

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
DOCKET NO. FMCSA – 2007-27748, RIN 2126-AB06

Comments of the American Bus Association

On the Notice of Proposed Rulemaking

Minimum Training Requirements
For Entry-Level Commercial Motor Vehicle Operators

May 23, 2008

The American Bus Association (ABA) appreciates this opportunity to comment on the Federal Motor Carrier Safety Administration’s (hereinafter “FMCSA” or “Agency”) Notice of Proposed Rulemaking (NPRM) in the above entitled proceeding. The ABA is the premier private bus industry trade association. The ABA is home to some 3500 member companies and organizations and approximately 850 bus operator companies. The bus operator members provide all manner of transportation services to the public including, fixed route scheduled service, charter and tour, airport shuttle and commuter services.

ABA and all its member companies are fully committed to safety. This clearly evidenced by the exemplary safety history of the private bus industry. It should also be noted that on numerous past occasions senior FMCSA and Department of Homeland Security officials have commented on and commended the safety record of the bus industry. The industry’s safety record was in fact used as justification by the FMCSA to

allow bus drivers to retain their existing hours-of-service rules when the Agency imposed new hours-of-service rules on truck drivers.

For purposes of responding to this NPRM, the ABA will divide its comments into three sections. First, we will list our organization's objections to the NPRM. Second, we will respond to the specific questions posed by FMCSA in connection with the rule. In part three ABA will conclude these comments with its recommendations to the Agency.

I

The FMCSA claims that there is a legitimate safety benefit to be gained by imposing the minimum knowledge and driving skills training proposed by the NPRM on entry level vehicle drivers. In order to bring about this result FMCSA advances this rulemaking that will, among other things, require a minimum number of training hours for entry level CDL drivers¹ and impose a "certified" training curriculum upon driver trainers. In addition, the proposal seems to preclude any motor carrier from hiring as a driver any person it has trained in those duties. Finally, the NPRM would require that all driver training schools and drivers' trainers be "certified" in order to train drivers; and it requires training institutions or motor carrier companies to issue certifications of proficiency for any training. In support of these wide ranging results FMCSA relies on the recommendations and conclusions found in a 1995 study (hereinafter "Adequacy Study"²) mandated by Congress³ and carried out by the Federal Highway Administration's (FHWA), Office of Motor Carriers. The Office of Motor Carriers is a

¹ An entry level driver is defined as one with less than one year of experience operating a CMV with a CDL in interstate commerce.

² The study is entitled "Assessing The Adequacy of Commercial Motor Vehicle Driver Training: Final Report." The report was developed by Applied Science Associates, Inc. under Contract No. OPM-91-2955 with the FHWA's Office of Motor Carriers.

³ The study was mandated by section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 (hereinafter "ISTEA").

predecessor agency of FMCSA. However, the Adequacy Study does not support the NPRM.

This is so because the Agency states in the NPRM that “The Adequacy Study took the intuitive position that entry level driver training is beneficial” (emphasis supplied). Thus there is no evidence in the report that supports the imposition of the NPRM mandating entry level driver training. The conclusion is supported by the Agency’s own words in the NPRM. The Agency found that the study could find “...no evidence of a relationship between adequacy of the training the driver... and his/her frequency of crashes.” A literature review in the Adequacy Study also “failed to identify studies or data indicating a positive correlation between driver training and crash reduction” (2007 Fed. Reg. 73229, emphasis supplied). The obvious conclusion here is that the Agency bases its NPRM on a document which will not support it.⁴

What FMCSA is attempting with this NPRM is to correct what it perceives as a problem even as it acknowledges that it has no direct evidence to support its claims that this NPRM will enhance safety. It is axiomatic that any agency must have some evidence, either through research or testing before it may promulgate a valid NPRM. An NRPM cannot be justified without research to determine that crash rates are affected by

