



NYAPT

NEW YORK ASSOCIATION FOR PUPIL TRANSPORTATION

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April 5, 2016

Docket Services M-30
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington DC 20590-0001

{Ref: FMCSA-2007-27748}

Dear FMCSA Administrator:

On behalf of the New York Association for Pupil Transportation, please accept the following comments to the docket for FMCSA-2007-27748, a Notice of Proposed Rule Making published in the Federal Register on March 7, 2016.

This proposed rule deals with regulations governing Entry Level Driver Training for individuals seeking to be licensed to drive Commercial Motor Vehicles at the interstate and intrastate levels.

Our Association is comprised of men and women dedicated to the safe transportation of 2.3 million school children on over 50,000 yellow school buses in our state. We are proud of the safety record we have attained in our state and believe that that record is largely due to the quality of training that we provide our more than 50,000 licensed school bus drivers. We have reviewed the NPRM with that safety record and our training regimen in mind.

We have outlined our comments into three categories: (1) general comments about the regulations as proposed; (2) comments related to the questions that you raised as the Agency in the NPRM; and (3) comments related to issues related to our training and training capacity here in our State.

GENERAL COMMENTS

Denial of Our Request for an Extension for Comments

NYAPT is disappointed that FMCSA has not approved our request (or requests submitted by other entities) for an extension in the comment period. The original comment period in the NPRM was 30 days ending on April 6, 2016. Most significant rule-makings include a 60-day or 90-day comment period. This is clearly a significant rule-making that will have broad

ramifications in the way we license and prepare over 450,000 CDL holders in our state, including more than 50,000 school bus drivers.

School Bus Drivers: Applicability

NYAPT would raise at the start of our comments a question of the general applicability of this NPRM to school bus driver training requirements. According to FMCSA's own words in the NPRM, MAP-21 from which FMCSA has derived its authority to promulgate these regulations makes no reference to the "S" endorsement for school bus drivers. The agency notes that the ELDTAC included the "S" endorsement in its recommendations and agreements. We appreciate that fact and their sensitivity to school bus safety.

However, while school bus drivers will still be required to meet the new provisions for their CDL and their "P" endorsement, it would be desirable to avoid any changes to the current "S" endorsement requirements without specific legislative direction, as would preface other regulatory actions. See below for additional considerations on this point that discuss the unique nature of school transportation and the characteristics and responsibilities unique to being a school bus driver.

Yellow School Bus and Being a School Bus Driver is Unique

The Yellow School Bus is the safest mode of transportation for moving our children to and from school every day. The record on that is abundantly clear. This is the result of the school transportation sector taking very seriously the role we play in keeping our nation's CHILDREN safe. We are unique among the Commercial Motor Vehicle community in that our 'cargo' is our school children and we go to great lengths to ensure their safety and to assure their parents and families that they will be safe.

We would ask, then: is it necessary to approach licensure for school bus drivers in the same modality as we approach licensure for freight carriers? That question is not intended in any way to minimize the safety needs of freight carriers, but to call attention to the special environment in which the yellow school bus operates and navigates our highways. We urge FMCSA to recognize that distinction in adopting a final rule and in reflection of comments received from organizations, including ours, who are involved in school bus transportation, in particular.

Moreover, as we stated above, it was not the intent of MAP-21 to include any specific changes in the licensure and endorsements for school bus drivers. Their inclusion here is totally at the discretion of FMCSA and not in response to any legislative or court-ordered mandate.

These statements and observations do not lessen our own belief in and commitment as a professional association to higher quality training and development for our drivers and for all individuals involved in our school bus safety teams.

Existing State School Bus Programs

Many states, including New York State, currently engage in significant classroom and behind-the-wheel education and testing for school bus drivers. We are concerned in the overview that

the very involved and rigorous training programs and provider network in place will be supplanted by these new requirements and result in lower levels of quality and intensity of training. FMCSA should consider ways to grand-parent existing State programs that meet or exceed the proposed high training standards to continue in place, particularly within the school bus industry.

