

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO NOTICE AND REQUEST FOR PUBLIC COMMENTS
DOCKET NO. FMCSA-2007-27748
MINIMUM TRAINING REQUIREMENTS FOR ENTRY-LEVEL
COMMERCIAL MOTOR VEHICLE OPERATORS

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INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the March 7, 2016 Notice and Request for Public Comments, published by the Federal Motor Carrier Safety Administration (“FMCSA”) at 81 Fed. Reg. 11944 (“Notice”). FMCSA seeks comments on its proposed new training standards for individuals applying for their first commercial driver’s license (“CDL”), an upgrade of their CDL (e.g., from Class B to Class A), or a new endorsement for their CDL, and on the standards applicable to all entities that intend to train those CDL drivers. NMFTA is a nonprofit membership organization headquartered at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Its membership is comprised of approximately 600 motor carriers operating in interstate, intrastate and foreign commerce, primarily specializing in the movement of less-than-truckload quantities of freight (LTL). NMFTA’s mission is to promote, advance and improve the welfare and interests of its members and the motor carrier industry in general. To this end, and pertinent here, NMFTA presents its members’ position in relevant judicial, regulatory and legislative proceedings.

NMFTA’s member carriers have authorized the filing of comments in this proceeding because they not only employ drivers with CDL licenses but, in many cases, currently offer in-house entry-level driver training as an incentive to encourage individuals considering truck driving as an occupation to join their work force. In general terms, these members support FMCSA’s efforts to improve trucking safety through a comprehensive entry-level driver-training curriculum. However, they want to be certain that the new regulatory scheme will not impede their ability to continue offering such in-house programs.

DISCUSSION

I. The trucking industry will benefit if motor carriers continue to provide in-house training for entry-level drivers

In the commentary accompanying the proposed rules, FMCSA acknowledges that “[s]ome motor carriers offer in-house training to entry-level drivers and would choose to become training providers under this NPRM” and includes “motor carriers offering in-house training to their employees or prospective employees” among the types of entities that could request inclusion in FMCSA’s Training Provider Registry (“Registry”) once the new program is operational. 81 Fed. Reg. at 11965. However, the proposed rules themselves do not expressly acknowledge the right of motor carriers to continue offering training under the new regulatory scheme. To the contrary, “Training provider” is defined (at § 380.605) as “an entity that is listed on the FMCSA Training Provider Registry, as required by subpart G of this part.” Subpart G (at § 380.703), in turn, lists the requirements that must be met by any party seeking to be listed on the Registry. These include following the prescribed FMCSA curriculum, utilizing facilities, vehicles, and instructors that meet the criteria in that Subpart, allowing FMCSA to audit their training program for rules compliance, attesting to compliance in a Training Provider Identification Report, and submitting to FMCSA and retaining records of successful course completion. Subpart G (at § 380.707) also sets forth general rules applicable to the course of instruction to be offered by approved training providers. Yet all of these provisions fail to specifically identify the types of entities that might qualify as training providers.

NMFTA would ask that the proposed rule be modified to expressly recognize the right of motor carriers to continue to act as training providers under the new rules. As

noted in FMCSA's Regulatory Impact Analysis ("RIA") supporting the NPRM, FMCSA has estimated based on 2014 data that approximately 2,500 motor carriers train three or fewer entry-level drivers annually, while an additional 400 train more than that amount. RIA, pp. 51-52, Table 13. FMCSA further estimates that seven percent of new Class A CDL applicants receive training from their employer (*id.* at p.57), which in many cases is a motor carrier. These programs should not only continue but should be encouraged for carriers of all sizes because, as discussed below, motor carrier in-house training has several advantages over the institutional training programs offered by schools.

First, motor carriers have been providing driver training for decades. The instructors in these in-house programs are typically older, experienced drivers who have driven hundreds of thousands if not millions of accident free miles during decades spent on the road. These drivers know well and are conversant with all applicable laws and regulations, as well as the skills needed to safely and efficiently operate a large truck, from their years of on-the-job experience. This makes them well qualified to teach entry-level drivers the skills necessary to drive a large truck and/or tractor-trailer combination. With their wealth of practical information, carriers and their instructors already tend to provide the comprehensive training that would result in the issuance and submission to FMCSA of the training certificates required under the proposed rules, and will easily be able to adjust their programs to incorporate anything in the FMCSA curriculum that is not currently offered.

Second, because motor carriers are ordinarily training drivers who will then be employed in their own transportation operations, they have a direct and vested interest in training those individuals well. The carriers know that poorly trained drivers are likely to

cause safety compliance and liability issues and create other problems for them in the future. Consequently, instructors in carrier training programs are expected to go and commonly do go beyond the bare minimum provision of information and skills needed to get a CDL. Indeed, they stress the importance of observing all the governing rules and to provide real-world information and driving techniques that will make them safer drivers. The direct motivation to offer the best possible training results in training that is just as thorough, if not more thorough, than that offered by schools that churn out hundreds of newly-trained drivers annually with whom they will not have any future relationship. *See* RIA, p.55, Table 14 (showing number of drivers trained by different types of entities).

