BEFORE THE
DEPARTMENT OF TRANSPORTATION
AND THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

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COMMENTS OF THE
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.;
IN RESPONSE TO A PROPOSED RULE

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Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators;
Docket number: FMCSA-2007-27748

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President
Owner Operator Independent Drivers Association, Inc.

April 6, 2016
STATEMENT OF INTEREST

The Owner Operator Independent Drivers Association (OOIDA) provides comments on the Federal Motor Carrier Safety Administration’s (FMCSA) proposed Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators. The approximately 157,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the total of active motor carriers operated in the United States, and OOIDA’s average member has more than two million miles of accident-free driving experience.

COMMENTS OF THE ASSOCIATION

Entry-level driver training (ELDT) standards are considerably overdue because better trained drivers are safer drivers. OOIDA has long advocated for a standardized ELDT program. OOIDA has been active on FMCSA’s Motor Carrier Safety Advisory Committee (MCSAC), which has made several ELDT suggestions. The OOIDA Foundation has also performed various ELDT research. Over the years, OOIDA has consistently provided feedback and guidance to FMCSA as the Agency has attempted to set forth ELDT regulations.

In 2015, OOIDA participated in FMCSA’s Entry-Level Driver Training Advisory Committee (ELDTAC). Composed of twenty-six industry members, the ELDTAC was established to conduct a negotiated rulemaking on ELDT. The ELDTAC submitted their final recommendation to FMCSA on June 3, 2015 and OOIDA is encouraged to see that the Agency has followed the ELDTAC proposals in developing this Notice of Proposed Rulemaking (NPRM). The NPRM is a necessary step towards bringing a higher level of professionalism to the trucking industry and reducing the disparity in the quality of training. Most importantly, the proposed rule will increase safety on our nation’s roads.

OOIDA has offered responses to 17 of the questions and/or solicitations for feedback from the NPRM. They are listed under the headings used by the Agency as published in the Notice.

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)?

FMCSA has repeatedly acknowledged that there is a scarcity of data proving a correlation between ELDT and improved highway safety, more specifically crash reduction. This lack of data is a direct result of FMCSA’s inability to meaningfully research what is an intuitive fact - experienced and trained drivers are safer drivers. Despite the absence of a comprehensive study demonstrating a reduction in crashes, Congress has rightfully tasked the Agency to improve and standardize ELDT because, in part, when highway research is examined in its totality, the case to support ELDT becomes compelling.

In 1995, the Federal Highway Administration (FHWA) published a study entitled “Assessing the Adequacy of Commercial Motor Vehicle Driver Training,” which examined ELDT programs provided by privately owned driver training facilities. The study ultimately concluded that the
training was inadequate and improvements in ELDT were warranted. The report also found that while training is a necessary condition for the reduction of accidents, it alone is not a sufficient condition and something more has to be done in order for training to be effective. The “something more” the FHWA mentioned was formal training for CMV drivers to assure that all the necessary knowledge and skills are covered utilizing a structure that maximizes the chances that learning will occur. Again, while the study stopped short from concluding that ELDT will cause a reduction in crashes, it should not be overlooked that this study recognized the importance of such practices as ‘behind-the-wheel’ training in highway safety.\(^1\) It was this conclusion that in part caused the U.S District Court for The District of Columbia in 2005 to determine that FMCSA’s failure to include certain minimum training requirements in its 2004 ELDT rulemaking were “arbitrary and capricious.”

The FHWA study does not stand alone in offering commentary that the current state of ELDT is insufficient and, when coupled with other research, a pattern of disconcerting problems with the training of entry level drivers emerges. If one looks at FMCSA research, such as the 2006 Large Truck Crash Causation Study, a frightening statistic is identified in the conclusion that driver error played a role in approximately 87% of crashes involving CMVs where the truck was identified as the critical reason for the crash.\(^2\) It is probably inaccurate to conclude that all driver error acknowledged in the study was a result of inadequate training, but nor is it accurate to conclude that all drivers on the road possess a mastery of even the most basic skills when viewed in relationship to the current ELDT landscape. Considering the lack of existing standards governing driver training facilities and the absence of any oversight of the trainers at these facilities, OOIDA members have observed that new drivers are not mastering the skills necessary to operate a vehicle on the open road. The importance of qualified trainers was recognized in the 2004 FMCSA sponsored report “Commercial Truck and Bus Safety Synthesis 5,” where it was noted that the “single most important component of an effective training program is a qualified trainer.”\(^3\) Considering that even after Large Truck Causation Study and Commercial Truck and Bus Safety Synthesis 5 were published, driver training facilities still function without a uniform criteria for trainers and boast that certified commercial driver licenses (CDLs) can be attained in as little as 24 hours, it is reasonable to determine that the problems with ELDT are glaring and the safety implications remain unresolved.

OOIDA applauds the Agency for recognizing the patterns in the industry and working to reverse the trend of potentially admitting poorly trained drivers into the profession. Truck driving is a highly-skilled profession and there must be proficient instruction at the onset of a driver’s career. The lack of a “smoking gun” has been used as a deterrent for far too long.

Upon request, OOIDA can provide countless examples of drivers lacking basic operational skills and the results associated with the absence of these skills.

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\(^1\) R. L. Dueker, *Assessing the Adequacy of Commercial Motor Vehicle Driver Training*, FHWA (July 1995)

\(^2\) Robert Craft, *Large Truck Crash Causation Study*, FMCSA (May 2006)

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?

There are many ways in which the proposed training would improve safety and as such, the NPRM is an appropriate first step in pursuing significant ELDT reform. The requirement for 30-hours of behind-the-wheel (BTW) training, the creation of the Training Provider Registry (TPR), and the development of the core training curriculum are significant aspects of the proposal that would likely improve safety.

The minimum 30-hours of BTW time is an immense improvement over the current standard, which is zero hours. This required BTW training provides greater opportunity to evaluate the skills of the entry-level driver and for the trainer to offer corrective actions as compared to the brief evaluation that the examiner is able to presently conduct. These required hours will expose the entry-level driver to multiple road signs and various traffic and roadway situations, providing an opportunity for the instructor to correct deficiencies. This amount of BTW training permits the trainer to teach and demonstrate concepts such as the Smith System, which focuses on predicting a potential problem before encountering it, then having the ability to react appropriately.

While the curriculum goes beyond basic instruction to pass the licensing exam, it would be inadequate without enforcement. The creation of the Training Provider Registry (TPR) offers assurances that trainers will cover the required material. Currently, the main goal of most training facilities is to advertise that a high percentage of their graduates get hired quickly. This NPRM will provide, for the first time, a training program that holds schools and instructors accountable for their graduates’ performance. The NPRM will also allow an audit of the effectiveness of the training programs. As MCSAC noted in Task 13-01 Report: B (1) (3)(C)(i)(A), “By following the safety record of ELDT graduates, this information could be used to evaluate the success of approved ELDT programs.” The Agency must ensure that the performance of graduates is reviewed and compared. Crash rates and serious violations which indicate poor safety performance should initiate an investigation into the training practices of the training provider. Without such enforcement from FMCSA, the expected safety outcomes from the NPRM will be at risk. In addition to the certification of training providers, the TPR will incentivize trainers to teach safety through a more specific training curriculum and permit more time to pay attention to detail.

The TPR will also address fraudulent CDLs. The United States Department of Transportation, Office of Inspector General released a report in May 2002 stating that suspected criminal activity had been identified in at least 16 jurisdiction CDL programs. Large-scale fraud has been identified in the CDL programs of Florida, Georgia, Illinois, and North Carolina. In Illinois alone, nine deaths could be directly traced to crashes involving commercial drivers that fraudulently
received their CDLs.\textsuperscript{4} The promulgation of ELDT will help reduce the number of fraudulent CDLs issued nationwide.

