



A bold voice for transportation workers

October 6, 2017

Bivan R. Patnaik
Chief, Regulatory Development Division
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

**RE: Rulemaking Procedures Update
Docket No. FMCSA-2016-0341**

Dear Mr. Patnaik,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) regarding FMCSA's rulemaking procedures. By way of background, TTD consists of 32 affiliate unions across all modes of transportation, many of whom operate commercial motor vehicles and are therefore subject to FMCSA's regulations.¹ We therefore have a vested interest in the rulemaking.

This NPRM implements Section 5202 of the FAST Act, which requires that if FMCSA is planning on proposing a "major rule", it must first issue either an Advance Notice of Proposed Rulemaking (ANPRM) or proceed with a negotiated rulemaking process. The NPRM proposes to define a major rule as a rule that OMB finds will result in 1) an economic effect of \$100,000,000 or more, 2) a major increase in costs or prices for consumers, or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises. This definition is also found in statute at 5 USC 804.

As background, TTD opposed Section 5202 during the negotiation and passage of the FAST Act. This section and others which were not included in the final legislation represented a concerted effort to hamstring the regulatory process, and place barriers in the way of FMCSA's ability to promote reasonable safety rules.

¹ Attached is a complete list of TTD's 32 affiliate unions.

Transportation Trades Department, AFL-CIO

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Larry I. Willis, President / Greg Regan, Secretary-Treasurer

We continue to believe that it is a mistake to require FMCSA to require an ANPRM or a negotiated rulemaking for all major rules. There may be occasions when an ANPRM is appropriate, especially when the Agency is seeking to better understand the scope of a safety issue and does yet have enough information to offer a formal proposed rule. A negotiated rulemaking may also be advantageous when contentious issues can be resolved by bringing various stakeholders together to find consensus on addressing safety challenges identified by the Agency. However, requiring either approach in every instance of a major rule limits the flexibility of the Agency to respond forcefully to safety problems that threaten the commercial drivers that our unions represent. Further, there is often not the broad consensus necessary in a negotiated rulemaking to address some of the most difficult safety issues affecting the industry. For safety issues that are well understood and have long been debated and studied, a traditional proposed rulemaking may still be the best course for the Agency to follow.

We do understand this requirement is mandated by statute, and the Agency has limited discretion in promulgating this rule. However, we offer several recommendations on how FMCSA can proceed in order to have the most limited negative impact on its safety mission.

First, FMCSA must provide further clarification on its interpretation of the Title 5 definition of a major rule, specifically on the second and third clauses. As an example, the term “significant adverse effect” is vague, and subject to various interpretations. We are concerned that the ambiguity of these terms may result in the Agency abusing its discretion in order to unjustly delay critical safety regulations or worker protections. Therefore, FMCSA should clarify how it intends to interpret these terms.

Given that these requirements will further slow the rulemaking process, FMCSA should consider how it plans to ensure that major regulations are promulgated in a timely manner and without unreasonable delay. We note that an ANPRM clearly adds additional steps to promulgating a rule, and while some have argued that negotiated rulemakings can serve to speed up publication of a final rule, evidence is clear that these rulemakings actually take more time than the traditional rulemaking process.² To further complicate matters, as recently as 2014 it took the Office of Information and Regulatory Affairs (OIRA) well over 100 days to process its review of a major regulation.³ All told, the implementation of this rule may result in regulatory proceedings dragging out for unconscionably long periods of time, putting safety at risk.

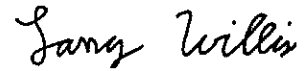
FMCSA is permitted to waive these additional requirements if the Agency finds good cause that they would be impracticable, unnecessary, or contrary to the public interest. As discussed, TTD maintains that in some cases, not progressing expeditiously with a safety regulation would be a clear example of a proceeding which fails to address the needs of the public. We therefore urge FMCSA to make judicious use of this waiver in order to ensure that when appropriate, much needed safety regulations are not delayed by a poorly designed legislative mandate.

² Steven J. Balla and John R. Wright, Consensual Rule Making and the Time It Takes to Develop Rules, University of Michigan.

³ Average Length of Review for Regulations, George Washington University Regulatory Studies Center.

TTD thanks FMCSA for the opportunity to comment on the NPRM, and looks forward to working with the Agency going forward.

Sincerely,

A handwritten signature in black ink that reads "Larry Willis". The signature is written in a cursive, flowing style.

Larry I. Willis
President



Transportation Trades Department, AFL-CIO
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TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD

