



A bold voice for transportation workers

April 6, 2016

Mr. Richard Clemente
Driver and Carrier Operations Division
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators
Notice of Proposed Rulemaking
Federal Motor Carrier Safety Administration
Docket No. FMCSA-2007-27748
RIN 2126-AB66**

Dear Mr. Clemente,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to comment on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators. By way of background, TTD consists of 32 affiliated unions that represent workers in all modes of transportation, including those whose members maintain a commercial driver's license (CDL) for employment.¹ We therefore have a vested interest in this rulemaking.

The workers represented by TTD unions include CDL holders in nearly every mode of transportation: from over-the-road and school bus drivers and construction workers, to transit operators, and railroad and longshore workers. TTD supports FMCSA's efforts to implement the MAP-21 requirements concerning entry level driver training, and to ensure that drivers who hold CDLs have the appropriate training to operate a commercial motor vehicle (CMV) safely. While we support this work, we have concerns with the burden such training places on rail workers who hold CDLs but operate CMVs infrequently and how this rule applies to construction workers who operate specialized CMVs.

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

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer

In this NPRM, FMCSA implements Section 32304 of MAP-21 to establish new minimum training requirements for commercial vehicle drivers. In particular, the proposal outlines required curriculum that all entry level drivers will have to complete in order to receive a Class A or B CDL, or a Passenger, School Bus, or Hazmat endorsement. FMCSA also proposes a refresher curriculum for drivers who have been disqualified and are seeking to reinstate their CDL. These curricula consist of both theory (classroom) and behind the wheel (BTW) elements. Finally, the NPRM proposes requirements for both training providers and instructors. The proposal represents the conclusion of a negotiated rulemaking by the Entry Level Driver Training Advisory Committee (ELDTAC), which included representatives from TTD affiliate unions.

TTD supports FMCSA's proposed rule, specifically several elements of the Class A and B curriculum, the inclusion of school bus curriculum, and the continued ability for school districts and labor-management apprenticeship programs to offer training. TTD is also in favor of several provisions FMCSA adopts in this NPRM which differ slightly from ELDTAC's recommendation, including the requirement that all training providers must assess student competency through a written assessment and how safety violations are handled. We also believe the rulemaking can be improved with regard to the availability of training options, passenger endorsement curriculum and the refresher training program. Each of these issues are described at length below.

Class A and B Curriculum

TTD specifically commends FMCSA for the inclusion of curriculum items related to hours of service requirements, fatigue and wellness awareness and whistleblower and coercion protections. By including these items, FMCSA has taken steps to make certain that in addition to the technical requirements of driving a CMV, drivers will be made aware of issues pertaining to their well-being, health, and legal protections. TTD has long advocated for issues like whistleblower protections and strong enforcement of hours of service regulations, and we believe that requiring entry level training to include these elements will have a positive effect on the safety and welfare of drivers.

However, TTD is concerned with the burden this training may place on employees in certain modes. For example, some rail workers are required to hold Class A CDLs to operate specialized CMVs, but operate them infrequently, if at all. Similarly, the Class A and B curriculums fail to take into account the unique training needs of employees who operate CMVs exclusively within the construction industry. Therefore, we recommend that FMCSA consider including flexibility in training requirement for these employees.

School Bus Curriculum

In the NPRM, FMCSA notes that Section 32304 of MAP-21 mandated training for both Passenger and Hazmat endorsements but did not include a similar requirement for the School Bus endorsement. We agree with FMCSA's position that the inclusion of a School Bus curriculum is

consistent with the MAP-21 mandate and that the addition is a positive step in promoting safety. While school bus drivers must also maintain a Passenger endorsement, school bus-specific training will help ensure that entry level school bus drivers can operate their vehicles at the highest level of safety.

Training Providers

To implement the rulemaking, FMCSA proposes creating a Training Provider Registry (TPR), which will list all entities that are certified to administer entry level driver training. The agency also specifically identifies several entities that are eligible to become training providers. TTD strongly supports recognition of apprenticeship programs and school districts as entities which will be able to become listed. Many CMV drivers represented by TTD unions currently participate in apprenticeship programs that offer rigorous classroom and BTW training that ensures only drivers who have proven they can operate a CMV safely are hired. Similarly, school bus drivers regularly complete strong training programs offered by school districts that ensure prospective drivers understand the unique demands of driving a school bus.

When registering on the TPR, entities will be required to submit a Training Provider Identification (TPI) form. This form was adopted by ELDTAC, and FMCSA has stated that it will address it and other documentation in post-rule guidance. Currently, under a section entitled “Third Party Quality Control,” the form requests that providers list whether or not the training location is a member of a third-party certification or accreditation organization, of which it includes joint labor-management training programs and government oversight in addition to several industry training programs. We appreciate the recognition of the strength of joint labor-management training programs through their inclusion on this list. We request that if FMCSA maintains the “Third Party Quality Control” section of the form in its post-rule guidance that it continues to include labor-management training programs as entities which can provide quality control.²

TTD also commends FMCSA for the changes the Agency made to ELDTAC’s recommendations concerning training providers that certify three or fewer drivers per year. ELDTAC recommended that these providers not be required to conduct written assessments of drivers on the theory curriculum. We agree with FMCSA’s decision to require that all providers, regardless of size, conduct written assessments. While TTD understands the limitations of smaller providers, it is important that drivers have received equivalent training prior to attaining their CDL. Maintaining this change in the final rule will help ensure that training providers are offering high quality training.