The curriculum recommended by ELDTAC, and included in the NPRM, was specifically structured to achieve a greater level of safety than is currently achieved with no entry-level standard. Throughout the historical development of this rulemaking, a number of curriculums have been suggested, most of which were designed by true experts in the driving industry. The Model Curriculum that has been proposed as the core curriculum was developed by drivers with years of driving experience. The uniformity of training and guidelines provides both a path that can allow for comparison of educational and safety outcomes and the mechanism for analyzing the effectiveness in improving safety. OOIDA believes that with the information and data collected and reviewed during the training and follow-up period, FMCSA will be able to identify and promote more effective training and increased safety.

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

While there is some duplication between the commercial learner's permit (CLP) exam and ELDT theory training, it should not be eliminated or minimized. The ELDT theory curriculum will reinforce certain items from the CLP exam and should be used to make broader connections beyond what the CLP exam requires and relate that to real-world operating environments.

For example, CLP exams test for knowledge of vehicle size and weight restrictions, but do not determine if drivers can successfully utilize that understanding on the roads. The ELDT theory training will discover if trainees can implement the knowledge from CLP exams into necessary skills such as trip planning, where the entry-level driver will have to contemplate route selection along with the pros and cons of utilizing Global Positioning System devices. In this case, drivers will need to employ their understanding of size/weight restrictions when confronted with everyday driving challenges such as traffic, weather, and hours of service. During ELDT theory training, an entry-level driver will bolster their understanding of basic CLP concepts and, at the same time, learn how those concepts are effectively applied within the profession.

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?

OOIDA believes that there should be a required number of BTW hours for Class A and Class B CDLs. We would like to see significantly more robust training requirements than currently proposed, however the required 30-hours BTW training is a necessary first step. The 30-hour threshold is already surpassed by members of the ELDTAC who provide ELDT. Additionally, there are 12 states with statutes that set a minimum number of hours for entry-level Class A CDL

training which range from 80 to 160 hours, while 5 states have statutes that establish minimum training hours for Class B, which range from 48 to 80 hours\(^5\). FMCSA has identified 865 training programs that offer Class A curriculums with an average of 190 hours of training as well as 336 Class B training programs that offer curriculums with an average of 98 hours of training\(^6\). These statistics should encourage the Agency to establish a higher threshold for minimum hours of BTW training.

While the proposed rule offers substantive ELDT reform, further driver training should be pursued after a CDL is acquired. Moving forward, the Agency should examine graduated CDL programs. A graduated CDL program would be the best method to ensure that a new entrant has achieved proficiency. This would include multiple steps where the trainee competently demonstrates the skills needed to operate a CMV. Such a program could include learning basic skills on a smaller vehicle while eventually working up to a class 8 articulated vehicle. The trainee would be expected to demonstrate proficiency of multiple skills, in varying driving conditions, and on different types of roads and traffic situations. As an example, the United States Army has established such a program called Motor Transport Operator (88M), where trainees learn to operate increasingly larger vehicles and spend over 200 hours in training while operating different vehicles.

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?

OOIDA firmly opposes any other alternatives besides a minimum required number of BTW hours for entry-level drivers. There is absolutely no substitute for experience. When training is completed, and a trainee acquires a Class A CDL, they will be expected to be in complete control of a 70’ long articulated vehicle, which my weigh up to 80,000lbs, under every imaginable traffic and weather scenario. After completing training, there is no guarantee that the new CDL holder will have even one more day of supervision before driving on a public road. The training must be done right the first time and there must be adequate time to do it.

While OOIDA supports the Agency’s choice of the term “proficiency” to describe the level of skill that must be acquired, this can only be attained and evaluated with sufficient BTW time. A proficient outcome alone is not enough to ensure the best possible safety outcome for the entry-level driver. The hybrid approach of BTW and proficiency was agreed to by the diverse stakeholders of the ELDTAC as a complete package, and the individual element of the 30-hour minimum requirement was agreed upon via a consensus vote per the rules of the ELDTAC. A requirement that is expressed only in terms of outcomes does not put safety first.


