offsetting these additional costs, the agency removed the costs associated with training existing drivers with 12 to 24 months of experience previously affected by the ''grandfather'' clause as defined in the NPRM. Because the final rule eliminates this ''grandfather'' provision for drivers with 12 to 24 months of interstate commercial driving experience, FMCSA removed these costs from the analysis.

Regarding total costs, the agency had initially included in the analysis for the NPRM, the cost of training entry-level drivers operating both in interstate and intrastate commerce. Because the final rule specifies that only entry-level drivers operating in interstate commerce must comply with today's final rule, the agency adjusted downward its estimate of the number of entry-level drivers who must receive training under this final rule. Additionally, the final rule makes explicit that only non-governmental sector entities are subject to these entry-level training requirements, which resulted in a significant downward revision in the number of school bus drivers affected, because the vast majority work for local governments and the vast majority of school bus trips are intrastate in nature (*i.e.*, home-to-school and vice versa). This reduction in the number of affected drivers reduced the overall costs of the final rule. Additionally, the initial analysis included in the NPRM estimated the training that would be required for entry-level truck and motorcoach drivers at 10.5 hours. Because the final rule eliminated the instruction for alcohol and controlled substances testing, FMCSA reduced its estimate of the average number of training hours necessary to instruct entry-level drivers in the four content areas by one-half hour from 10.5 hours to 10 hours. Finally, because the entry-level training rule would apply only to school bus drivers employed by non-governmental entities (mostly contractors to local educational agencies), FMCSA increased the number of hours of training required for these drivers from 4.5 hours to 10 hours.

FMCSA provides a summary of costs in the next section. For a complete

discussion of the assumptions made, data used, and analysis performed in this regulatory evaluation, please refer to the docket, where the agency has placed a copy of the full regulatory evaluation.

Costs

The largest cost component of this rule is the cost to provide training to entry-level operators of trucks, school buses, and motorcoaches over 26,000 pounds GVWR. Training costs include both the direct cost to train drivers and the (opportunity) cost of drivers' time. The two key factors in estimating the training costs are the number of drivers who will need training and the training hours they will have to undertake.

The FMCSA estimates that employers or training entities will teach, on average, 10 hours of coursework to entry-level drivers of trucks, school buses, and motorcoaches in the four subject areas. FMCSA estimates the two content areas of driver qualifications and hours of service together would consume about 5.5 hours of training time (down from the 6 hours estimated in the NPRM when alcohol and drug testing training had been proposed). The driver wellness training would also consume about 4 hours, while FMCSA estimates coursework on whistle blower protection should consume about 30 minutes. FMCSA based the training hours estimate for all drivers on information provided in the instructor's guide for the Professional Truck Drivers Institute's (PTDI) accredited training courses, the instructor's guide for the Model Curriculum for motorcoach drivers, and discussions held with FMCSA CDL program staff in the Office of Safety Programs.

Using data from the Bureau of Labor Statistics (BLS), the total number of entry-level truck drivers entering the industry is estimated at 58,600 per year for the next 10 years, while the entry-level drivers required for growth and replacement for the school bus and motorcoach industry are estimated at 17,800 and 2,100 per year, respectively, also over the next 10 years. As is discussed below, only a certain percentage of these drivers must comply with today's final rule.

