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Docket Management Facility
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE. West Building,
Ground Floor, Room W12-140
Washington D.C. 20590-0001

RE: Docket No. FMCSA-2013-0518

Knowledge Testing of New Entrant Motor Carrier, Freight Forwarders and Brokers

The California Construction Trucking Association (“CCTA”) submits these comments in response to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) publication of a Notice of public listening session(s) published in the Federal Register on March, 10, 2014 (79 FR 13378), Docket No. FMCSA-2013-0518 concerning a mandate in sections 32101 and 32916 of the Moving Ahead for Progress in the 21st Century Act (“MAP-21”) that requires all new applicants for authority from FMCSA be assessed on their knowledge of regulations.

The CCTA is the largest non-profit association of construction trucking firms in the U.S. Founded in 1941 and headquartered in Upland, California, the CCTA advocates on behalf of our majority small-business trucking members for sensible legislation and regulations. The CCTA is made up of four conferences, each designed to represent and provide for the distinctive needs of a particular segment of the trucking industry. The CCTA does operate a business services unit, *American Alliance Authority & Compliance* that assists new entrants with their operating authority needs including members of the association.

Our membership has a keen interest in the development of this MAP-21 mandated requirement so that it achieves the actual goal of improving highway safety. We have long supported a similar requirement in California as a pre-condition to being issued an intrastate Motor Carrier Permit. Working with the California Highway Patrol and other in-state organizations, we have been proactive supporters of bettering motor carrier safety and oversight to improve highway safety. We are concerned that FMCSA not allow this process to be used to unnecessarily inhibit the entry into the marketplace of New Entrants or dramatically increase cost of entry.

DISCUSSION:

FMCSA has asked a series of questions in the Federal Register Notice and we will respond to each one. However, we will be limiting our response to the aspect of new entrants seeking “for-hire” operating authority, leaving discussion on how to implement MAP-21 requirements on brokers to their industry representatives.

1- Should the exam be limited to the applicable FMCSA regulations or include both the regulations and industry best practices?

The CCTA believes FMCSA should narrowly focus any New Entrant proficiency exam on safety related issues – not test for business acumen. It appears that many in industry have assigned a meaning to

this question that may or may not be intended by the Agency. By “best practices” are we to infer the Agency is referencing “best practices related to safety management?” In section 32101(b) of MAP-21 concerning a written proficiency examination for a motor carrier, the language states, “The written proficiency examination shall test a person’s knowledge of applicable safety regulations, standards, and orders of the Federal government.” The word “standards” is not defined; nonetheless we do not believe congressional intent meant for the Agency to involve itself in deciding whether any applicant possesses a certain level of business knowledge as a pre-condition for granting operating authority – essentially picking “winners and losers.”

We are aware that some industry stakeholders make unsubstantiated claims stating a link to lack of business knowledge with poor safety outcomes. Those are self-serving statements to promote their business enterprises (and profit) not rooted in any scientific analysis that proves or disproves linkage. FMCSA should ignore self-proclamations of expertise in delivery of non-accredited business courses that imply positive safety outcomes that cannot be statistically measured or peer reviewed.

To expound further on the difficulty of designing and testing for “industry best practices” related to business knowledge, the Agency would then need to ask “what type of trucking?” Trucking is not all the same with everyone falling into the category of “long-haul, for-hire” operations where – arguably – the Agency might try to claim certain economic theory applies. There are too many variables in the economic equation for any “one-size-fits-all” course. FMCSA is not just regulating traditional freight hauling enterprises. For example; our members are typically paid by the hour – not the mile, they must comply with a wide array of state and federal prevailing wage laws that typical freight hauling operations have no clue exist, some do not even consider themselves a trucking enterprise since their primary business is actually on-site construction activities and they just happen to operate commercial motor vehicles in the furtherance of their primary business. There are many similar examples of the wide variations of trucking operations that would add immeasurably to the complexity of FMCSA’s task should the Agency decide to test business knowledge.

2- If the exam covers industry best practices, what specific best practices should be included on the exam?

Our response to this question is predicated on our belief that “best practices” should be defined to focus on “safety management” best practices. While there are many third-party service providers, typically retired law enforcement personnel with a back-ground in motor carrier safety, that aid start-ups with the necessary safety management protocols (e.g. driver qualification files, maintenance records, etc.), some trade associations, CCTA included, provide members with both the information, checklists, and forms necessary to operate in compliance with the regulations. Much of the provided information and forms are free-sourced from state and federal websites. Of course, many New Entrants are not members of an association nor choose to employ a safety consultant, so their knowledge is limited to what they think they know.

