



April 6, 2016

Mr. T.F. Scott Darling, III  
Chief Counsel and Acting Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

**RE: Docket No. FMCSA-2007-27748, Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators NPRM**

Dear Acting Administrator Darling,

By publication in the Federal Register on March 7, 2016 (Vol. 81, No. 44, at 11944) the Federal Motor Carrier Safety Administration announced its intention to consider a “rulemaking that would establish minimum training requirements for entry-level commercial motor vehicle operators.”

The American Bus Association (ABA) supports the Federal Motor Carrier Safety Administration’s (FMCSA or Agency) effort to establish minimum training standards for those persons seeking to obtain a commercial driver’s license (CDL) or changing the class of license they possess by securing an endorsement. Specifically we support: 1) use of the Negotiated Rulemaking process as part of this rulemaking; 2) adoption of the model motorcoach curriculum and the encouragement of motorcoach/p-endorsement training providers; and 3) the establishment of a training provider registry. While supporting the negotiated rulemaking approach and the rule proposal, ABA has a few outstanding questions regarding details of the proposal. These questions concern use of simulator based training and state implementation.

ABA appreciates the opportunity to comment on this NPRM. ABA is the leading trade association for private and over-the-road operators who transport the public and serve the motorcoach industry. ABA, in operation for 90 years, represents over 800 bus operating companies. Our members provide all manner of transportation services, including intercity scheduled service, charter and tour operations, airport and employee shuttle services. In addition, ABA membership includes hotels, convention and visitors bureaus, attractions, restaurants, motorcoach manufacturers and companies that provide services to the motor coach industry. Motorcoach companies carry out more than 605 million passenger trips per year, moving

individual passengers a total of 65 billion miles annually<sup>1</sup>.

In addition, ABA's membership is largely comprised of small business entities with family-based, generational ownership structures. The average ABA bus operator operates about six motorcoaches. As well, the minimum price for a new motorcoach is approximately \$500,000. Our members have a vital interest in this NPRM because the lifeblood of our industry and the ambassador for almost every motorcoach company is its drivers. Further, based on the significant investment required to own and operate motorcoaches, small businesses are particularly sensitive to the need for properly trained personal, in order to maintain the value of their investment. In short, properly trained drivers are invaluable both in terms of tangible assets such as vehicles, as well as embodying goodwill and in ensuring safe operations to maintain an ongoing business concern. By establishing minimum driver training standards, FMCSA, like our members, recognizes the importance of motorcoach drivers to safe passenger carrier transportation and ABA supports the Agency in this goal.

### **The Negotiated Rulemaking Process**

On August 19, 2014, FMCSA formally announced its intention to address this Moving Ahead for Progress in the 21st Century Act (MAP-21) mandated rulemaking through a negotiated rulemaking (79 FR 49044).

ABA participated in the process, as a member of the Entry Level Driver Training Advisory Committee. We appreciated this role, as it enabled ABA members to share their expertise related to motorcoach driver training programs of all scales, sizes and delivery systems (including simulator and online knowledge training) to assist in reaching consensus by the Committee.

Also, the additional time afforded by negotiated rulemaking process enabled ABA to better educate our members, as opposed to the traditional rulemaking process where 30-day comment periods are common. Some ABA members even participated on the negotiated rulemaking's various subcommittees. We were also able to utilize the extra time afforded this process to have several industry education seminars on this topic, a number of targeted committee meeting discussions with training experts and even begin an outreach process to potential vendors to help with developing the infrastructure needed to facilitate future implementation. All of this was able to be pursued in advance of the close of the comment period and provide a level of engagement between our members and the details of this rule that ABA would like to see a part of every significant rulemaking.

Based on our experience with the negotiated rulemaking process, ABA was extremely pleased to note the provisions enacted in the 2015 Fixing America's Surface Transportation Act (FAST Act), mandating use of the either negotiated rulemaking process or advanced notices of proposed rules for all major rule proposals. This new requirement will provide additional time for affected stakeholders to participate in the rulemaking process, enabling fuller consideration of a rule proposal, and in turn providing better feedback to the agency.

### **Adoption of the Motorcoach Model Curriculum and Encouragement of Motorcoach/P-**

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<sup>1</sup> American Bus Association Census 2014.

## **Endorsement Training Providers**

Operating a motorcoach is much different than operating a truck. Similarly, a training provider, familiar with training motorcoach operators and who focuses on motorcoach driver training, clearly will produce better equipped motorcoach drivers than a training provider without such expertise. Also, in light of transporting passengers rather than cargo, there is a considerable amount of specialized training required for transporters of passengers. For example, passenger carrier requires: a higher standard in terms of passenger safety; recognition of specialized vehicle operations (e.g. bottoming out); unique security considerations; accommodation of disabled passengers; passenger evacuation in case of mishap/fires, baggage loading, and general customer service. These considerations are not, generally, addressed in a traditional truck driving school, or are they contemplated in the proposed Class A CDL curriculum, let alone mentioned in existing regulations.