The BLS data make no distinction between those drivers operating in interstate commerce and those operating in intrastate commerce. Because the final rule specifies that its requirements apply only to entry-level drivers operating in interstate commerce, FMCSA adjusted the above estimates accordingly. Data obtained from the Motor Carrier Management Information System on the number of drivers operating in interstate commerce for FMCSA-regulated entities reveals that 78 percent of drivers were operating in interstate commerce, while 22 percent were operating in intrastate commerce. This is surely an overestimate of the number of drivers operating in interstate commerce as a percent of total drivers, because the MCMIS database only contains information on motor carriers required to register with FMCSA (generally those operating large CMVs in interstate commerce). Therefore, it does not adequately represent the population of motor carriers (and thus drivers) operating solely in intrastate commerce. Additionally, data from the 1997 Commodity Flow Survey indicate that 54 percent of shipments moved by for-hire truck (as measured in tons) traveled less than 50 miles (FMCSA presumes most of these shipments would be intrastate shipments). In the case of shipments moved by private trucks (again, as measured in tons), the percentage that traveled less than 50 miles was 79 percent. Given the above data, it is reasonable to assume that the ratio of interstate carriers to the total motor carrier population is closer to 50 percent, and that the breakdown of interstate drivers relative to the total driver population would also be closer to 50 percent. However, in cases where employers provide the training for their entry-level drivers, the FMCSA believes it is logical to assume that the motor carrier would plan to train a greater proportion of its entry-level drivers than that necessary to meet the short-term requirements of the regulation. Doing so provides the carrier with greater flexibility in scheduling freight and passenger movements, should the proportion of its interstate-based shipments and charters suddenly increase. At the same time, FMCSA believes that these carriers are highly unlikely to train 100 percent of their entry-level drivers to operate in interstate commerce if only half its revenue is generated by such business, because doing so would result in a sunk cost with little potential ROI. As such, FMCSA assumed in this analysis that on average carriers would train 75 percent of their entry-level truck and motorcoach drivers, thereby allowing them to operate in interstate commerce. Also, in using the 75-percent assumption, FMCSA ensures that it will not underestimate the number of entry-level truck and motorcoach drivers who will receive training as a result of this rule. With regard to whether the employer actually provides the training to entry-level drivers or the drivers themselves fund the training makes little difference from the perspective of this economic evaluation, because such costs represent transfers between one industry party and another. The goal of this regulatory evaluation is to estimate the impacts to society as a result of the rule's implementation. The group of industry participants to whom the costs apply is of lesser immediate concern (at least until the small business impact, or regulatory flexibility, analysis is performed). With regard to the training costs associated with this rule, it is likely that in some cases the employer will provide the training for its existing entry-level drivers and for those new drivers entering its workforce each year, whereas in other cases, employers might expect that new drivers who wish to work for them would have already acquired such training. With regard to owner-operators, they alone would most likely incur the full cost of training, given their dual roles as driver and company owner.

In estimating the number of entry-level school bus drivers affected by this rule, our March 24, 2004 (69 FR 13803) ANPRM withdrawal notice addressing interstate school bus operations of local educational agencies revealed that about one third of school bus drivers worked for non-governmental entities (or those that would be subject to this rule). However, not all of these drivers would be expected to receive training that would allow them to operate school buses in interstate commerce, because the number of non-home-to-school interstate trips by local education agencies represent less than 1 percent of all school district trips. And, as was the case with entry-level truck and motorcoach drivers, FMCSA assumed that a non-governmental employer would train one and one-half times more drivers than would be immediately required by this final rule, because this provides the employer with short-term flexibility in its operations, should the need for interstate school bus trips increase suddenly.

Therefore, in examining the total number of entry-level drivers potentially affected by this rule in any given year, FMCSA incorporates the adjustments discussed above. For entry-level truck drivers, a maximum of 43,950 (or 75 percent of 58,600) must comply, although a further adjustment is discussed below. For entry-level motorcoach drivers, the number is 1,575 (75 percent of 2,100). And for entry-level school bus drivers, the number is 85 (or one percent of the 32 percent of 17,800 entry-level drivers entering the industry each year, multiplied by 1.5).

Regarding entry-level truck drivers, an additional issue must be considered:

The number of entry-level truck drivers who graduate from training courses that already teach the content addressed under this final rule. In this analysis, FMCSA assumed that 30 percent of the applicable entry-level heavy truck drivers (or 13,185 of 43,950 total) would not need any additional training, as they are assumed to attend a PTDI or similar accredited training program (*i.e.*, PTDI accredited courses already include these content areas in their curriculum). FMCSA bases this assumption on information obtained regarding the number of accredited programs as a percent of total driver training programs. For the remaining 70 percent (or 30,765 entry-level truck drivers), FMCSA assumed that the potential drivers either receive training from a non-accredited training program or they receive informal training from the employers. Therefore, this 70 percent of entry-level truck drivers would require approximately 10 hours of training per driver on the four subject areas mentioned above. The total hours of training provided under the final rule for the entry-level heavy truck drivers is estimated at 307,650 hours per year. For those drivers who already receive some type of formal (yet non-accredited) employer-or third-party training, it is quite possible that employers (or third-party training providers) might reduce the amount of training time spent on other, non-required subject matter, so that the net increase in training per truck driver would be less than 10 hours. However, in the absence of specific information on the types of subject matter that training entities might omit from these training programs to offset the new training costs, FMCSA assumed a net increase of 10 hours for estimating the costs of this rule.

FMCSA assumes that the additional hours of training for an entry-level motorcoach driver would be 10 hours. The instructor's guide to the Model Curriculum for training motorcoach drivers includes 5 hours of logbook training but only about an hour on safety and wellness issues (including topics such as the correct lifting of heavy objects and identifying prohibited cargo). The FMCSA does not have information on the proportion of entry-level motorcoach drivers following training under the Model Curriculum. Therefore, the FMCSA estimates that 1,575 entry-level drivers of motorcoaches would require 10 hours of training on driver qualifications, hours of service for drivers, driver wellness, and whistle blower protection for a total of 15,750 hours of training per year.

Regarding entry-level school bus drivers working for non-governmental entities, this rulemaking will result in 10 hours of additional training for each entry-level driver. Therefore, for the 85 entry-level school bus drivers affected by this rule each year, FMCSA estimates a total of 850 hours of training per year.

To be conservative, FMCSA used a figure of $25 per hour of training in this analysis to calculate the direct costs of training (calculated via an average cost of $4,000 per training course divided by 4 weeks divided by 40 hours per week). This translates into $250 of direct training costs for a 10-hour course. The agency believes that this is a reasonable estimate of the total hourly cost to train drivers (whether or not the training is provided by the employer or a third party) because it falls well within the range of training cost estimates provided in comments to the ANPRM. In reality, employer-based training could very well be less than $25/hour in certain cases (*i.e.*, assuming new physical space is not leased by the employer to conduct the training, the training is self-directed by the driver, and/or the training is computer-based), but to be conservative the agency used the same figure whether the training was employer-or third party-based so as not to underestimate employer and/or driver costs. It is likely that some employers (and third-party providers) may take advantage of computer-based (*i.e.*, web-based, self-directed) training to provide entry-level drivers with the necessary instruction, since such training is generally less costly than more traditional classroom-style training in cases where many drivers must be trained. However, in the absence of estimates on the percentage of drivers that would likely utilize computer-based training methods, we assumed all would partake in more traditional (classroom-style) methods to obtain the necessary training.

To arrive at a truck driver's wage rate, FMCSA used a figure of $14.75 per hour, which is an average from three recent national wage/employment surveys (including the Current Population Survey). FMCSA added 31 percent to cover the cost of fringe benefits, an estimate developed in the Hours of Service of Drivers regulatory evaluation. (It is a weighted average of the fringe benefits for private and for-hire carriers, based on data from the ATA and the BLS.) The 31 percent increase brings total compensation to $19.32.

Regarding a motorcoach driver's wage, FMCSA used a figure of $9.98 per hour obtained from the BLS 2001 National Occupational Employment and Wage survey. This figure represents the 25th percentile wage estimate for an entry-level motorcoach driver and the agency used it because entry-level drivers generally earn at the low range of the industry wage standards. Again, 31 percent is added to cover the cost of fringe benefits, resulting in a total hourly wage estimate of $13.07 per hour.

Regarding a school bus driver's wage, FMCSA used a figure of $7.67 per hour obtained from the BLS 2001 National Occupational Employment and Wage survey. This figure represents the 25th percentile wage estimate for an entry-level school bus driver and the agency used it because entry-level drivers generally earn at the low range of the industry wage standards. Again, 31 percent is added to cover the cost of fringe benefits, resulting in a total hourly wage estimate of $10.05 per hour.

To get the total unit cost of training per hour (*i.e.*, including both direct training costs and the drivers' cost of time), FMCSA added the relevant estimate of the driver's wage rate for truck, school bus, and motorcoach drivers to the average hourly cost of training discussed earlier. For example, for an entry-level truck driver, the unit cost of training is $44.32 an hour ($19.32 of foregone driver wages plus $25 in actual training costs). For entry-level motorcoach drivers, it is $38.07 per hour ($13.07 of foregone driver wages plus $25 in actual training costs) and for entry-level school bus drivers, FMCSA estimates the total training cost at $35.05 per hour ($10.05 of foregone driver wages plus $25 in actual training costs).

Taking these hourly training costs for each type of entry-level driver (based on median wage rates and an average hourly cost of training) and applying them to the average 10 hours of training for each type of driver and the number of entry-level drivers in each category, the agency developed an estimate of total annual training costs of this rule.