For instance, in New York State, we have enacted laws that address school bus driver skills and training. We have used those laws to certify and credential qualified “*School Bus Driver Instructors*” (certified by the State Education Department) and “*19A Examiners*”, (certified by Dept. of Motor Vehicles) named after the section of law that authorizes their work. These men and women conduct biennial “behind-the-wheel” testing, annual defensive driving observations and other assessments of school bus drivers in New York. Similarly, the State’s Education Department deploys some 1,200 School Bus Driver Instructors who provide school-bus-specific training and refreshers for school bus drivers in classroom settings where they receive theory-based approved procedures required for student safety.

It is our sense that these qualified and state-certified professionals have performed admirably and our record of safety is witness to that fact. We are concerned in the overall that the new regulations will erode or otherwise disrupt that system that has worked so well and kept our children safe.

RESPONSES TO COMMENTS SOUGHT BY FMCSA

Availability of Data on Safety Benefits of Training

The agency has requested data on the safety benefits that would accrue from this training. States and operators do not necessarily keep data on the safety benefits of such training. It would have been preferable for FMCSA to have provided documentation of the anticipated safety benefits inherent in the training required before issuing the regulation as a means toward generating support for its scope. This will result in significant changes in state and local activities and result in increased costs and allocation of time to training. Having data on the anticipated safety benefits would have been extremely beneficial, and should have been considered by FMCSA prior to proceeding.

Anecdotally, in New York State, we witnessed a rise in our accident and injury/fatality levels in the late 1980’s when school bus driver training funds were removed from the state budget. NYAPT advocated for reinstatement of those funds and, since its reinstatement in 1997, we have seen a dramatic decrease in accidents, injuries and fatalities in our school buses.

Potential Safety Impact of the Proposed Training

FMCSA is again looking to us as operators and states to determine the likely efficacy of the training being proposed in this NPRM. Here again, we would have encouraged FMCSA to document the anticipated safety benefits that might be expected as a result of these regulations. Such benchmarks would have allowed both FMCSA and operators to determine such effects following implementation.

Duplication in the CLP and ELDT Theory Training

While there are areas of overlap and duplication, NYAPT does not believe such overlap is inappropriate in terms of safety and the comprehensive nature of the training and training environment.

Proposed Hours for BTW Training

It is unclear what was used to determine the minimum number of hours for Behind-The-Wheel training. There are states that require more hours of BTW training currently and it must be made clear that these states may continue to require such levels of training for their CDL holders.

The important factor to be considered is whether the 30 hours or 15 hours is sufficient to accomplish what instructional information is needed to prepare the driver adequately for the license they will achieve. That is not clarified in the NPRM, and given the lack of FMCSA-generated data, nor is the reasoning behind those training periods.

Specific Order for Training Components

NYAPT does not believe that it is necessary for FMCSA to spell out in detail the sequence of learning by requiring that the theory, range and road training be provided in a particular order. It is presumed that most training providers will work on the theory portions before any actual driving training occurs but there will be instances in which the two activities can and will occur simultaneously. The approach of leaving this topic to the expertise of the training provider to ensure effective teaching and learning is an appropriate approach.

Comments on Section 380.605/Definitions

The Agency was seeking comments on whether the two-year experience requirement for BTW instructors would affect the applicability of state laws relating to instructors or training providers.

- ❖ NYAPT agrees that there need to be standards related to the experience levels of those individuals who will train on Behind-the-Wheel skills. The provisions as suggested are not inappropriate from our viewpoint. State law and regulations may have to be adjusted to ensure that this experiential factor is accommodated in our training programs.

Comments on Section 380.611/Entry-level Driver Training Requirements

FMCSA is requesting comments on (a) whether the rule should require that theory and BTW training be taken sequentially and (b) specifically whether theory training should be required before taking the state-administered written test to obtain the Commercial License Permit.

