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VIA ELECTRONIC SUBMISSION

August 16, 2019

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE
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Washington, DC 20590-0001

RE: Federal Motor Carrier Safety Administration 49 CFR Parts 380, 383, and 384 [Docket No. FMCSA-2007-27748] RIN 2126-AC25, Partial Extension of Compliance Date for Entry-Level Driver Training (ELDT)

Dear Administrator Martinez:

Thank you for the opportunity to comment on the above-captioned item, which was published in the Thursday, July 18, 2019 Federal Register at 84 FR 34325 by the US Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA).

The Tree Care Industry Association (TCIA) is a trade association with over 2,500 commercial tree care company members in the U.S. Our line clearance contractor members are employed by utilities to maintain reliable electric service and are the first to respond when there are power outages caused by weather events. Our residential and commercial members work for cities, towns, public and private institutions and homeowners to maintain the safety, health and aesthetics of our urban/suburban trees. Our members collectively employ tens of thousands of CDL Class A and B drivers that would be impacted by FMCSA's proposal.

TCIA is committed to lowering accident rates and improving worker safety in the tree care industry. In fact, improving industry safety is one of the association's top priorities in its long-term strategic plan and an integral part of the ethics pledge required of all members. Because safety plays such an integral part in TCIA members' daily routines, TCIA was philosophically supportive of FMCSA's December 8, 2016, final rule, "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators" (ELDT final rule) and satisfied that our concerns and questions were being addressed by groups with ties to our industry such as American Public Power Association (APPA), the Edison Electrical Institute (EEI), and the National Rural Electric Cooperative Association (NRECA). As such, we refrained from submitting comments.

However, while TCIA members support FMCSA's well-intended efforts to ensure that Commercial Motor Vehicle (CMV) drivers are well qualified and operate in a manner that will ensure their safety and the safety of the motoring public, we are

tremendously concerned that FMCSA's plans for implementing the rule in a piecemeal manner fails to provide a clear path to compliance and, as a result, will impose significant and unanticipated costs to our industry and others regulated by the rule without the intended safety benefit.

For reasons explained more fully below, we ask that FMCSA delay implementation of all requirements of the rule until it can guarantee all aspects of the ELDT program are functional.

Background

Driving is incidental to tree care work and our members' CDL vehicles are typically driven for short periods over short distances. We are aware that before promulgation of the ELDT final rule, FMCSA received numerous comments from various industry segments requesting exceptions. In particular, comments filed jointly by APPA, EEI and NRECA requested that FMCSA exclude electric utility drivers because their driving represented a small proportion of their daily responsibilities. FMCSA responded collectively to these requests for exception by stating that it would be, "...virtually impossible..." to grant exceptions to the ELDT final rule.

Employee turnover rates in the line clearance tree care work are remarkably high due to the nature of the work (responding to emergencies at all hours to perform inherently dangerous work in adverse weather conditions). Yet, we have pressing need to fill vacancies, including CDL drivers, needed to perform this important work. If FMCSA is unable to provide exceptions to the rule, then the agency must be sure the final rule is workable. To that end, we ask the agency to address the serious albeit unintended consequences that will arise from implementing the ELDT final rule in a piecemeal approach.

FMCSA's Partial Delay is Burdensome, Costly, and Ineffective

Due to unforeseen delays in completing the entire IT infrastructure of the Training Provider Registry (TPR), FMCSA is proposing to extend by two years the compliance dates for "the requirement that training providers upload driver-specific training certification information to the TPR" and "the requirement that State Driver Licensing Agencies (SDLAs) confirm driver applicants are in compliance with the ELDT requirements prior to taking a skills test for a Class A or Class B CDL"¹.

The proposal makes clear that the proposed extension of the compliance date does not apply to any other provision from the ELDT final rule. The result is that effective February 7, 2020, training providers must meet the eligibility requirements set forth in the final rule to be listed on the TPR, electronically register with the TPR, and remain subject to the documentation and recordkeeping requirements of the final rule.² This is required despite FMCSA's acknowledgement that the TPR will not be able to accept or transmit the ELDT training certification information needed for SDLAs to confirm that drivers are meeting their training requirements nor permit training providers to register electronically. Furthermore, the Training Provider Registration Form, something training providers electronically submit through the TPR website, has not been finalized.