As well, motorcoach *driving* operations require a unique skill set, justifying the requirement of a specialized endorsement, and ABA believes specialized training should be required before an endorsement is conferred. Simply because a driver can drive a truck does not mean, in turn, the driver is competent to drive a bus or operate in passenger service without additional training. The model motorcoach curriculum was developed in concert with the industry by FMCSA and has the widespread support of ABA, the United Motorcoach Association and safety groups like the Bus Industry Safety Council.

Further, motorcoaches provide more than 605 million passenger trips each year. This statistic, alone, for safety reasons, justifies the need for establishing a minimum training standard for all persons seeking to operate these vehicles in intrastate or interstate commerce. As universally recognized in the transportation regulatory world, when transporting people, a higher safety standard is warranted. Historically, most of the commercial driving training schools have focused on trucking operations. While a few large scale motorcoach companies provide in-house training, the vast majority of motorcoach drivers migrate to the industry after having previous driving experience in the military or trucking world or with working experience from aforementioned larger in-house motorcoach training providers.

As another benefit, ABA believes the rule will increase the transparency of training provider course offerings, and make it easier to identify training providers. Overall, we believe this will likely result in an increase in training providers available to the motorcoach industry for driver training as well as for hiring opportunities.

## **Training Provider Registry**

The ABA also believes the process FMCSA proposes in the NPRM will assist training providers to register and self-certify that they utilize the outlined FMCSA curriculum. While we have some concerns about state requirements for training providers, the amount of flexibility FMCSA provides under the rule proposal will support the efforts of training providers. The simplicity of the registration process should alleviate any administrative burden related to registering as a training provider. However, we remain interested to see how the enforcement or audit mechanism will work for training providers, as well as the regularity of these activities. Although

we want to ensure the credibility of the training provide, at the same time we worry about potential burdens for in-house training providers.

ABA supports the formation of the training provider registry, the limited record retention requirements for training providers and the simplified registration process. However, we have some questions and concerns regarding the data retained within the registry, the infrastructure designed to support the registry and the planned accessibility of registry information.

For example, does FMCSA intend to make the training certificates described under §380.717 available to motor carriers wishing to hire available CDL drivers? Is FMCSA expecting to host the data? Can the industry expect to have open access to the data or pay a subscription fee? What kind of data (e.g. level of detail) would be made available? It appears that without additional clarification and detail, this section of the NPRM could potentially lead to unexpected consequences.

We encourage FMCSA to provide additional guidance for purposes of clarifying its intentions on this aspect of the proposal.

### **Additional Clarifying Questions**

While ABA supports this NRPM and is pleased with many of its elements, there remain some specific details ABA believes need to be clarified in order to avoid unintended consequences.

### **Simulator-based Training**

ABA would like to know whether FMCSA would consider including simulator-based training as part of acceptable behind the wheel training options. As previously mentioned, a motorcoach is a significant financial investment and while training simulators are also expensive (retailing for \$45,000 or more), such devices provide a less costly risk to operators in terms of training professional drivers for two primary reasons. First, a simulator would avoid putting an untrained person at a safety risk, along with an expensive asset; and second, it would avoid the need to take a revenue producing asset “off-line” during the training period. Alternately, if the agency does not support simulator training as equivalent to behind the wheel training, simulator training could be recognized as part of theory training. As in other modes of transportation, such as aviation and rail, simulators have proved invaluable for training purposes. ABA requests FMCSA recognize the value of simulators, and provide additional flexibility for their use under this rule proposal.

### **Terminology and Usage of “Course”**

ABA also wishes to avoid confusion by obtaining clarity on the use of the words “course” and “range” under the rule proposal. These words are often used interchangeably in the transportation world, and therefore ABA requests the agency ensure the distinction between the two. As neither word is included in the definitions, we recommend clarification in the definition section or, alternately, replace the word “course” with “curriculum” in the proposal. In common usage, course can have multiple meanings and those not as closely familiar with the ELDT negotiations and this rulemaking, or new training providers entering the space, may not readily note the

nuances and differences.

### **State Requirements for Training Providers**

ABA believes FMCSA's rule proposal is successful in providing flexibility and ease for training providers to register on the proposed registry. However, as the agency notes, there may be other requirements imposed on training providers by state licensing agencies or other federal entities (such as the U.S. Department of Education) which may pose obstacles for training providers. This is particularly true for small in-house training providers, in terms of actual ability to register/remain registered or for their driver-trainees to sit for CDL tests because some states may not recognize their registration of a small in-house training provider as valid even though they may have met all of the federal requirements.