Third, the trucking industry has been experiencing a serious driver shortage for some time now. Older drivers are leaving the profession in greater numbers than new drivers are entering the profession. Many potential new drivers are deterred from trucking by the high up-front cost of CDL training. FMCSA has estimated that the average cost for Class A driver training is \$3,700. RIA, p.56, Table 15. The majority of advertised training programs found on the internet try to get around this by attracting students to their programs without revealing their actual tuition, fees, and other costs. However, available information shows many programs that cost far more than the FMCSA average. *See, e.g.*, www.education.costhelper.com/truck-driver-school.html (up to \$7,000); www.pdacdl.com/?page_id=104 (\$5,460); www.alltrucking.com/schools/maryland/truck-driving (average more than \$5,000); www.cdstruckschool.com/cdl-classes-and-fees (\$4,415); www.check-ride.com/what-to-expect/tuition-financial-aid (\$4,195). Faced with these daunting costs, individuals are far more likely to consider trucking as a profession if training is included as part of an employment package.

Equally important, motor carriers are more likely to take on entry-level drivers if they don't have to pay an independent school thousands of dollars in tuition to train those new recruits. This is especially so because carriers don't simply hire a new CDL driver and put him on the road, notwithstanding the formal training. Every new driver must learn an employer's unique way of dealing with day-to-day trucking related issues. How to interact with shippers and receivers, handle alleged shortages or damage claims, and process trip paperwork, are just a few of the many subjects entry-level drivers must learn about before they take to the road in addition to the mandatory subjects in the FMCSA curriculum. Some of these matters are subject to government rules and regulation as well as company policy.

If an entry-level driver gets basic training from an independent school, he or she is effectively required to complete two separate driver-training programs. First, he takes a costly FMCSA compliant program at an independent driver training school. Second, he completes a carrier's in-house orientation program to ensure that he has truly gained the skills and absorbed the information imparted by the school and that trains him to meet the carrier's specific operations and expectations. It is far more efficient for a carrier to provide all of the up-front driver training at one time and place.

In recognition of the importance of motor carrier in-house training programs to the industry overall, NMFTA would suggest that the definition of "Training Providers" in Section 380.605 be amended to include a listing of the types of entities that offer training programs. Borrowing the list of entities provided in the NPRM (81 Fed. Reg. at 11965) that offer such training, NMFTA proposes the following modified language, with the addition in italics.

Training provider means an entity, *including training schools, educational institutions, motor carriers offering in-house training to their employees or prospective employees, local governments or school districts providing training to transit agency or school bus driver employees*, that is listed on the FMCSA Training Provider Registry, as required by subpart G of this part.

II. Self-certification subject to FMCSA audit is the most efficient and effective way to enforce the rules

In a 2007 Notice of Proposed Rulemaking, FMCSA proposed allowing motor carriers to continue offering entry-level driver training. 72 Fed. Reg. 73226, 73234 (Dec. 26, 2007). However, it also required in-house training programs, like the programs offered by independent driving schools, to be accredited by an agency recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation. *Id.* It found such third-party accreditation to be necessary, even though it recognized that the accreditation process could impose a substantial burden on providers insofar as it often takes years to navigate the accreditation process. *Id.* Commenters in that earlier proceeding noted that accreditation is costly and would not necessarily result in better entry-level driver training programs because accreditation is not program specific. 81 Fed. Reg. at 11952. Accrediting agencies are not even familiar even with the trucking industry, yet alone the particular information and skills that need to be learned by an entry-level driver. *Id.*

Recognizing the validity of these concerns, in developing the current proposal the ELDTAC rejected third-party accreditation and instead recommended a self-certification of compliance requirement that is included in the NPRM. 81 Fed. Reg. at 11958. NMFTA strongly supports self-certification. While self-certification processes are commonly viewed as suspect, in this case the FMCSA has proposed adequate safeguards

to ensure that it is meaningful. First, the proposed Identification Report containing the certification, which is the document that a transportation provider submits to FMCSA in order to be listed on the Training Provider Registry, goes beyond a simple attestation of compliance with all applicable rules. It also requires both a narrative description of various aspects of the training program and specific details about the program such as the average hours of classroom, behind-the-wheel range time, and public road time. *See* ELDTAC Federal Minimum Standards for CMV Entry-Level Driver Training Written Statement, Annex 9 (June 5, 2015) (“ELDTAC Standards, Annex 9”). The proposed rules also subject training providers to on-site audits or investigations by FMCSA and require them, upon request, to provide FMCSA with documentation confirming compliance with the rules. 81 Fed. Reg. at 11958, 11961, 11982 (at §380.703). This obligation and the potential adverse consequences of running a non-compliant program are clearly reflected in the following provisions of the detailed self-certification:

I agree to allow FMCSA or its representatives to: visit my training facilities and observe theory, range and road instruction; interview current and former students concerning the quality of the training provided; and review and copy records that I am required to maintain. I understand that failure to deliver [compliant] training, to meet Eligibility Requirements, or to allow FMCSA or its representatives to have access to my facilities, students and records could result in the Agency removing my company from the Registry of Training Providers.

ELDTAC Standards, Annex 9. Removal from the Registry would mean that the involved motor carrier could no longer provide entry-level driver training. Under these circumstances, self-certification should be just as effective, if not more effective, in ensuring compliant and high-quality driver training than accreditation by an independent agency that has no substantive knowledge regarding CDLs, applicable FMCSA

regulations, or any other aspect of the trucking industry. Accordingly, the self-certification should be retained in the final rule in lieu of third-party accreditation.

Respectfully submitted,



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