\(^6\) Ibid., 73
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 trainee should be able to demonstrate basic control of the vehicle before entering a public roadway for training. This should include such functions as familiarity with the location of the brake pedal and throttle pedal (which are located more directly below the driver in a large truck as compared to in front of the driver in an automobile due to the seating position configuration), familiarity with the turning radius of the vehicle, a grasp of double clutching and shifting, and the location and operation of common controls. The trainee should also demonstrate confidence in operating the vehicle. Once the trainer has clearly established that basic control of the vehicle has been demonstrated, then it would be appropriate for the trainee to engage in BTW public training along with theory and range training.

OOIDA understands that providing flexibility within the training requirements is important, especially for small business truckers offering ELDT. The scenario for training a particular skill may present itself on any given day. Taking advantage of those opportunities can provide some of the best training an entry-level driver might encounter. However, a new driver must demonstrate basic control of the vehicle before moving on to any other stages of ELDT.

Input specifically requested by the Agency

a. Trainer driving record qualification

Question: During the two years prior to engaging in BTW instruction, the driver must not have had any CMV-related convictions for the offenses identified in § 383.51(b) through (c). FMCSA invites comment on this proposed driver training qualification.

OOIDA understands the need for and approves of having minimum standards for driver trainers, including the use of driver disqualifying offenses under § 383.51. But the Association is concerned that the following 3 violations should not disqualify a driver trainer (or a driver):

§ 383.51(c) Table 2 (1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the regulated or posted speed limit.
This violation can arise where speed limits drop unexpectedly and a local officer is positioned to record a vehicle’s speed immediately after passing the posted sign.

§ 383.51(c) Table 2 (4) Following the vehicle ahead too closely.
This violation can arise when a car cuts in front of a truck unexpectedly and the officer does not see this action happen. Subsequently the officer sees the car, now in a position which does not allow for an assured clear distance for following, and writes up the truck driver for the violation.
§ 383.51(d) Table 3. Disqualification for railroad-highway grade crossing offenses.
The violations in Table 3 are especially problematic. Poor roadway design and engineering, particularly before CMVs of 70 feet in length were commonplace, leads to these violations being more common, despite the best efforts of drivers. As an example: § 383.51(d) (1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train. This violation can leave a substantial room for interpretation. OOIDA has experienced members being cited when the vehicle speed was already below 10mph when approaching the tracks and therefore the driver did not slow down further. The officer then cited the driver for not slowing down.

Due to the high potential for the 3 violations identified above to be cited incorrectly, OOIDA requests that they not be used to disqualify a trainer. The time period in which the offenses would be considered disqualifying should be extended to 5 years.

b. Retention of training records
Question: ELDTAC briefly discussed how long training providers would be required to retain training records, but ultimately left the decision to the Agency. FMCSA proposes that the records be kept for three years after the date they are created, consistent with the retention requirements in §391.51(d), General Requirements for Driver Qualification Files.

Aligning this record keeping requirements with other record keeping requirements in §391.51(d) is reasonable and should be sufficient for enforcement purposes.

III. Necessary conforming changes
a. Requirement for refresher training
Proposed change: The Agency proposes a disqualification under § 383.51(b) through (e) as the sole standard for requiring refresher training. This change would ensure consistency among the States in determining when refresher training is required. FMCSA is using this criteria for both when a CDL holder is required to take refresher training and for determining the qualification of a BTW instructor. The Agency requests comments on these changes.

