



National School Transportation Association

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COMMENTS

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

The National School Transportation Association appreciates the opportunity to comment on the Notice of Proposed Rulemaking concerning the Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.

NSTA is a not-for-profit association of private businesses providing transportation services to public school districts and private schools across the country. Our members range from single bus owners to large multi-national corporations operating thousands of school buses in many states. Private carriers operate about a third of the nation's school bus fleet. All are committed to providing safe, efficient and economical transportation for America's school children.

NSTA has serious concerns about this proposal, and in regard to the school bus industry, questions the assumptions on which the NPRM is based. After some general comments, we will discuss each of our concerns in detail, following the order of the NPRM.

General Comments

This NPRM focuses on weaknesses in the trucking industry, and indicates a lack of understanding of the school bus industry, whose driver force would be affected by the requirements. School bus carriers, both public and private, are unique among the transportation modes in providing free training to CDL driver applicants. Applicants without commercial licenses are accepted into the carrier's training program and often paid entry-level wages while receiving free training mandated by the state and designed to prepare the applicant for the CDL tests to become a school bus driver. The drivers are trained typically by state-certified school bus driver training instructors who are employed by the carrier. It is extremely rare for a school bus driver applicant to attend a training school to prepare for a CDL. Why would she, when she can get trained for free—and get paid while doing it—by the local school district or school bus company following a state-mandated curriculum?

There is a reason that carriers provide free training for school bus drivers. The nature of the job is such that most drivers work 20-30 hours a week, not a full time position. While

the part-time nature of the work suits many drivers' schedules, for most people it does not justify the thousands of dollars it would cost to go through a driver training school. Once a driver has that much invested in training, he or she will look for a higher-paying full-time position as a motorcoach, transit, or truck driver.

School bus drivers are in short supply, with carriers facing a 21% annual turnover rate. In a survey published in October 2007 by *School Bus Fleet* magazine, 89% of school transportation officials reported a driver shortage, with almost 60% reporting their shortage as moderate to desperate. If applicants are forced to apply to an accredited training school in order to receive their CDL, spend 90 hours in training, and pay the associated fees, the school bus driver shortage will grow exponentially. This will have a devastating effect on school districts, parents, and students.

We understand that a carrier could opt to forego the required training and have drivers receive a restricted intrastate-only CDL. But nearly all school bus operations make some interstate trips (and some operations located near the border of a state send buses outside the state daily), and it is important within the industry that all drivers receive consistent training. That is the impetus behind the state training mandates that more than 90% of states impose on carriers. It is unrealistic to think that within a school bus operation there would be two different training standards—or that state school bus authorities would accept two different licensing standards for school bus drivers. The effect will be that if interstate school bus drivers are required to meet the training standard in this NPRM, it is likely that all school bus drivers will have to meet it.

The safety record of school bus drivers does not indicate a need for increased training. Compared to the fatality rate of trucks at 2.5 per 100 million VMT, the overall fatality rate of school buses is only 0.2 per 100 million VMT. Going back at least fifteen years, we can identify only one fatal school bus crash in interstate transportation. It would take a reduction of 24 fatal crashes a year to justify the true cost of this NPRM to the school bus industry—clearly a benefit that cannot be attained.

In regard to school bus drivers, FMCSA is proposing a solution where no problem exists. On the contrary, the current driver training provided by the school bus industry based on state requirements has proven effective as evidenced by the safety record. Implementing this NPRM will significantly increase costs for carriers and exacerbate the school bus driver shortage. The result will be a decrease in student transportation safety, as schools are forced to cut back on busing and children are forced to find less safe ways to get to school.

Specific Concerns

II. B. Training Research and Studies

The research that FMCSA relies on in determining the need for additional training for entry-level drivers focuses on truck drivers and their training. None of the recent studies

referenced in the NPRM investigated the training of school bus drivers; the authors of Synthesis 13, in fact, specifically excluded school bus driver training from their review. Therefore, the conclusions that FMCSA reaches on the basis of this research cannot be extended to school bus operations.

It is clear in statements such as “. . . It has been over 20 years since a formal curriculum design for commercial drivers was systematically developed,” that the research did not consider school bus driver training. On a national level, NHTSA has revised and added to their comprehensive school bus driver training series in the past several years, and many states have designed or updated required school bus driver training curricula. The NPRM completely ignores the fact that 90% of the states have a mandated training requirement for school bus drivers—not only a pre-service requirement, but a continuing inservice requirement as well.

The NPRM asserts that “no accessible records of training exist.” Again, FMCSA has neglected to investigate school bus driver training. In fact, states do have records of school bus driver training, as they require every applicant for a CDL with an S-endorsement to provide evidence of mandated training. If FMCSA wanted to compare the effects of training, it could look at the incidence of school bus driver at-fault accidents by state and compare those data to the states’ training requirements.