Motor carriers operating one-truck or thousands, have identical responsibilities to adhere to all regulations contained in the Federal Motor Carrier Safety Regulations (“FMCSR’s”). Our experience is that it is virtually impossible for anyone to intricately understand each and every regulation in a book that is over 600 pages in length. Plainly, people can’t know what they don’t know unless they possess a natural curiosity to read/investigate or are instructed. That problem becomes even more difficult to resolve when language issues are encountered. While it’s every motor carrier’s responsibility to understand all the regulations, there are clearly regulations deemed so important to know, that violations of those particular regulations have dire consequences for new motor carriers.

Subpart D of §385 – *New Entrant Safety Assurance Program* (“NESAP”) outlines FMCSA’s 18 month safety monitoring of new motor carriers. Since the NESAP is a critical component used by FMCSA and its state partners to measure new motor carriers basic safety management controls, we highly suggest that FMCSA focus knowledge testing requirements on the violations that can cause an automatic failure of

the NESAP audit and on violations or behaviors that can cause an expedited audit. While it is easy to claim a New Entrant should have knowledge of each and every regulation contained in the FMCSR's, that is impractical and would virtually assure a 100 percent failure rate in the examination. The Agency should develop a test that causes the New Entrant to learn those regulations and behaviors that they will be immediately held accountable for violating.

Language. FMCSA needs to make both materials and the proficiency test available in multiple languages. There is NO federal requirement that a company owner learn to speak English in accordance with §391.11(b) (2), that is a licensing only requirement and is not even universally enforced by the states. The goal is to elevate motor carrier safety, so it is imperative that FMCSA give everyone the tools to succeed. While this proposal will certainly stir acrimony in certain segments of the industry, we would like to note that the Commercial Vehicle Safety Alliance ("CVSA") makes the *North American Standard Out-of-Service Criteria* available in English, French, and Spanish recognizing the three dominant languages spoken in North America. The CCTA endeavors to make many educational materials available in Spanish as a business necessity.

3- What industry best practices manuals/publications are available for new entrants to study prior to taking a proficiency exam?

The CCTA is unaware of any publications privately produced that go beyond re-printing/formatting requirements found in Subpart D of §385. As part of CCTA's business services unit that assists New Entrants in securing operating authority, we have designed a manual that we give to every client to help them focus their start-up on those regulations that can cause them to fail their NESAP audit. All content is publicly sourced from state and federal websites. In many respects, our manual is similar to FMCSA's guide, Education & Technical Assistance Program – *A Motor Carrier's Guide to Improving Highway Safety*.

FMCSA should consider expanding its content and offerings on its newly designed website through a portal dedicated to New Entrants. There is much publicly available information, but it is not easy for even knowledgeable individuals to locate. Some third-party authority service providers will offer this publicly available information to their clients – but for exorbitant fees thus inhibiting the dissemination of necessary information to their clients.

In our view, it is an unconscionable practice for any authority third-party service provider to take significant amounts of money from an applicant for operating authority and either do nothing to inform them of the many requirements to legally operate, or demand hundreds of dollars in payment for what amounts to recycled content from government websites. How many New Entrant failures occur simply from not being told what they need to know? In our experience, that is likely a staggering number.

FMCSA may want to consider a process similar to that used in California and Arizona where third-party service providers acting on behalf of clients must register with each states Department of Motor Vehicles in order to conduct business with each state on behalf of clients. Third-party service providers themselves ought to be tested for competence in assisting New Entrants.

4- Are private-sector training courses available to teach new entrants industry best practices?

We are aware of some entities that offer business classes/seminars that will focus on safety management - somewhat. Many are tinged with opportunistic "political" grandstanding concerning rules and regulations as well as used for attempts to upsell other products and services. The measures of success from these types of programs are to be taken with a grain of salt. If someone wants to spend their own money taking these courses and believe they receive a value – wonderful. Not all New Entrants are new to the industry and in need of "training courses."

We have members that have been a registered motor carrier for decades - operating millions of miles (safely). They've simply been registered as an "intrastate" motor carrier and for whatever business reason choose to expand their activities to outside-the-state. We've assisted construction firms operating as private-carriers get their operating authority because they want to turn empty miles into revenue miles and they do not consider themselves a traditional "trucking company." They adhere to all the regulations, have safety departments and yet they should be grouped with a novice for training purposes?

If FMCSA is intent on including some focus on business acumen training, we highly recommend the Agency work with the U.S. Small Business Administration ("SBA") that actually has a reputation for meaningful, informed, and inexpensive workshops and training classes. The SBA is the CCTA's preferred referral for our members on everything from inquiries about Disadvantaged Business Enterprises, small-business loans, to classes on improving negotiating skills. The SBA conducts seminars and classes throughout the country on a daily basis. FMCSA including information about the SBA at a portal dedicated to New Entrant motor carriers could only be beneficial in at least bringing awareness to start-up businesses of excellent resources available to them from the government.