⁴ The Agency’s reliance on this deficient Adequacy Study also raises the issue of whether FMCSA has violated the provisions of the Data Quality Act enacted by Congress in Section 515 of the Treasury and General Government Appropriations Act of FY 2001 (Public Law 106-554). This act requires that all federal agencies implement standards and guidelines to ensure the quality of information disseminated by the federal government. The Office of Management and Budget (OMB) has established data quality guidelines to allow citizens to seek and obtain correction of government disseminated information. The Adequacy Study has no analytical basis by which its conclusion can be tested; in fact there is no conclusion that bears upon the NPRM. It appears that the Adequacy Study is the very model of poor quality information that the Data Quality Act was designed to prevent from being disseminated.

driver training or that the costs of a minimum number of training hours or a certified curriculum will benefit society.

Another objection to the NPRM is the fact that the NPRM is obviously meant to force changes in the States' CDL licensing procedures. Any proposal to correct defects in the licensing procedure should be directed at the States. The States are charged with testing commercial drivers and issuing CDLs to successful applicants. The State administered CDL examinations are charged with acting as the "gatekeeper" to insure that poorly trained or unsafe drivers are not licensed. If drivers are obtaining CDLs without exhibiting the necessary skills and knowledge required by Part 383 of Title 49 of the Code of Federal Regulations (CFR), that failure is an issue for the States to correct. The U.S. Department of Transportation's Inspector General has documented problems with State licensing procedures in two reports directed at FMCSA in 2002 and 2006.⁵ In recognition of these deficiencies, the FMCSA on April 9, 2008 published an NPRM directed to the State licensing agencies, which, if promulgated, would strengthen driver training by mandating state adoption of the American Association of Motor Vehicle Administrators (AAMVA) model commercial driver testing program (Commercial Driver's License Testing and Commercial Learner's Permit Standards" 2008 Fed Reg. 19282 – (Docket No. FMCSA 2007-27659)). At the very least, the NPRM that is the subject of these comments should be held in abeyance until action on this latter NPRM is completed. It may well be that this second NPRM will correct the problems FMCSA perceives in the entry level driver training segment of the commercial motor vehicle

⁵ See, OIG Report: "Improving Testing and Licensing of Commercial Drivers" Report No. MH-2002-093 (May 8, 2002) and OIG Report: "Oversight of the Driver's License Program" Report No. MH-2006-037 (February 2006).

industry. If that is the case then this rulemaking proceeding would be at best unnecessary and at worst, harmful to the industry and any efforts to improve driver testing standards.

A third objection to the NPRM is the Agency's plan to exempt large numbers of drivers from its requirements. The rule will only affect drivers operating for private carriers in interstate transportation. Intrastate drivers and state employees (i.e., 60% of all school bus drivers) will be exempted from the training requirements⁶. Exempting a vast number of CDL holders from training requirements and creating a "loophole" through which many CDL holders could move into the interstate driver pool without any prior training is not, in ABA's view, a way to enhance safety. For all of these reasons, the NPRM should not be approved.

II

The problem FMCSA perceives within the training segment of the CMV industry brings into focus the bus industry's specific objections to this NPRM. First of all, the ABA and its 850 bus operator members, is sure that this NPRM is focused on long distance commercial truck operations and operators and not on bus operators or its drivers. It is also apparent that the FMCSA did not take into account the differences between the truck and bus industry in promulgating this NPRM. Nor did the Agency recognize that the only bus driver training facilities and schools are those which have been established by private bus companies. In fact, the entire NPRM contains no discussion of the bus industry or any of the regulatory challenges facing the bus industry.

⁶ One other objection to the rule is found in its omission of any effect this NPRM may have on current CDL reciprocity agreements with the United States' North America Free Trade Agreement (NAFTA) partners.