While FMCSA has committed to making the TPR available for training providers' registration purposes in November 2019 and to provide guidance at that time as to how the process will work, we are concerned that given the issues with the other functions of the IT infrastructure that complete the TPR, FMCSA will not meet this deadline. Even if FMCSA adheres to the timeline they set forth, we have serious questions about the full functionality of the ELDT Final Rule without a fully operational TPR.

¹ 84 FR 34327

² FMCSA should clarify what these recordkeeping requirements are.

Simply put, to create a compliance date for a final rule and then wait until five months prior to that date to inform industry that neither FMCSA nor the SDLAs are ready to uphold their part of the rule places an unanticipated and undue burden on industry, and nullifies all the feasibility analysis FMCSA used to justify this rule in the first place. The FMCSA's and the SDLAs' collective ability to track and share information is the very basis for this rule to work. If anything, FMCSA's idea of delaying enforcement deadlines is exactly backwards: get the IT infrastructure, the TPR and SDLAs running first, then implement the training requirements.³

TCIA has other questions and concerns about the current proposal:

- Exactly how will a company register as a training provider? The *Training Provider Identification Report* we find on reginfo.gov (OMB Control Number: 2126-00XX) is not consistent with the current regulation.
- Exactly how will we certify trainers? Is a credential required? Is there a specific course or curriculum of study they must use?
- Will trainers be able to provide training in multiple States or only in their State of domicile and/or employment?
- What constitutes a "facility" for training purposes? FMCSA guidance only says the facility must comply with State, federal and local regulations, and seems to suggest a "bricks-and-mortar" facility; but many of our members use pull-outs or utility substations as offices, or share offices, or have "virtual offices"; i.e., a crew presence in a region of the country with corporate support in a different location entirely.
- If our individual members and/or we as a trade association decide to develop curriculum for theory training, how do we have it certified for use in multiple States?

FMCSA's intent to have this clarified by the fall, 2019 seems overly ambitious on the agency's part, given the number of large, looming questions that remain. Even if FMCSA met this deadline, it doesn't provide enough time for industry to react, to train, etc. We would need far more lead time with this information to communicate to members, and for them to set up their programs, register their facilities, etc.

There are other CDL-related issues FMCSA should resolve before ELDT is implemented, which we summarize beginning on the next page.

³ To exemplify the impracticality of requiring partial implementation of the ELDT Final Rule, consider the following hypothetical scenario: John Doe who on February 7, 2020 begins the application process for a Class B CDL. Assuming the limited functions of the TPR are in place by November 2019 and there have been no issues for training providers with their registration, John finds a trainer through the registry and begins the required curricula. If the TPR were fully functional as the final rule intended, after John successfully completed his required curricula, the training provider would have transmitted John's electronic certification of completion to FMCSA—however, because that portion of the registry will not be functional until February 2022, John leaves the training provider without any verification as to whether he completed or did not complete the required curricula. John proceeds onwards to the nearest SDLA, where it is not possible to verify whether he has taken the required training as FMCSA is not able to receive nor transmit verification information until 2022 and States are not capable to receive it either, and takes the skills test for a Class B CDL. John passes the skills test, is issued his CDL, and shortly thereafter is operating a CMV without anyone knowing or able to enforce whether he took the required mandatory training that is set forth in the final rule. In that dysfunctional scenario, the proposed partial delay could have a material, negative impact on the safety of CMV operations.

MAP 21 – CSA mandate

Congress mandated that FMCSA reevaluate and create a better method to identify “High Risk” carriers. As FMCSA moves forward with this requirement, they have been testing a new method, “Item Response Theory” (IRT). Nothing is final, but FMCSA has been testing and we must assume that at some point they plan to change from the current CSA/SMS methodology to IRT. Doing so will drastically change the way carriers are evaluated inclusive of consequences for violations, severity, time weighting, etc.