Additionally, it is important that FMCSA take steps to hold training providers of all sizes accountable for the programs they offer. Drivers who do not have access to employer-provided training will have to seek training from providers that could be driven more by profit than quality

² TTD affiliate IUOE explains this request at length in the comments it separately filed to this NPRM.

training. We are concerned for the consequences to drivers whose training provider becomes decertified before the driver has completed training, as well as for drivers who complete training from a provider which is later found to have committed fraud or other criminal behavior in which the driver did not knowingly participate. In these situations a driver may have spent time and money on training which they cannot then complete with the same provider and may not be transferable, or been issued certificates FMCSA retroactively considers invalid. FMCSA must ensure accountability of providers to safeguard drivers from these possibilities.

FMCSA Sponsored Online Training

The NPRM currently allows for providers to offer online training for the theory (classroom) component of the curricula, and FMCSA correctly notes that online training provides a lower cost and less time consuming alternative. Given that FMCSA believes this to be the case, TTD recommends that FMCSA develop its own standardized online training curriculum and testing procedures. By offering this option, FMCSA can increase access to training, and ensure drivers have access to quality training. Additionally, this offering would provide flexibility to providers who struggle with or are unable to retain theory instructors. Finally, the availability of online training would reduce the reliance on profit-driven training providers.³

Violations Resulting in Disqualification

TTD also supports the proposed set of safety violations that would both require a driver to take a refresher course and disqualify an instructor from teaching BTW curriculum. FMCSA proposes that the violations that would trigger the need for a refresher course or disqualification from teaching would be violations of the safety regulations contained in §383.51(b) through (e). This is as opposed to the ELDTAC recommendation which stated these outcomes could occur from disqualifications from “highway safety related reasons.” The proposed set of violations represent a clear guide for drivers and instructors. Additionally, the proposed set of violations avoids placing drivers in a situation in which they may be required to take a refresher course because of circumstances beyond their control, for example, disqualifications stemming from the failure of an employer to properly maintain a vehicle.

Applicability of Refresher Training

In the preamble to the document, FMCSA states that refresher training is necessary for CDL holders who have been disqualified from operating a CMV or “have either never learned the necessary skills for safe operation of a CMV or have allowed those skills to deteriorate to the point where they have no greater mastery of operational safety than individuals who have not previously driven a CMV.”⁴ However, the NPRM does not address drivers who failed to initially learn these

³ As with the Third Party Quality Control issue discussed above, TTD affiliate IUOE explains this request at length in the comments it separately filed to this NPRM.

⁴ Federal Motor Carrier Safety Administration, Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators. March 7, 2016, 81 FR 11943 page 11950.

skills or whose skills have deteriorated. The language of the proposed rule explicitly requires only drivers who have been disqualified due to safety violations to complete a refresher training course. It is important for drivers to understand the conditions under which they may have to take a refresher course, and to include the items mentioned above creates unnecessary ambiguity. To maintain consistency in the purpose of the refresher program, the extraneous language in the preamble should be deleted.

Passenger Curriculum Requirements

TTD expresses serious concern with the element of Passenger endorsement curriculum relating to dangerous materials. The NPRM proposes that classroom curriculum for the Passenger endorsement include training in identifying hazardous items, including explosives and radioactive material, and removing them when appropriate. We express doubt over the efficacy of this training given current industry standards. Generally, individuals and their baggage are not screened when boarding a bus, and as such it is unclear when a driver would be in a position to identify these hazardous materials. Because of this, TTD is concerned that drivers may be held liable for failing to detect material that they never had an opportunity to identify. Finally, TTD is concerned with the health risks to drivers associated with handling some of the mentioned materials. As passenger vehicle drivers are not necessarily hazmat trained, FMCSA should remove the requirement that drivers be taught to remove certain materials. If FMCSA intends to include the curriculum item, the Agency should make clear how the training fits within the current realities of passenger and luggage screening.

Ensuring that drivers seeking Class A and B CDLs, P, S, or H endorsements, or a reinstatement of their license have the appropriate training to drive safely, and with knowledge of available protections is of paramount importance. We are encouraged by FMCSA's efforts to adopt the ELDTAC proposal and enact minimum training requirements. TTD thanks FMCSA for the inclusion of transportation labor in the negotiated rulemaking process and the opportunity to ensure that workers' voices are heard.

We appreciate the opportunity to comment on this NPRM, and we look forward to working with the Agency to continue to improve on-road safety for CMV drivers and other motorists.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, looping flourish at the end.

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

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)*