II. C. Need for the Regulation

FMCSA admits that there is no research showing a correlation between increased driver training and reduced commercial vehicle crashes. In the case of school bus drivers, the need for the regulation is particularly spurious. In 2004, FMCSA withdrew a rulemaking on Interstate School Bus Safety, concluding that “FMSCA finds a lack of identifiable data indicating that this segment of transportation is unsafe.” In fact, FMCSA noted that there had not been a single fatal crash involving an interstate activity school bus during the preceding ten years; and also noted that the overall fatality rate for school buses is 0.2 per 100 million vehicle miles traveled (VMT), compared with the fatality rate for trucks at 2.5 per 100 million VMT. Since the current NPRM is based primarily on 49 U.S.C. 31136(a)(1), requiring regulations to ensure that CMVs are “operated safely,” and all evidence indicates that in fact school buses are already “operated safely,” there is no justifiable need for additional training for entry-level school bus drivers.

III. A. Scope and Applicability

There is some confusion in the NPRM as to the applicability of the proposed regulation to school bus drivers who are employed by public school districts. This confusion derives from FMCSA’s cost-benefit analysis in which it considers only contractor-employed drivers. The implication is that only applicants who work for—or intend to work for—contractors are affected by the regulation. This is in direct contradiction to statements throughout the NPRM, such as “The new training requirements proposed in this NPRM would apply to **all** persons applying for a CDL for the first time who intend to operate CMVs in interstate commerce, and to persons upgrading from one class of

CDL to another.” [Emphasis mine] According to page 73231, the requirements would apply to all persons required under Sec. 383.3 to have a CDL, except for: (1) Those who intend to operate exclusively in intrastate commerce; (2) those who are excepted from obtaining a CDL under paragraphs (c) and (d) of Sec. 383.3; and (3) those who obtain a restricted license under paragraphs (e), (f), and (g) of Sec. 383.3. None of the exceptions applies to publicly-employed school bus drivers who intend to drive out of state. In fact, there is no government exemption in Sec. 383, so this requirement would apply not only to applicants for CDLs who intend to drive a school bus across state lines, but also to applicants who intend to operate any other public vehicle out of state.

Even if an applicant for a CDL were already employed by a public school district, the requirement would apply. While it is true that the training requirement is part of Sec. 380, which has a government exemption, the requirement to present a training certificate is part of Sec. 383, which does not have an exemption. And the applicability in Sec. 380 says “(a) The rules in this subpart apply to all entry-level drivers who intend to drive in interstate commerce and are subject to the commercial driver's license (CDL) requirements of part 383 of this subchapter, except drivers applying for a restricted CDL under Sec. 383.3(e) through (g) of this subchapter.” Since all school bus drivers are subject to the CDL requirements, it follows that all school bus drivers are subject to this NPRM.

III. B. Curriculum Content

FMCSA bases the proposed curriculum solely on curricula used for training truck drivers, much of which is inappropriate for school bus drivers. While vehicle operation is certainly applicable to all drivers (and is covered in state school bus driver training curricula), topics such as vehicle maintenance are aimed at over-the-road drivers, not at drivers who return to the home base twice a day. The NPRM requires, in fact, that the mandatory behind-the-wheel training for Class B drivers be conducted in a straight truck with a GVWR of at least 14,000 pounds. This is contradictory to the requirement that the CDL test be conducted in a vehicle of the type that the applicant intends to drive. Persons training to be school bus drivers have no reason to learn to drive a truck; it is a waste of their time.

Not only does the curriculum include many hours of training unrelated to school bus driving, but it also fails to include the kinds of training most important to school bus drivers. There is, in fact, almost nothing in the curriculum pertaining to passenger transportation, much less the specialized concerns of student transportation. The result is that drivers who completed this mandated training would still need to complete the mandated state training for school bus drivers, which would add as much as forty additional hours to the training requirement. A combined mandate for 130 hours of training would devastate the school bus industry, both in cost and in driver availability.

III. C. Training Providers

Again, FMCSA demonstrates a lack of understanding of the school bus industry in this section. Unlike other transportation modes where employers hire licensed drivers, school bus carriers universally train drivers to get their CDLs. Virtually every school district and every school bus contractor recruits applicants without CDLs, provides free (and usually paid) training following the state-mandated curriculum, and shepherds them through the licensing process. This training is typically conducted by state-certified instructors who have completed train-the-trainer programs run by or sanctioned by the state. In some states, these carriers are also licensed as third-party CDL testers. None of these state programs is accredited by U.S. Department of Education or CHEA, but all have demonstrated their effectiveness in the safety record of school bus drivers.

