



**Bill Graves**  
**President and Chief Executive Officer**

January 25, 2013

The Honorable Anne Ferro  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

RE: *Hours of Service of Drivers*, Docket No. FMCSA-2004-19608

Dear Administrator Ferro:

In its final rule in the above-captioned rulemaking proceeding published on December 27, 2011, the Federal Motor Carrier Safety Administration (“FMCSA”) established a compliance effective date of July 1, 2013 for the provisions of the rule that are the subject of litigation currently pending before the United States Court of Appeal for the D.C. Circuit, Case Nos. 12-1092 and 12-1113. We write to request FMCSA delay the compliance effective date for those provisions until three months after the D.C. Circuit issues its decision in those cases. The requested delay will avoid potentially duplicative and unnecessary training, prevent confusion if the Court’s decision alters in any manner the final rule, and, given the anticipated short length of the delay, will have no measurable impact on highway safety.

In its final rule, FMCSA recognized that “industry and law enforcement may need extra time to train personnel and to adjust schedules and automated systems.” 76 Fed. Reg. 81,134, 81,162 (Dec. 27, 2011). Several commenters noted that software development, programming, and testing would take up to eighteen (18) months. *Id.* Much of that work is well underway. However, to preserve the effectiveness of training by linking it as closely as possible to the date the rule changes becomes effective for compliance purposes, motor carriers and law enforcement have yet to fully deploy their training resources. In our discussions with our respective members, that training is expected to begin three (3) months prior to the compliance effective date, consistent with comments in the record. *See* FMCSA-2004-19608-7040 (comments of Ohio Public Utility Commission) (“FMCSA should provide states with the necessary training and software updates at least three months prior to the rule’s effective date to . . . train their enforcement personnel.”); CVSA Petition for Reconsideration, Jan. 25, 2012 (“60 days is not enough time for the enforcement community to conduct the necessary training . . .”). FMCSA’s own schedule suggests training materials will not be delivered to the states until “between April and June of 2013.” *See* “Ask the Administrator,” *Guardian* (Vol. 19, Issue 4 2012).

It was our hope that the related litigation would have been decided far enough in advance for industry and the enforcement community to be certain of the rules on which to train their respective constituencies. Unfortunately, the court’s scheduling of oral argument for March 15,

**Good stuff.**



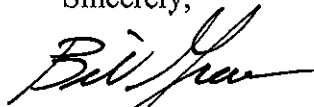
2013 makes that highly unlikely. However, the scheduling also suggests a decision is not very far off. It would be a waste of industry, FMCSA, and enforcement community resources to require training based on the final rule beginning in April of 2013 only to have that rule altered in some manner via the court's decision in mid-May or early June.

The requested delay would be entirely consistent with, and in furtherance of, the memorandum to heads of executive departments and agencies accompanying the President's Executive Order 13563, which states, "My Administration is firmly committed to eliminating . . . *unjustified* burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects." (emphasis added) We recognize that the parties to the pending litigation will differ on what the likely outcome will be, but the undeniable reality is that there is genuine uncertainty until the D.C. Circuit resolves the challenges. A delay of enforcement until three months after the court issues its decision will avoid the significant potential waste of moving forward while that uncertainty persists.

It is not our intent to forestall the effective compliance date any longer than necessary to meet the previously stated needs of the enforcement community and the industry. We recognize that our proposal hinges on the timing of the court's decision. We believe a decision sometime in June is likely, but if not, ATA, as a party to the litigation, would offer to join FMCSA in petitioning the court to expedite the decision.

We thank you in advance for your consideration of this request for commonsense accommodation and look forward to your prompt and timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Graves", with a stylized flourish extending from the end of the name.

Bill Graves