To do so, FMCSA multiplied the hours of training required for each type of driver by the total number of drivers in that driver group per year by the applicable hourly wage rate to drivers in each group (including direct wage and costs of training). The result is an annual training cost of $14 million (after rounding) for the 32,400 entry-level truck, motorcoach, and school bus drivers affected by this rule.

Note however, that in the first year of the rule's implementation, currently employed drivers with less than 12 months of driving experience will be required to return for training in the four content areas specified above. Therefore, FMCSA expects an additional 32,400 drivers with less than

12 months of driving experience to return for training within 90 days of the rule's effective date. Because there is a 60-day period between today's final rule and its effective date, the percentage of drivers with 11 to 12 months of driving experience today (or 17 percent, assuming an equal distribution of new drivers each month) will become exempt from the rule's training requirements upon its effective date. Therefore, 27,000 entry-level drivers with 10 months or less of driving experience will be required to return for training within the first year of this rule. These 27,000 drivers represent 83 percent (or 10 of 12 months worth) of the original 32,400 entry-level drivers in the industry with less than 12 months of driving experience. The cost to train these 27,000 drivers is roughly $12 million in the first year (or 83 percent of the $14 million required to train all 32,400 new drivers in the first year of this rule). Note that in years 2 through 10 of the analysis period, the average annual training costs are just $14 million (undiscounted), or the amount required in training costs for 32,400 new drivers entering the industry in that year.

In addition to training costs for entry-level drivers, FMCSA estimated record-keeping costs for drivers or their employers who must file and retain a training certificate as proof that the training occurred. FMCSA had no data to determine what percentage of existing certificates would meet today's requirements, so it assumed all employers of entry-level drivers must receive and store a training certificate. The agency recognizes that in many cases a new training certificate may not have to be issued (if the existing certificate contains the necessary information regarding the supplemental training required in the four content areas discussed above). The Paperwork Reduction Act analysis for this rule estimates that the handling costs for each driver-training certificate is 10 minutes per year. Using the average hourly wage rates for new truck, motorcoach, and school bus drivers discussed above (including fringe benefits), and dividing by 60, FMCSA obtains a ''per minute'' wage rate with which to estimate record-keeping costs. To a per minute wage rate of $0.32, $0.17, and $0.22 for entry-level truck, school bus, and motorcoach drivers, respectively, FMCSA multiplied 10 minutes of record-keeping costs per year for the applicable 32,400 drivers entering the industry each year (30,765 truck, 1,575 motorcoach, and 85 school bus drivers). The result is an annual record-keeping cost of roughly $100,000 (undiscounted, after rounding). However, as was done for the training costs, the record issuance and filing costs of the rule will be 83 percent higher in the first year, given that there will be an additional 27,000 drivers with 10 months or less of driving experience for whom training certificates will be issued in the first year. (In addition to the 32,400 new drivers for whom FMCSA assumed employers or training entities must issue training certificates.) As a result, first-year record issuance and filing costs will equal almost $200,000, and annual record issuance and filing costs thereafter will be roughly $100,000 (undiscounted). Additionally, FMCSA expects that the record-keeping requirement will be multi-year in nature, because the final rule states that employers must maintain training certificate records for one year beyond the date the driver's employment ends with an employer. For this analysis, the agency assumed that employers would maintain each driver's training certificate an average of three years. As such, in years 2 through 10 of the analysis period, annual record retention costs of this final rule are roughly $300,000. Regardless of whether the agency assumed employers would retain entry-level driver training certificates two or three years as the average time, the total discounted costs of this rule did not change significantly.

The agency also estimated a marginal cost to inspect these entry-level driver-training certificates, which the agency estimated would occur as part of a motor carrier compliance review (because no new auditing programs were discussed in detail). However, because in recent years compliance reviews have been conducted on fewer than two percent (or 10,000 of 650,000) of all motor carriers in a given year, and the time to review entry-level driver training certificates would most likely be less than one minute per record, the additional costs associated with this activity were so low that they did not change the annual cost estimates after rounding.

Total first-year costs associated with this rule equal $26 million, with annual costs in years 2 through 10 equal to $14 million (undiscounted). Total discounted costs for this rule over the 10-year analysis period are $121 million.