Requiring school bus driver training programs, which are now governed by and in many cases operated by the state, to be accredited brings up Federalism issues. As FMCSA states in its previously-mentioned withdrawal notice, “Further, Executive Order 13132, dated August 4, 1999, dealing with Federalism, states that ‘the national government should be deferential to the States * * *.’ and ‘[i]ntrusive Federal oversight of State administration is neither necessary nor desirable.’” School bus driver training is a state policy issue. It follows a state-mandated curriculum, and is generally taught by state-certified instructors. For FMCSA to require either that current school bus driver training programs be accredited or that they be superseded by the proposed required curriculum would clearly be intrusive, and would be neither necessary nor desirable.

V. A. Cost Analysis

FMCSA has severely underestimated the cost of this proposal for the school bus industry. In order to obtain current data, NSTA conducted a survey of members in January and February of this year. We received responses from a cross section of carriers with operations in 36 states, employing roughly 50,000 school bus drivers. We believe the responses are representative of the industry. The following comparison of FMCSA’s estimates and NSTA’s survey responses show how far off the agency is.

Number of new school bus drivers: FMCSA predicts that 24,800 new school bus drivers will be needed each year. While the school bus industry does not have accurate figures on the number of drivers we employ, we do know the approximate number of school buses we operate—475,000. According to our survey, the ratio of drivers to buses averages 1.16, which would mean that we currently employ 551,000 drivers. The survey also shows that an average 21% of the driver force are new trainees each year. Consequently, the actual number of new drivers being trained for their CDL licenses annually is 115,710 (551,000 x 21%).

Number of interstate drivers: FMCSA claims that the only school bus drivers who will be affected by the NPRM are 1% of contractor-employed drivers. There are two flaws in this assumption. As noted earlier in the scope of the proposed rule, the

requirement will apply to **all** applicants for a CDL who intend to drive in interstate commerce, not just to those who intend to drive contractor buses. Perhaps FMCSA assumes that public school districts do not transport students out of state. If so, it is mistaken. Public school districts that operate their own buses are no less likely than public school districts that contract transportation to send students on interstate activity trips.

The second flaw is the estimate that only 1% of drivers go out of state. In making this determination, FMCSA misapplied information that NSTA supplied in regard to an earlier rulemaking. In 2001, we provided data showing that 1% of all school transportation **trips** were interstate activity trips. That does not mean that only 1% of **drivers** go out of state. Because activity trips are typically assigned on a rotating basis, most if not all drivers at a location are eligible to take them. Among our survey respondents, an average 83% of the driver force is eligible for interstate trips under the employers' policies or union contracts, and an average 17% of the drivers actually made an interstate trip during the previous year.

Training cost: FMCSA estimates direct training costs at \$25/hour and the lost cost of wages and benefits at \$11.40/hour for a total cost of \$36.40/hour. According to our survey, direct training costs average \$37.59/hour and the average starting wage is \$12.35/hour. That figure does not include any benefits. The actual average total cost of training is therefore more than \$49.94/hour.

FMCSA also miscalculates the number of additional hours of training that will be required for school bus drivers, as it deducts 10 hours that are already part of the FMCSRs. In fact, the current requirement for school bus drivers is not 10 hours, but 6 hours; and more important, the current requirement does not apply to publicly-employed school bus drivers (since the responsibility lies with the carrier, not the driver), who represent two-thirds of the driver force. Therefore, for most of the industry, the training requirement will be 90 hours, not 80 hours.

Total cost per year: The following chart shows the difference between FMCSA's calculations and NSTA's calculations based on our survey results.

FMCSA	NSTA
119 drivers/year (1% of 30% of 24,800)	19,670 drivers/year (17% of 100% of 115,710)
9,514 hours/year (119 x 80)	1,770,300 hours/year (19,670 x 90)
\$36.40/hour	\$49.94/hour
\$346,300 cost per year to industry	\$88,408,800 cost per year to industry

NSTA's survey of actual practices and expenses shows that FMCSA has underestimated the cost of this NPRM to the school bus industry by a staggering **\$88 million in the first year**. Carrying the cost out for the ten year period would bring the total for the school bus industry closer to \$600 million than to the \$2.6 million estimated by FMCSA.

Benefit: Given the actual cost of the training requirement, and using the same cost per fatal and non-fatal crashes as FMCSA uses, it would take a reduction of 24 fatal school bus crashes or 454 non-fatal crashes each year in order for the benefits to equal the cost. We are aware of only one fatal school bus crash in interstate transportation in the past 15 years. Clearly, any benefit to be gained from applying this requirement to school bus drivers is far outweighed by its cost.

Recommendation

NSTA urges FMCSA to exempt school bus drivers from this training requirement. This exemption would not be administratively difficult due to the unique CDL endorsement for school bus drivers.

An exemption is justified on the bases of the safety record of school bus drivers, state requirements for school bus driver training, and an analysis of cost versus benefit. Additionally, the unintended consequences of the NPRM are more likely to reduce student transportation safety than to enhance it, as schools will be forced to cut back on busing due to increased cost and fewer drivers, sending more students to less safe modes of transportation.