The Agency has not demonstrated the need or appropriateness of refresher training. OOIDA believes that the proposal for a refresher course is outside of the scope of the rulemaking. The Agency has made no record to support the need for or the appropriateness of refresher training. There is no evidence that disqualified drivers "have either never learned the necessary skills for safe operation of a CMV or have allowed those skills to deteriorate to the point where they have no greater mastery of operational safety than individuals who have not previously driven a CMV.” OOIDA does not believe that driving experience will cause a driver’s skill to deteriorate over time, but rather that it generally produces a safer driver. While OOIDA agrees that there are drivers on the road now that obtained their CDL without beneficial training, there is no certainty that convictions for the disqualifying offenses accurately separate those who need training from those who do not.
OOIDA is also concerned with the potential for the disqualification process to be applied to drivers when no pre or post deprivation due process was afforded a driver. FMCSA and its state partners frequently use the Motor Carrier Management Information System (MCMIS) inspection data to make enforcement decisions - even if a driver was never given due process to challenge in court the alleged violations recorded on an inspection report. Under 49 C.F.R. § 383.51(a)(3), drivers are disqualified if convicted of the offenses listed in subsections 383.51 (b) (Disqualification for major offenses) and (c) (Disqualification for serious traffic violations). The requirement for a conviction suggests that drivers will be given the opportunity to go to court and defend themselves against such allegations before they are disqualified from pursuing their livelihood.

As described in Tables 1 through 4 to §383.51, convictions of the rules listed are required for driver disqualification. It would be inappropriate for disqualifications and subsequent retraining requirements to be based on merely the alleged violations in the MCMIS database. While OOIDA questions the lack of a record to support blanket refresher training of experienced drivers who have been disqualified, at least the requirement applies only to disqualifications based solely on convictions.

There is a disconnect between disqualification and the content of refresher courses. For the most serious disqualifying offenses, the Agency already provides an opportunity for reinstatement if the convicted and disqualified driver undertakes a state approved rehabilitation plan, 49 C.F.R. § 383.51(a)(6). The proposed rule leaps from rehabilitation for the most serious disqualifying offenses to a one-size-fits-all refresher training, regardless of the underlying disqualifying offense. Assuming the "appropriateness" of state rehabilitation programs means that they are tailored to address the violations that caused the disqualification, expanding this system would be more appropriate than creating another layer of rehabilitation bureaucracy not particularly tailored to the offense that disqualified the driver. Many of these violations listed for disqualification could easily be due to momentary lapses in judgment and/or unintended consequences due to being in unfamiliar situations, neither of which would be corrected through additional financial and time penalties.

Examples of violations listed in 383.51 (b) through (e) that as proposed would lead to refresher training:

383.51 (c) of the Federal Motor Carrier Safety Regulations: Table 2; If the driver operates a motor vehicle and is convicted of: For a second conviction of any combination of offenses in this table in a separate incident within a 3-year period while operating a CMV the CDL holder must be disqualified from operating a CMV for 60 days.

383.51 (c) (I) - A CMV driver receives a speeding ticket going 15 miles an hour over the posted speed limit, and then 2 years later receives a ticket for following too close. OOIDA does not try to justify these violations, but accepts that there could be other reasons for the speeding and the following too close other than the driver’s skills have deteriorated or the driver never learned the skills necessary for safe driving. There are countless cases where the
speed limits have been reduced due to minor construction or temporarily reduced because of an infinite number of reasons. Drivers can sense and see when there is no work or workers present; then typically the original posted speed becomes the norm for traffic. That driver’s violation could be for traveling 45 mph in a temporary 30 mph speed zone and the driver is convicted of this violation.

383.51 (c) (4) Following too close - It is not unusual for a driver to brake hard to avoid 4-wheelers that feel obligated to get right in front of a CMV. Sometimes, the CMV driver is cited for following too close even if the entire episode was not seen. This would be a second serious violation under Table 2 of 383.50 (c) (4). If this violation occurs within the 3 year timeframe of the previous 15 mph over the speed limit violation, the penalty is 60 days of disqualification from driving a CMV.