Specifically, the wording of proposed § 380.719 is concerning:

*“The Agency proposes that, in order to remain on the TPR [training provider registry], a training provider would continue to ensure that its program meets the requirements defined in § 380.703 as well as all applicable State training licensure, registration, certification, or accreditation requirements. The goal is not to attempt to enforce State requirements, but to ensure that a training provider that fails to satisfy applicable State requirements should not remain on the TPR.”*

Without a clear understanding of applicable state requirements across all states, a small in-house training provider may experience significant difficulty ensuring compliance because they may operate and train drivers in multiple locations and jurisdictions. ABA notes, from the NPRM's "Regulatory History" section, that accreditation was an issue where consensus could not be reached through the negotiated rulemaking process, and self-certification was selected as the way to address the issue and enable the rulemaking process to move forward. However, ABA believes the federal interest in establishing this rule should be communicated to the states, and efforts brought to bear to ensure states eliminate barriers to its implementation, for a number of reasons. One, it would facilitate the establishment of a truly uniform approach to driver training; and two, it would prevent obstacles within individual state schemes that could thwart the federal interest, limit training providers, and in the end exacerbate safety interests. ABA would also propose an exemption from any additional state licensing requirements for existing in-house training providers that can document at least 10 years of use of the FMCSA approved curriculum.,

In this same vein, we would propose state requirements for training providers be harmonized. This is consistent with the spirit of the rule making of FMCSA-2007-27659 which sought to harmonize the CDL and CLP testing standards among the states. If harmonization does not occur, we anticipate a number of unintended consequences from this rulemaking. For example, it may result in "forum shopping" because it will be more complicated to actually register as training providers in certain states, and we do not believe this is the intent of the rule. ABA seeks additional guidance from FMCSA on this issue of state requirements and what will be required of training providers.

### **Major Issues on Which the Agency Seeks Comment**

FMCSA has requested comment on several issues throughout this section. The Agency specifically seeks comments on the following topics:

1. Is there any additional data on the safety benefits of requiring ELDT training that you can provide (e.g. demonstrated crash reduction as a result of training)?

*ABA cannot provide comment on this question at this time.*

2. As proposed, would the training be effective in improving safety? If so, what aspects of the proposal would be effective in improving safety? If not, how could the training be delivered more effectively than proposed?

*ABA believes that the adoption of the model motorcoach curriculum, which includes emergency procedures, baggage handling to reduce workplace or passenger injuries, handling and securement of ADA devices are topics that will greatly enhance safety and much of it was proposed following the original development of the model curriculum. The proposed curriculum represents a bit of an evolution from the curriculum proposed in 2007 and incorporates solutions to common problems and safety issues that we see today. Something that the Agency should consider, is proposing a mechanism as part of this rulemaking to continue to update the curriculum going forward, particularly as effectiveness measures are developed and additional tracking of driver performance occurs over time.*

3. Is there any duplication in the commercial learner's permit exam and ELDT theory training? If yes, should it be eliminated or minimized?

*ABA cannot provide comment on this question at this time as CLP holders are not generally eligible to operate in a for-hire capacity. However, since there is generally lag time between the CLP exam and ELDT CDL training, any duplication of course material should be reinforcing the basic lessons learned and will quickly be surpassed when they begin P-endorsement training, which is our industry's focus.*

4. FMCSA proposed a specific number of required hours for the BTW training for Class A and B. First, should there be a required number of BTW hours for these two programs? If so, is FMCSA's proposal for 30 hours (Class A) and 15 hours (Class B) appropriate?

*This was discussed extensively during the negotiated rulemaking process. Establishing a minimum does restrict a student or training provider from seeking or providing additional behind the wheel training. The minimum was based on the experience of current training provider's ability to deliver a basic program and ensure that all of the material was covered.*

5. If there is not a required number of behind the wheel hours, what alternative would be appropriate to ensure adequate BTW training for Class A and B? Would a requirement that is expressed in terms of outcomes rather than specifying the means to those ends be more appropriate?

*A minimum helps establish a baseline. The data may prove over time that additional time may be needed to be added to the training curriculum and have the minimums adjusted.*

6. FMCSA allowed training providers flexibility by using either clock-hours or academic hours depending on the type of entity that offers the training (e.g. community college vice carrier provided trainer). FMCSA requests comment on whether training providers should be allowed to use academic hours versus clock-hours. Furthermore, FMCSA asks for input regarding whether there is a discernable difference between the two concepts.

*The flexibility allowed is appropriate and is accommodating to the specific training reality of the various training providers.*

7. MAP-21 did not mandate that FMCSA include the “S” endorsement as part of the required training. Given the devastating consequences of unsafe school bus operation, should the “S” endorsement training be retained in the final rule?

*ABA cannot comment on this item, however we would note that several entities that represent companies that would be impacted by the S endorsement were valued and enthusiastic participants during the negotiated rulemaking process.*

8. The Agency did not propose that the theory, BTW range, and BTW public road training occur in a specific sequence in order to allow training providers the flexibility to determine how they would structure their programs. FMCSA requests comment on whether there should be a particular order associated with the theory, BTW range, and BTW public road curricula.

*The flexibility allowed is appropriate and is accommodating to the specific training reality of the various training providers.*

ABA appreciates the opportunity to comment on FMCSA’s effort to establish minimum training standards for persons seeking to obtain CDL’s or CLP’s and related endorsements. ABA supports the use of the Negotiated Rulemaking process as part of this rulemaking, the adoption of the model motorcoach curriculum, and the establishment of a training provider registry. While supporting this framework and curriculum as a whole, ABA does have a few clarifying questions about a few of the details of this proposal and seeks additional details and guidance on FMCSA before a final rule is developed.

Respectfully submitted,



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