Benefits

The total number of crashes potentially avoided by the final rule (or direct benefits) is difficult to quantify, largely because of the variability in study results about the impact of training on CMV crash reduction. This variability is most likely due to the wide variation in quality of driver training programs and the difficulty associated with estimating statistically the relationship between a single input (training) and an outcome (safety) when working with very large data sets. However, several case studies reveal that driver-training programs reduced crashes by two to 40 percent. Because of the relatively modest costs (estimated at an annual average of $16 million (undiscounted, after rounding), today's final rule would have to deter up to 201 truck-related crashes (fatal, injury-related, and property-damage-only crashes combined) each year in order to be cost beneficial (*i.e.*, where the rule's benefits exceed its costs).

To develop the estimate of the number of truck- and bus-related crashes that must be avoided each year for the rule to be cost beneficial, FMCSA used crash cost estimates from a recent study by Zaloshnja, *et al.*, which estimated the average cost of a crash involving a large truck (*i.e.*, those with more than 10,000 pounds gross vehicle weight) at $79,873 (in 2002 dollars). Dividing the average annual undiscounted costs of the rule ($16 million) by this average cost per truck-related crash ($79,873) allows us to arrive at the cost-beneficial threshold of 201 annual crashes. To be cost-beneficial, the rule must prevent 201 crashes by the 32,400 entry-level drivers affected by its provisions each year. For the 32,400 entry-level drivers FMCSA estimates must comply in any given year by this rule, this represents a 5-percent reduction in their crashes if FMCSA assumes their crash risk is roughly equal to that of the industry average. Because intuitively FMCSA knows that the crash risk profile of entry-level drivers is much higher than that for the overall driver population (as is the case with new versus experienced employers), FMCSA would anticipate that less than a 5-percent reduction in crashes by this driver group would be required for this rule to be cost-beneficial.

Additionally, FMCSA anticipates that the likely reduction in crashes may also result in carriers having lower insurance bills. The extent to which their premiums would fall is unknown, as the specific reduction in crashes is unknown. Because of the level of uncertainty, FMCSA did not attempt to estimate this benefit. While a reduction in insurance rates may be a benefit to a carrier, it is not a social benefit. The lower rates primarily reflect a monetized value of the reduction in

crash costs. In other words, premiums go down by the amount insurance claims have fallen, so including this as a benefit would be double counting. A reduction in the real cost of administering insurance would constitute a real net benefit. However, it is unlikely that any such reductions would be substantial.

The 201 crashes that must be avoided for the rule to be cost beneficial represent five one-hundredths of one percent (or 0.05 percent) of the average total number of truck-related crashes reported annually (estimated at 445,000 in 1999 and 2000).

A complete copy of the regulatory evaluation is in the public docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. In addition, DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. The Regulatory Flexibility Analysis must cover the following topics.

(1) A description of the reasons why the action by the agency is being considered.

(2) A succinct statement of the objectives of, and legal basis for, the final rule.

(3) A description, and where feasible, an estimate of the number of small entities to which the final rule would apply.

(4) A description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

(5) An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule.

Reason the Action Is Being Considered

Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 directed the Secretary of Transportation to undertake a rulemaking on the need for training for entry-level CMV drivers.

Objective and Legal Basis for This Action

The objective for this action is to reduce the number of crashes caused by entry-level CMV drivers. Congress was specifically concerned about the number of crashes caused by inadequate driver training, and believes that better training will reduce these types of crashes. As noted above, the legal basis for this rule is section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991.

Number of Small Entities to Which the Action Applies

This action applies to those small entities regulated by the FMCSA that hire entry-level truck, school bus, and motorcoach drivers. It is difficult to determine exactly how many small employers will be affected by this final rule, because it is not known year-to-year how many small employers on average would be likely to hire an entry-level driver. However, as of June 2003, there were 650,000 motor carriers on the FMCSA's Motor Carrier Management Information System (MCMIS) census file. This includes both for-hire and private motor carriers. The Small Business Administration (SBA) defines small businesses in the motor carrier industry based on thresholds for average annual revenues, below which SBA considers a motor carrier small. For trucking companies, the threshold is $21.5 million in annual sales, while for the motorcoach and related industries the threshold is $6 million in annual sales. Data from the 1997 Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 4841, ''General Freight Trucking,'' indicates that 99 percent of ''general freight'' trucking firms had less than $25 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $21.5 million for motor carriers). In the case of passenger (or motorcoach) carriers, the 1997 Economic Census NAICS Code 4855, ''Charter Bus Industry,'' indicates that 94 percent of charter bus firms had less than $5 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $6 million for passenger carriers). In the case of school bus service, the 1997 Economic Census NAICS Code 485410, ''School Bus Service,'' indicates that 96 percent of school bus service firms had less than $5 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $6 million for this group of carriers).