5- Should FMCSA limit the exam to company officers or employees responsible for safety and compliance, or should the Agency allow safety consultants to complete the exam on behalf of the new entrant?

This is perhaps the most vexing question asked by FMCSA. If testing is not made available in multiple languages then the answer is a safety consultant should be allowed to test for the New Entrant. However, regardless of language issues, allowing safety consultants to test can create a cottage industry of "paid for" safety consultant test takers who have no actual input on day-to-day safety operations of their client motor carriers. That would appear to defeat the entire purpose of proficiency testing.

6- Should the test results be linked to specific individuals identified on the registration application with a requirement that the new entrant entity have a "certified" individual who passed the exam in a position responsible for safety and compliance? And should the new entrant be required to update their registration information whenever these individuals are replaced or reassigned during the new entrant monitoring/oversight period?

The answer to both questions is yes. It is not uncommon for both a husband and wife to start up a company, often times as a LLC. When both parties are listed as members of the LLC and get operating authority, one of the parties is obligated to take supervisor training to comply with drug and alcohol testing regulations. Requiring a New Entrant to identify the person ultimately responsible for safety and compliance would appear not to seem too dissimilar from those requirements. If somebody leaves the company, somebody else needs to be designated. Obviously, a one-truck sole proprietor operation would name themselves as the responsible party. What does FMCSA mean when saying "certified?"

7- MAP-21 requires freight forwarders and brokers to renew their registration authority every 5 years. Should the new entrant testing rule require a new test (i.e., recertification test) to accompany the freight forwarder or broker renewal application?

The CCTA offer no opinion on requirements for freight forwarders and brokers.

8- Should the FMCSA develop and deliver the test directly to the new entrant applicants, or should the Agency rely on a private sector entity to handle the testing, with the results being transmitted directly to FMCSA?

FMCSA should absolutely develop the test itself based on input from stakeholders. Whether a private third-party entity is contracted to provide a portal for testing, the answer depends on what the costs would be to test. The process of taking a test should not become so unwieldy and expensive as to discourage entities from pursuing their operating authority.

FMCSA has shown with the Pre-Employment Screening Program that it can launch an effective, efficient, and relatively inexpensive partnership with a third-party to deliver on-line services. The CCTA's only other position regarding FMCSA contracting with a third-party is that the entity could not be an industry trade association or operating subsidiary of any trade association. We believe this would be a conflict of interest and place Personally Identifiable Information that could be used for recruitment/sales in the hands of what we view as competitors.

9- Do private sector companies or organizations currently conduct testing concerning industry best practices?

Not that we are aware of – whether one is speaking of business acumen testing or safety management. There are certainly all types of “surveys” on both on these issues, which are typically used to further political/regulatory agendas, or to use in marketing activities.

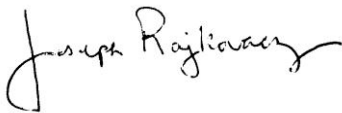
10- Should the testing be conducted at testing centers, or should FMCSA allow on-line testing?

Testing should be conducted on-line. This will create the need to develop security protocols to ensure as much as possible, that the individual taking the test is who has been identified as the person responsible for safety oversight. This should not be that difficult for FMCSA since the Agency currently uses credit card information to validate the identity of anyone applying for operating authority. If FMCSA should decide to allow third-party consultants to take a test for their client, we believe they should be registered with the Agency and limited to the number of carriers they can claim to represent. There is simply a physical limit to the number of motor carriers any single safety consultant can effectively claim to be overseeing.

It can be expected that FMCSA will hear comment from some entities who believe there is no “fool-proof” method to insure the proper individual takes the examination if done on-line. Instead, FMCSA will likely hear that New Entrants should go through private third-party testers. This type of reasoning can only have a profit motive at its core. As FMCSA is well aware, third-party testing in the issuance of commercial driver's licenses has not been without controversy with plenty of instances of fraud. FMCSA as part of the adoption of regulations requiring the taking of a proficiency exam could include regulatory language that any single violation related to “ghost” testing would result in an automatic revocation of operating authority. For most New Entrants with tens of thousands of dollars invested in their company, that penalty would be sufficient deterrence not to “game the system.”

CONCLUSION:

Unquestionably, requiring a proficiency test on select regulations could enhance the knowledge of many New Entrants of the regulations and their responsibilities. We believe strongly the test should be narrowly focused on provisions within NESAP so as to enhance both that program and New Entrant awareness of their responsibilities.



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