Note that this section outlines in close detail the contents and subject matter requirements for the theory portions of the training program.

- ❖ (a) NYAPT does not believe it is necessary for FMCSA to mandate the sequence in which the theory and BTW training should be delivered. Different training providers will approach the introduction of the training topics in different ways. The agency should allow them to use their professional judgment as long as the content is delivered as specified.

(b) On the second point, NYAPT does not believe it is necessary for the training content to be completed prior to an individual obtaining a Commercial License Permit. In our operations, we have found it useful for an individual to obtain the CLP with basic orientation and then begin their formal training once they have their CLP.

Comments on Section 380.719/Requirements for Continued Listing on the Registry

The Agency was seeking comments on provisions related to steps necessary for changing the status of a training entity.

- ❖ NYAPT does not believe that the standards identified for training entities are onerous or inappropriate to the objective of maintaining high quality training entities for driver and highway safety.

Comments on Section 380.723/Removal from Training Registry

The Agency was seeking comments on the procedure for removal of providers from the Registry and whether there are viable alternatives to this approach.

- ❖ NYAPT has no objection to this process.

AREAS OF SPECIFIC NYAPT INTEREST

Section 380.615

Section 380.615 deals with the requirements needed in order to obtain a Class B Commercial Drivers' License. The regulation does not mandate a specific number of hours of theory or classroom instruction but requires the training provider to cover all necessary elements of training. The section does require a minimum of 15 hours behind-the-wheel training with a minimum of 7 of those hours on public roads. The training provider would determine how the remaining hours of BTW training would be used but would have to ensure that the 'range' driving elements are included. The training provider would also ensure that the training is conducted on a vehicle for which a Class B license would be required.

- ❖ NYAPT does not object to the content and requirements set forth in this section. However, we are concerned about the length of time that will be needed between attainment of a Commercial License Permit and the attainment of a CDL. The school bus industry is facing a serious driver shortage which, if exacerbated, will have a detrimental effect on our ability to transport our children to their education.

We would inquire further as to the intention of FMCSA to provide courses of study related to the Theory portion of the training to enable training entities to simply deliver already approved training programs in the future.

Section 380.619

Section 380.619 deals with training requirements needed in order for a CDL license holder to gain a “Passenger” or “P” endorsement. The regulation as proposed does not require a minimum number of hours for theory or behind-the-wheel training for this endorsement. Rather the requirement is for the training provider to cover all the topics required in the regulation and for the training to be conducted in a representative vehicle for the “P” endorsement.

- ❖ NYAPT has no objection to the content prescribed for attainment of the “P” endorsement. However, we are concerned over the potential impact the rigorous training requirements will have on school bus driver recruitment and hiring. This is particularly important at a time when there are driver shortages in most states in the nation, and in many of New York State’s districts and contract operations.

Section 380.621

Section 380.621 deals with the training requirements needed in order for a CDL license holder to gain a “School Bus” or “S” endorsement. Again, the regulation as proposed does not require a minimum number of hours for theory or behind-the-wheel training for this endorsement. Rather the requirement is for the training provider to cover all the topics required in the regulation and for the training to be conducted in a representative vehicle for the “S” endorsement.

- ❖ NYAPT does not object to the content prescribed for attainment of the “S” endorsement. We do, however, have concerns about the impact the new training requirements will have on school district and state budgets at a time when schools are making difficult choices in terms of spending. We believe in safety first but FMCSA has, in its own words, stated that they have no data to support the potential benefits of this training. In difficult budgetary times, it is important to justify any new costs with attendant benefits.

In addition, the new requirements could also likely have an effect on the shortage of school bus drivers. This training regimen, however well-intended, will make it more difficult for drivers to be brought on-line in school bus operations. Moreover, that extended period of preparation will likely lead to erosion in the rates of training completion and hiring upon completion.