Because the FMCSA does not have annual sales data on private carriers, it assumes the revenue and operational characteristics of the private trucking firms are generally similar to those of the for-hire motor carriers. Regardless of which of the above percentages is used (99, 94, or 96 percent), FMCSA estimates that over 600,000 of the approximately 650,000 total motor carriers in the MCMIS Census File meet the definition of small businesses.

Recall that the agency estimated that employers would hire 32,400 entry-level drivers affected by this rule each year on average by the motor carrier industry. Also recall that total discounted compliance costs of this final rule were estimated at $121 million over the 10-year analysis period (2004–2013), or an average annual cost of $16 million (undiscounted) in compliance costs. The FMCSA divided the average annual cost of $16 million by the 32,400 entry-level drivers affected by the rule each year, and arrived at an average compliance cost of less than $500 per driver, whether the cost is incurred by drivers who are owner-operators or by the employer providing the training for each of its entry-level drivers). As stated above, FMCSA does not know how many small firms would be hiring one or more of these entry-level drivers in any given year, although with 87 percent of the industry employing six or fewer drivers, it is reasonable to assume that any single small trucking company would be hiring no more than two drivers per year on average. As such, each small carrier (whether an employer or owner-operator) would incur, on average, between $500 and $1000 in compliance costs per year to hire at most two entry-level drivers affected by this rule.

Data from the 1997 Economic Census, NAICS Code 4841 (General Freight Trucking), NAICS Code 4855 (Charter Bus Industry), and NAICS Code 4854101 (School Bus Service), are contained in the following three tables.

TABLE 1.—AVERAGE ANNUAL REVENUES OF SMALL TRUCKING FIRMS

[NAICS Code 4841, General Freight Trucking]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $25 million	*27,609	1.33	0.08

*99 percent of segment total.

TABLE 2.—AVERAGE ANNUAL REVENUES OF SMALL PASSENGER CARRIERS

[NAICS Code 4855, Charter Bus Industry]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $5 million	*1,022	0.98	0.10

*94 percent of segment total.

TABLE 3.—AVERAGE ANNUAL REVENUES OF SMALL PASSENGER FIRMS

[NAICS Code 4854101, School Bus Service]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $5 million	*2,397	0.60	0.17

*96 percent of segment total.

One criterion used by SBA to define a ''significant'' economic impact to small businesses is the impact on the revenues of entities within a particular sector. According to the SBA guidance ''The Regulatory Flexibility Act: an Implementation Guide for Federal Agencies,'' The Office of Advocacy, U.S. Small Business Administration, May 2003, *http://www.sba.gov/advo/laws/rfaguide.pdf*, ''if the cost of a proposed regulation exceeds one percent of the gross revenues of the entities in a particular sector'' then the regulation should be considered significant. The impact of this regulation on the average annual revenues of small firms in the general freight trucking, charter bus, and school bus industries is far less than one percent per year in all cases (0.08, 0.10, and 0.17 percent, respectively). Therefore, FMCSA certifies that this regulation will not have a significant impact on the small businesses subject to today's final rule.

Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action imposes some relatively minor record-keeping requirements on employers. The primary employer requirement is to verify drivers' eligibility before allowing them to operate a CMV in interstate commerce. In addition, employers must maintain a copy of the entry-level driver's training certificate in the driver's personnel or qualification file. Employers are currently required to maintain a personnel or qualification file for each driver, as outlined in § 391.51 of the FMCSRs. No special skills are required to verify eligibility to operate a CMV or to place a driver's training certificate in a personnel or qualification file.

Duplicative, Overlapping, or Conflicting Federal Rules

The FMCSA is not aware of any other rules that duplicate, overlap, or conflict with today's final rule.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of its regulatory actions on State, local, tribal governments, and the private sector. This rule does not impose an unfunded Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or the private sector of $100 million, adjusted for inflation, or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor or require through regulations. An analysis of this proposal was made by the FMCSA, and it has been determined that the final rule, when promulgated, would create a new collection of information requiring OMB's approval. This PRA section addresses the information collection burden for activities associated with training and certifying entry-level drivers.