The cost of disqualification for that employee driver could place the driver in financial ruin. The likelihood of that driver being hired after 60 days disqualification by another carrier is also very slim. However, assuming that a carrier would ride out those 60 days with the driver, the lost income assuming a 40-hour work week or 342.8 hours in 60 days would be $13,026.40. This loss of income and potential loss of opportunities to pursue an earned livelihood is a serious consequence that does not require further penalty by mandating that driver find the time and extra money to pay for refresher training.

The added financial crisis from such a disqualification period is even more severe for an owner-operator leased to a carrier or an owner-operator under their own authority. While the employee driver is out of wages, they seldom have any financial investment in the carrier that they drive for. The owner-operator, by definition, has substantial financial interest in the truck, and in the business of trucking. Many of these costs, generally fixed costs, continue even if the truck is idle. The owner-operator is dependent on the truck moving daily in order to make the small business operate efficiently and profitably. The inability to operate a CMV for 60 days would put the majority of owner-operators not only out of business, but also in financial ruin for themselves and their families. There is a domino effect that occurs as future business opportunities will be lost, and the reputation of the owner-operator degrades. According to the OOIDA Foundation’s biannual survey of its owner-operator members, the mean expense for an owner-operator under their own authority is $454.52 per day. A 60 day disqualification would cost the owner-operator operating under their own authority $27,271. The penalties for these violations are extremely harsh and would force bankruptcy and financial ruin for most owner-operators.

The OOIDA Foundation biannual survey indicates that owner-operator members on average have over 20 years of driving experience, over 2.5 million miles of accident free driving, and

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7 Based on $38 per hour referenced in U.S Department of Transportation, Federal Motor Carrier Safety Administration, Regulatory Evaluation of Entry-Level Driver Training Notice of Proposed Rulemaking, FMCSA (March 2016), 14.
8 Owner-Operator Independent Drivers Association, Owner-Operator Member Profile Survey 2014, OOIDA (July 2014), 11.
less than 1% has ever had a DOT reportable accident.⁹ Requiring that such a driver, because of unfortunate and possibly unavoidable circumstances, must pay to take a refresher driving course is unwarranted and adds to an already onerous penalty.

OOIDA suggest four alternatives be considered in this rulemaking concerning refresher training.
1. The refresher training requirement should be removed because it is controversial and recognized as being outside the scope of this rulemaking.
2. If the Agency wants to pursue further penalties for those convicted of those violations under 383.51 (b) through (e), then announce a separate rulemaking with comments specific to refresher training.
3. The refresher training program should be eliminated until further research is initiated verifying that disqualification from driving for 60 days and an additional penalty of paying for and taking a driver training program is an effective means of reducing crashes.
4. Propose that the refresher training program is available to those that have been disqualified from driving a CMV because of convictions for violating 383.51 (b) through (e) will nullify or reduce the 60 day disqualification requirement. There are many states that believe that paying fines and punitive measures can be somewhat useful, but specific and effective training may offer more long range benefits.

c. **Requirement for refresher training when ruled imminent hazard**

   Proposed change: FMCSA invites comment on whether a driver disqualified under §383.52 should also be required to complete refresher training before his or her CDL is reinstated.

   If the refresher training requirement is not removed, §383.52 “Disqualification of drivers determined to constitute an imminent hazard” when using the definition of imminent hazard in §383.5 is an appropriate threshold for requiring refresher training.

d. **Require written or electronic assessment**

   Proposed change: The Agency believes that a written or electronic assessment of a driver-trainee’s proficiency by all training providers is necessary in order to create a record verifying that the training provider followed the applicable theory curriculum requirements; therefore, it includes this requirement in the NPRM. The Agency requests comment on this proposed clarification.

   OOIDA supports the requirement of a written or electronic assessment. The assessment is necessary in order to confirm that the proper testing procedures have been used. Without such an assurance, the effectiveness of the entire NPRM is at risk. If individual trainers are left to develop theory assessments, this will lead to a disparity in the quality of training. Such a disparity would create the risk of “CDL mills” teaching to the test and nothing more.