In the new ELDT Final Rule there are several places where FMCSA requires Training Providers to train drivers in violation with consequences, ramifications, fines, repercussions, etc. It will likely change training processes and create additional cost and confusion to affected parties if they must adapt training from CSA to IRT.

FMCSA should not implement the training rule until it is ready to implement the IRT method and provide guidance on how to incorporate it into required training.

CDL Third-Party Testing

On July 9 (Docket No. FMCSA–2018–0292, RIN 2126–AC14), FMCSA proposed allowing States to permit a third-party skills test examiner to administer the CDL skills test to applicants for whom the examiner has also provided skills training. Under this proposal, States would have the option to permit this practice, which is currently prohibited under FMCSA rules.

FMCSA believes that allowing States to permit this practice could alleviate CDL skill-testing delays and reduce inconvenience and cost for third-party testers and CDL applicants, without negatively impacting safety.

We estimate ELDT “theory” training and testing could take anywhere from 10 to 40 hours, after which the CDL candidate would have to sign up for skills testing either with a state or third-party provider, not knowing how long the delay may be between.

Schools and carriers planning to register on the Training Provider Registry are likely already in the process of building their training modules and evaluating class size, costs, time and class intervals. If this NPRM becomes a final rule, much of this preparatory work will have to be revisited, incurring more time and expense.

It would be highly advantageous for our members to be able to start and complete the process in one planned training session. Both safety and productivity suffer when we must disrupt crew configurations.

While we consider this measure to be positive on its own, as the NPRM comment period ends on September 9, 2019, we ask FMCSA to resolve the “third-party” proposal before any ELDT compliance deadline.

Out-of-State Testing

On July 29 (Docket No. FMCSA–2018–0332), FMCSA issued another Notice of Proposed Rulemaking allowing driver applicants to take the CDL general and specialized knowledge tests in a State (the testing State) other than the applicant’s State of domicile.

Under this proposed rule, a State would not be required to offer the knowledge tests to out-of-State applicants. However, if the testing State elects to offer the knowledge tests to these applicants, it would transmit the results to the State of domicile, which would be required to accept the results.

Again, we intend to submit separate comment, but to summarize our position: The CDL is a federal regulated license. Why cannot all testing be completed in any State? Unlike an operator's license, the CDL was intended to prevent its holder from carrying one or more State licenses. Although allowing knowledge testing in other States is an improvement, why not skills testing as well?

Again, we ask FMCSA to resolve this issue before the ELDT compliance deadline.

Conclusion

The FMCSA should not rush to a compliance deadline on ELDT, given the fact that FMCSA and the States are not ready to comply with their own requirements. Not only would it place an undue burden on industry, we imagine it would be catastrophic for DOT roadside inspectors as well.

Industry leaders helped FMCSA create this rule in good faith. At the very least we should be afforded the same relief as FMCSA and the SDLAs until all provisions of the rule are functional. If this proposed rule goes forward, affected parties could have multiple years of chaos before FMCSA and the SDLAs undertake the needed effort and expense to make the process work efficiently.

This entire rule should be delayed until: 1) FMCSA and the States have the necessary infrastructure and information in place to make the rest of the rule work, 2) the IRT Module is fully tested and verified, 3) the State vs. third-party testing (by training providers) is decided and 4) out-of-State testing is resolved. A prudent delay in ELDT implementation will result in a far more navigable regulatory landscape and effective rule for all stakeholders.

The ELDT program can only be functional if all provisions are working in harmony. On the contrary, phasing a rule into place as proposed in the NPRM creates a cost burden as well as confusion for regulated entities that the original ELDT rule's analysis did not contemplate. All provisions of the rule should be delayed at least until the infrastructure to make it work is in place.

Respectfully submitted,

A handwritten signature in black ink that reads "Peter Gerstenberger". The signature is written in a cursive, flowing style.

Senior Advisor for Safety, Compliance & Standards