CDL Class “C” Drivers

It is unclear whether these regulations would apply to so-called “Class C” CDL license holders who drive smaller school buses including “Type A” buses.

We have heard differing opinions from differing sources that these regulations may or may not apply to those drivers. We note that the NPRM does not reference those drivers in its text and therefore it is unclear how or to what extent they are covered or affected by the NPRM’s provisions. We would request clarification and would be of the opinion that these drivers should be covered by the regulations given their responsibilities for transporting our children.

The Training Registry

NYAPT recommends that FMCSA allow for the Training Registry to be completed before asking states and operators to implement new training provisions envisioned in the NPRM. If the Registry is not completed, it will adversely affect the ability of employing agencies and companies to comply with the training requirements.

Our concern is that, similar to the implementation of the Medical Examiner Registry, the agency could again place the state licensing agency (DMV) in the difficult position of having to implement the new requirements without registry against which to compare our training providers and entities. Our state DMV works very hard with our school bus industry to ensure efficient administration of their services and we are therefore concerned about the impact these provisions might have on their operations.

NYAPT is concerned that the inclusion of a Training Registry in the NPRM will cause further confusion and administrative activity for states and operators. The recent implementation of the Medical Examiner Registry bears witness to the fact that such registries are complicated to develop and launch and that they can be difficult to maintain. Moreover, it is unclear how the market will respond to such a registry and whether there will be sufficient training providers on the registry to accommodate significant demand loads.

Training Registry Populations

We wish to point out that the Training Registry is likely to be populated by hundreds of school districts as well as private contractor operators who currently complete much of their own training activities to prepare drivers for their road tests and to acquire the skills needed to become a school bus driver.

The approach that is taken in the NPRM will require many school districts to sign up as training providers, to meet the basic requirements of the registry and to maintain their status on the registry. Not only could this present a sizable administrative burden on schools and operators, but it will also inflate the size of the Registry significantly with entities that seek to train their own drivers and who are not intending to make their services available to other employers.

FMCSA should re-consider the formatting of the registry in consideration of such an operational reality.

Retraining and Reinstatement

The proposed regulation requires that a CDL holder who has been disqualified or who is on a 60-day suspension, must complete refresher training in the same way as entry-level CMV drivers.

NYAPT believes that it is appropriate to require CDL holders who have been disqualified or put on suspension to engage in some form of corrective training before they are allowed to resume their licensed status. Particularly in the school bus industry, we need to be cautious to not do anything that compromises the trust of parents and school children who ride yellow school buses. While we do not believe that the entire refresher curriculum is necessary for this

purpose, we believe some form of training and refresher on the critical topics would be in order and appropriate.

While we cannot object in substance to many of the safety-related provisions of the proposed regulations, we are concerned as operators of school buses that the new regulation will result in three key, perhaps unintended, consequences:

- ❖ Additional costs to school districts as well as to private contractors providing transportation services on behalf of school districts in New York State, at a time when schools in New York and nationwide are struggling to meet budget constraints amid calls for higher classroom attainment
- ❖ Additional delays in the testing of individuals due to increased testing responsibilities and increased training requirements
- ❖ Creation of a new training infrastructure that will supplant the very successful model we have developed in our state; a new infrastructure that will take valuable time to perfect
- ❖ Worsening of the school bus driver shortage being experienced in many districts and operations in New York State and nationally
- ❖ Creating a system at the national level and the state level that will be fraught with technological and logistical issues at the outset that can and will affect our ability to get our children to their schools for their education – for their sakes, we cannot afford to get this wrong

These kinds of real-time issues give us pause and we urge FMCSA to consider these and other similar concerns that you will receive from others involved in the transportation of our school children on yellow school buses.

Thank you for your attention to and consideration of our concerns. We look forward to reviewing the final rule and hope that it reflects our ideas and recommendations.

Sincerely,



Peter F. Mannella
Executive Director