The NPRM has few mentions of bus driving schools, bus driver model curriculums or bus operations. It is clear that the bus industry was an afterthought to this NPRM.⁷

ABA's first specific objection to the NPRM is the large financial burden this rule will place on motor coach companies. As ABA has noted in prior comments the private bus industry is largely one of small businesses. The United States Small Business Administration (SBA) estimates that over 90% of all privately owned bus companies meet the SBA definition of a small business. This additional burden will come with the requirement that any company's training program and trainers be certified as well as with the new record keeping requirements that will follow certification. Moreover, companies that do certify their training programs will also bear additional liability. The NPRM requires all driver trainers to ensure that driver trainees not only complete their course of study but also certify the "proficiency" of that driver's skills and knowledge. ABA believes that certification is the proper role of State licensing agencies and not private industry. Currently, CDLs act as the only evidence of a driver's skill and knowledge to operate a commercial motor vehicle. With this rule, FMCSA forces private parties to assume a State function.

Second, ABA has great concerns that one effect of the NPRM's accreditation process will be to prevent any carrier trainer from hiring any driver trained by the company.⁸ Simply stated, any driver trainer company may only be accredited if it agrees not to hire any person that it has trained. Thus, the NPRM's accreditation process will

⁷ It is unfortunate and not understandable as to how the FMCSA could simply overlook the bus industry. The industry works closely with the FMCSA on a range of safety issues. In fact, the agency is a regular participant in the discussions of the ABA supported Bus Industry Safety Council (BISC) semi annual meetings. Furthermore, the bus industry has commented on NPRMs that involve the private bus industry for years and at each opportunity has reminded FMCSA of the differences between the bus and truck industries.

⁸ This concern has also been raised in the comments filed to this docket by Greyhound Lines and the American Trucking Association.

eliminate any chance of a company recruiting or hiring new drivers not already trained. The result of this will be to force bus companies to either “raid” other companies for drivers or use third party bus training facilities. As to the latter remedy, ABA is unaware of any third party bus driver training school. Given this restriction on hiring drivers, this provision creates a real risk that the pool of bus drivers or prospective bus drivers will significantly decrease in the near term. Drivers will simply seek employment with intrastate truck companies or state run vehicle programs that enjoy an exemption from this rule’s training requirements.

For all of the reasons set forth above, ABA believes that the NPRM should not be approved.

III

Throughout the NPRM the Agency requests comments on a range of topics. ABA responds to these questions as follows:

- (1) The Agency invited comments to each of the following specific topics from the Transportation Research Board (TRB) Synthesis – Effectiveness of CMV Driver Training Curricula and Delivery Methods; Content; Instructional Methods; Train the Trainers; Lack of Systemic Training Design; Lack of Standards for Measuring the Effectiveness of Driver Training Programs; and CMV Operator Abilities (FR 73230-73232).

Answer: ABA understands that the members of the TRB involved in the development of the Synthesis 13 report (as well as the TRB Synthesis 5 report) never intended these reports to lay a “factual” foundation for any future driver training

rulemaking. The TRB reports were intended only to summarize the state of training within the industries.

(2) FMCSA solicits comments on the analytic basis and justification for the proposed rule. Comments are specifically invited that would address any of the research gaps that make it impossible to demonstrate a relationship between increased systematic training and improved safety. (FR 73231).

Answer: ABA emphatically requests that FMCSA not proceed with the imposition of any new entry level driver training rules. There is no analytical basis or justification for the proposed rule.

(3) The Agency invites commenter to provide information or research data that could demonstrate the relative effectiveness of the Driver Model Curriculum (hereinafter “Model Curriculum”) compared to other training standards (FR 73232).

Answer: ABA is not aware of the existence of any data that would provide evidence either for or against the effectiveness of the Model Curriculum. That said, the bus industry has, in the words of the FMCSA, an exemplary safety record. Since the Model Curriculum has been the baseline for driver training for many years within the industry, the industry’s safety record provides at least anecdotal evidence of the effectiveness of the curriculum in providing safe driver when backed by an effective company safety management program.