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⁹ Ibid., 26
Eliminating this situation was one of the core goals of the ELDTAC. An effective test must have a randomized selection of questions to draw from to ensure this situation does not occur. Small business entities who train 3 or less individuals would be hard pressed to create such randomized test questions, thus creating a barrier for entry into the profession.

Within DOT, the Pipelines and Hazardous Materials Safety Administration currently provides online training and testing. Given the resources available, FMCSA should be able to create the necessary training and assessment for the theory curriculum. The required written or electronic assessment would prevent the ELDT disparity which currently occurs and provide an additional mechanism for directly tracking training performance.

Additionally, the FMCSA could host the final theory assessment test on their website and offer randomizations of tests. The test taker would have to verify who they are and where they completed training. This would let FMCSA track those individuals and the trainer’s success in teaching the core curriculum. This would assist FMCSA in determining what programs routinely fall below the 80% success rate, and would allow FMCSA to investigate those trainers and programs.

IV. General Discussion of the Proposal (section VI of NPRM)

a. Should minimum hours requirement be retained or altered?
   Question: We solicit comment on whether any minimum number of BTW hours should be required. If there is a required minimum number of hours for BTW training, we seek comment on whether the number of BTW training hours proposed in this NPRM should be retained, lowered, or increased.

   See additional discussion of BTW hours requirements under section I (4) and (5).

   While a very limited number of organizations have pointed to the lack of empirical evidence showing a correlation between ELDT and the performance of the entry-level driver, this does not indicate the absence of a connection. In some cases, these organizations own CDL schools, which provide ELDT with a minimum hours requirement. At these schools training large volumes of entry-level drivers, there are typically recruiters working for members of these organizations who visit the school. Additionally, websites for these schools promote the fact that there will be such recruiters affiliated with members of these organizations and upon acquiring their CDL, entry-level drivers will have a position with one of those carriers.10 Considering that these companies are pursuing a profit, the fact that they are in search of graduates from ELDT programs indicates that such programs must be providing a return to those companies affiliated with members of these organizations, particularly when those companies almost always

offer to compensate drivers for the cost of their training, such as “Up to $7,500 tuition reimbursement.”

The training institutions where these companies are recruiting are not providing training by promising the entry-level driver that they will graduate as soon as they are ready, or based strictly on their performance. Instead, these schools have a set schedule and curriculum which they follow. In the case of Truck Driver Institute, Inc “Our 15-day training program is designed for people with no trucking experience but want to complete and get their Commercial Driver’s License in as little time as possible.” This is clearly the hybrid approach that ELDTAC approved. It is an approach which members of these organizations clearly embrace as their members proudly associate themselves with these schools which require a minimum number of hours in addition to demonstrating proficiency with required skills. In the example of Truck Driver Institute, Inc. requiring 15 days, this would equal approximately 120-hours of combined training. Even when allowing for theory instruction and other time not spent BTW, that would easily surpass the 30-hour minimum BTW requirement set forth by ELDTAC and included in the NPRM. The Agency has followed the requirements of Executive Order 12866 by using performance objectives where feasible. The hybrid approach is a clear indicator of that. The minimum hours requirement should be retained or increased.

V. ELDT Curricula

a. Manual transmission requirement

Question: In the proposed curricula for Classes A and B, shifting/transmission is a required element of both theory and BTW components of the training. We invite comment on whether there should be an option to forego this element of the training for driver-trainees who intend to operate CMVs equipped only with automatic transmissions. Currently, for drivers who take their CDL skills tests in a CMV equipped with an automatic transmission, the State must indicate on the CDL that the person is restricted from operating a CMV with a manual transmission (49 CFR 383.95(c)(1)).