Today's final rule defines an ''entry-level driver'' as a person with less than one-year's experience operating a CMV as defined by § 383.5 for any employer in interstate commerce from a period

that begins on July 20, 2003, and thereafter. Entry-level drivers fall into two categories—currently employed and student entry-level drivers—that must be trained in driver qualification, hours-of-service, driver wellness and whistle blower protection requirements before operating a CMV.

A ''currently employed entry-level driver'' is an individual who began operating a CMV in interstate commerce for any employer one year before the effective date of today's rule. Such a currently employed entry-level driver with up to one-year's worth of experience must obtain the basic training required by this rule no later than October 18, 2004, or 90 days after the effective date of this final rule. The FMCSA is permitting such drivers to operate a CMV during this 90-day delayed compliance period pending completion of the required training and certification. The rule will permit the motor carriers to train the currently employed entry-level drivers in shifts so that the employer does not have to cease interstate operations pending the completion of training. After the 90th day, October 18, 2004, all currently employed entry-level drivers must have received the required training before operating a CMV. Thus, after the 90-day delayed compliance period, there will be no more currently employed drivers subject to this rule.

A ''student entry-level driver'' is an individual who will begin operating a CMV in interstate commerce *after* the effective date of this final rule July 21, 2004, and must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

Upon completing the required minimum training for both currently employed and student entry-level drivers, the employer will give each entry-level driver it trains, or ensure the training provider gives each entry-level driver, a copy of the training certificate. Each employer that uses an entry-level driver that has been trained by a training provider other than the employer must obtain a copy of the training certificate from the driver or training provider. The employer must also retain and keep a copy of the training certificate in the entry-level driver's personnel file or qualification file so the employer can prove to the FMCSA that the driver has received the required minimum training.

The FMCSA estimates there are about 32,425 currently employed drivers [1] who need to be trained during the first 90 days after the rule is implemented. The agency also estimates there would be an annual burden to the motor carrier or other training entity to complete, photocopy, and file the training certification form for the currently employed entry-level driver that has been trained to operate a CMV. FMCSA estimates that this first-year information collection activity will take 10 minutes, resulting in an annual burden of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) times 10 minutes per motor carrier/training entity/60 minutes equals 5,404]. There will be no information collection burden for currently employed entry-level drivers in subsequent years. This final rule provides for no grandfathered or exempt drivers.

FMCSA estimates that in the first year and subsequent years, 32,425 student entry-level drivers [2] will need the minimum training required by this final rule. There would be an annual burden to the motor carrier or other training entity to complete, photocopy and file the certification form for these student entry-level drivers. FMCSA estimates that this information collection activity will take 10 minutes, resulting in a first year annual burden of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) times 10 minutes per motor carrier/training entity/60 minutes equals 5,404]; and in subsequent years of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) $\times$ 10 minutes per motor carrier/training entity/60 minutes equals 5,404].

Thus, the total first-year information collection burden associated with this final rule, when promulgated, is estimated to be 10,808 burden hours [5,404 burden hours for currently employed entry-level drivers plus 5,404 burden hours for student entry-level drivers equals 10,808 hours]. In subsequent years, there would be no information collection burden associated with currently employed entry-level drivers; and the burden would drop as it relates to student entry-level drivers to 5,404 burden hours.

OMB Control Number: 2126–NEW.

Title: Training Certification for Entry Level Commercial Motor Vehicle Operators.

Respondents: First year 64,850; subsequent years 32,425.

Estimated Annual Hour Burden for the Information Collection: First year 10,808 hours; and subsequent years 5,404 hours.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the collected information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

If you submit copies of your comments to the Office of Management and Budget concerning the information collection requirements of this document, your comments to OMB will be most useful if received at OMB by June 21, 2004. You should mail, hand deliver, or fax a copy of your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503, fax: (202) 395–6566.

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d. of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to the regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that this action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's

[1] This 32,425 estimate for currently employed entry-level drivers consists of 30,765 student truck drivers, 1,575 student motorcoach drivers and 85 student school bus drivers.

[2] FMCSA's 32,425 estimate for student entry-level driver estimate consists of 30,765 student truck drivers, 1,575 student motorcoach drivers and 85 student school bus drivers.

General conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. *See* 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total CMV mileage, change the time of day when, or how, CMVs operate, the routing of CMVs, or the CMV fleet-mix of motor carriers. This action merely establishes standards for minimum training requirements for entry-level operators of CMVs.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations)

The agency evaluated the environmental effects of the proposed action and alternatives in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with this rule. Environmental justice issues would be raised if there were a ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. The agency determined that there are no high and adverse impacts associated with the final rule. In addition, the agency analyzed the demographic makeup of the trucking industry, potentially affected, and determined that there will be no disproportionate impact on minority or low-income populations. This is based on the finding that low-income and minority populations are generally underrepresented in the CMV driver occupations.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk, or that an agency has reason to believe may disproportionately affect children, must include an evaluation of these effects on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its environmental health or safety effects on children. The agency evaluated the possible effects of the action and determined that it will not create disproportionate environmental health risks or safety risks to children.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number of 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects in 49 CFR Part 380

Driver training, Instructor requirements.

■ For the reasons stated in the preamble, FMCSA amends 49 CFR chapter III, subchapter B, part 380 (added at 69 FR 16732, March 30, 2004, and effective June 1, 2004) as set forth below:

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 1. The authority citation for this part is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31307, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); and 49 CFR 1.73.

■ 2. Part 380 is amended by adding a new subpart E to read as follows.

Subpart E—Entry-Level Driver Training Requirements

Sec.

Subpart E—Entry-Level Driver Training Requirements

§ 380.500 Compliance date for training requirements for entry-level drivers.

(a) Employers must ensure that each entry-level driver has received the training required by this subpart no later than July 20, 2004, except as provided in paragraph (b) of this section.

(b) Each employer must ensure that each entry-level driver who first began operating a CMV in interstate commerce requiring a CDL between July 20, 2003, and October 18, 2004, has had the required training no later than October 18, 2004.

§ 380.501 Applicability.

All entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of part 383 of this chapter must comply with the rules of this subpart, except drivers who are subject to the jurisdiction of the Federal Transit Administration or who are otherwise exempt under § 390.3(f) of this subchapter.

§ 380.502 Definitions.

(a) The definitions in part 383 of this chapter apply to this part, except where otherwise specifically noted.

(b) As used in this subpart:

Entry-level driver is a driver with less than one year of experience operating a CMV with a CDL in interstate commerce.

Entry-level driver training is training the CDL driver receives in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection as appropriate to the entry-level driver's current position in addition to passing the CDL test.

§ 380.503 Entry-level driver training requirements.

Entry-level driver training must include instruction addressing the following four areas:

(a) *Driver qualification requirements.* The Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (part 391, subparts B and E of this subchapter).

(b) *Hours of service of drivers.* The limitations on driving hours, the requirement to be off-duty for certain periods of time, record of duty status preparation, and exceptions (part 395 of this subchapter). Fatigue countermeasures as a means to avoid crashes.

(c) *Driver wellness.* Basic health maintenance including diet and

exercise. The importance of avoiding excessive use of alcohol.

(d) *Whistleblower protection.* The right of an employee to question the safety practices of an employer without the employee's risk of losing a job or being subject to reprisals simply for stating a safety concern (29 CFR part 1978).

§ 380.505 Proof of training.

An employer who uses an entry-level driver must ensure the driver has received a training certificate containing all the information contained in § 380.513 from the training provider.

§ 380.507 Driver responsibilities.

Each entry-level driver must receive training required by § 380.503.

§ 380.509 Employer responsibilities.

(a) Each employer must ensure each entry-level driver who first began operating a CMV requiring a CDL in interstate commerce after July 20, 2003, receives training required by § 380.503.

(b) Each employer must place a copy of the driver's training certificate in the driver's personnel or qualification file.

(c) All records required by this subpart shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

§ 380.511 Employer recordkeeping responsibilities.

The employer must keep the records specified in § 380.505 for as long as the employer employs the driver and for one year thereafter.

§ 380.513 Required information on the training certificate.

The training provider must provide a training certificate or diploma to the entry-level driver. If an employer is the training provider, the employer must provide a training certificate or diploma to the entry-level driver. The certificate or diploma must contain the following seven items of information:

(a) Date of certificate issuance.

(b) Name of training provider.

(c) Mailing address of training provider.

(d) Name of driver.

(e) A statement that the driver has completed training in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection requirements substantially in accordance with the following sentence:

I certify _____has completed training requirements set forth in the Federal Motor Carrier Safety Regulations for entry-level driver training in accordance with 49 CFR 380.503.

(f) The printed name of the person attesting that the driver has received the required training.

(g) The signature of the person attesting that the driver has received the required training.

Issued on: May 17, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–11475 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–EX–P