(4) FMCSA seeks comments regarding methods of ensuring the adequacy and quality of training if minimum hours were not specified, including behind-the-wheel

training. To what extent could performance standards be substituted for mandatory training time? (FR 73232).

Answer: ABA believes that the question of training, either by a school or a bus company is secondary to the fact of a driver acquiring the knowledge and skills by whatever means so long as the state licensing agency is rigorously and consistently testing with federal standards or with the AAMVA model testing program.

(5) FMCSA invites comments and proposals regarding alternative methods of matching specific curricula components to licensing actions involving the State driver licensing agency (SDLA). For example, if a driver wants to upgrade from a Class B to a Class A CDL, what training should be required, and what type of training certificate should be presented to the SDLA? Should the driver be required to complete the entire Class A classroom and behind-the-wheel (BTW) training, or should a more limited supplemental training curriculum be required? Should a supplemental curriculum include modifications to both the classroom and BTW components? (FR 73232).

Answer: The ABA response to this question is found in the first two paragraphs of page 3.

(6) The FMCSA seeks comments on the content and extent of proposed training for Class A and Class B/C applicants and whether a separation of Class B and C requirements into individual curricula would have merit. If so, comments are sought regarding the content of these separate courses. Comments are also sought regarding the minimum specifications for the type of vehicle that should be required for Class B and C BTW training, recognizing that when applying for a

CDL, the driver may not yet know the specific type of vehicle he or she will be operating (FR 73233).

Answer: See the ABA response to question 5.

(7) The Agency also seeks comments and data on the correlation between hours and content of training and the driving records of persons completing such training; i.e., data indicating the effectiveness of entry level driver training (FR 73233).

Answer: ABA is unaware of any data, research or literature that would be responsive to this question.

(8) The FMCSA requests references to any studies showing the effectiveness of simulator training and comments on the potential for substituting such training for actual driving time (FR 73233).

Answer: See ABA response to question 7.

(9) The FMCSA seeks comments regarding the appropriateness of accreditation as a means of maintaining quality control over the training provided, the ability of existing entry level training facilities to acquire accreditation, and the necessity of acknowledging CHEA in addition to ED as an entity that may recognize accrediting agencies for purposes of this entry level driver training. Comments are also sought regarding any possible alternatives to accreditation that would accomplish similar objectives (FR 72234).

Answer: ABA has responded to this question in paragraphs 2 through 4 on page 5. In addition to the above comments ABA sees no need for certification of driver training programs. State license tester training and certification should be the focus of FMCSA's efforts if the goal is to prevent unsafe and unqualified drivers from acquiring CDLs.

- (10) The Agency is seeking comments about the ability of the States to carry out the proposals in this rulemaking within the required timeframe and on the length of the implementation period in general (FR 73234).

Answer: ABA has no comment on this matter.

- (11) The Agency seeks comments about existing student capacity at training schools and whether the proposed three year implementation period is appropriate (FR 73234).

Answer: As stated above, ABA is unaware of any bus driver training schools in the United States.

- (12) The Agency also seeks comments on the probable cost of entry level training and any anticipated impact on carrier operations (FR 73234).

Answer: ABA has not conducted research or collected data on the increased costs to bus companies that would result from this rule. However, we do suggest that they would be significant. The most obvious cost will be the diminution of the entry level drivers' pool as ABA pointed out above.

IV.

ABA recommends that FMCSA begin to collect the relevant data, and conduct the required research prior to continuing with this regulatory action. On completion of that research, ABA recommends that the Agency then conduct an analysis of the costs and benefits to the private motorcoach or bus industry prior to proceeding with any such regulatory action. The private bus industry is not an adjunct to the interstate long distance truck industry. The requirements of the industry the ABA is proud to lead are separate and distinct. The industry's needs cannot be forced to fit within the rubric of "commercial motor vehicles" with respect to entry level driver training. It is clear that the NPRM is in no way sufficient for the bus industry and that industry should not be made a part of this regulatory action.

Respectfully submitted,

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