While intending to operate an automatic transmission does not ensure a driver will only operate an automatic transmission, 49 CFR 383.95(c)(1) ensures that a driver will not operate a CMV without first passing the skills test on a manual transmission vehicle. An option to forego manual transmission training for driver-trainees who intend to operate CMVs equipped only with automatic transmissions is reasonable.

b. Substitute HM regulation in place of ELDTAC curriculum

Question: FMCSA seeks comment on whether the hazardous material regulations (HMR) training in 49 CFR 172.704 could be used or modified to satisfy the H endorsement training in this proposed rule.

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OOIDA does not support substituting HMR training in 49 CFR 172.704 to satisfy the H endorsement training in the proposed rule. The ELDTAC HM curriculum recommendations were carefully developed by a clear consensus. Just as the overall curriculum goes beyond merely learning the regulations, the HM curriculum was created with the same purpose. Safety requires more than learning a regulation, it also requires an understanding of how to operate and apply those regulations in the “real-world.”

c. **Should range training be permitted in any sufficient location**

Question: The NPRM sets forth the proposed elements that any area would meet in order to be suitable for range training. This approach provides the flexibility for small training entities to use publicly available areas, such as office building or mall parking lots during “off” hours for range training, so long as the basic definitional requirements (e.g., range area must be free of obstructions and permit adequate sight lines) are met. The Agency requests comments on the practicability of this proposed approach.

OOIDA supports retaining the flexibility as agreed to by the ELDTAC. Utilizing any suitable location for range training would not be detrimental to the effectiveness of range training. These settings can simulate training in “real world” situations. This requirement is especially critical for small business truckers who would be able to utilize these areas for training.

VI. Section by section explanation of proposed changes

a. **§ 380.605 Definitions: 1yr minimum requirement**

Question: In the definition of “BTW instructor” the Committee agreed to the requirement of 1 year of CMV experience driving or 1 year or experience as a BTW instructor. The Consensus Agreement included a statement that 2 or more years of such experience “is preferable.” The Committee agreed that FMCSA should solicit comment on whether the two-year requirement would affect the applicability of State laws relating to instructors or training providers.

A CDL (without restrictions) can be used in any state and at any time of the year. This means a trainer with limited experience could be teaching a trainee who will be driving across the country without the benefit of having personally experienced hazardous weather conditions, such as dense fog or severe thunderstorms. Concerns beyond weather include seasonal experiences with wildlife, such as the higher risk for a deer strike in the fall. There is no substitute for an experienced trainer. OOIDA would welcome an increase in the requirement to at least 2 years or more of experience.

b. **§ 380.719 Requirements for Continued Listing on the Training Provider Registry**

Question: The Agency proposes that, in order to remain on the TPR, 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. In addition, a training provider would update its FMCSA Entry-Level Driver Training Provider Identification Report biennially and report changes in key information to FMCSA
within 30 days of the change. Key information changes would include a change in the status of a training provider based on the number of driver-trainees actually trained in a twelve-month period. For example, if, when submitting the report form, a training provider anticipated training three or fewer driver-trainees annually, but in fact trained more than three, that provider would no longer be eligible for treatment as a small training provider. The provider's change in status would be updated on the report form and the provider would thereafter be subject to all requirements of § 380.707 (a) through (d). We invite comment regarding this proposed requirement.

OOIDA supports this proposed requirement for acceptance to the training provider registry and to remain on the registry.

In working with a diverse group of stakeholders, the Agency has submitted an ELDT rule which is long overdue. The solid foundation of the model curriculum reaches beyond merely teaching to a test and provides a greater understanding of the real-world conditions and responsibilities a driver will encounter once they have earned a CDL. While OOIDA anticipates additional strengthening of ELDT in the future, this new standard will play a role in raising the level of professionalism among truck drivers and increasing safety on our nation’s roads and provide mechanisms for evaluating the effectiveness of entry-level training.

OOIDA supports the effort to ensure that every CDL holder starts their career with an effective ELDT program. OOIDA’s comments and concerns reflect this as we work with FMCSA to promulgate this NPRM.

Thank you for your consideration of OOIDA’s comments.

Sincerely,

Jim Johnston
President, OOIDA