



2018 Legislative Agenda

COMMERCIAL VEHICLE TRAINING ASSOCIATION 2018 LEGISLATIVE AGENDA

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*A Letter from CVTA's
President & CEO
Don Lefevé*

Trucking begins with truck drivers. CVTA's 2018 Legislative Agenda is focused on policies that promote safety, workforce development, and keep our economy moving forward. Currently, America is facing a severe driver shortage, and it is estimated that the country is 50,000 jobs short to fill demand. This shortage is only expected to worsen as driver demographics, growth, and other factors will require more drivers in the future. As of 2014, commercial driving was the number one in-demand occupation in 29 states. Drivers deliver the goods that Americans rely upon every day and are therefore critical to our way of life.

CVTA's legislative agenda is a culmination of issues that affect our schools. These issues are at the nexus of transportation, commerce, education, and labor policy, at both the federal and state levels. CVTA lends its expertise in these policy domains to ensure that students can enter and exit training without any major impediments. CVTA member schools provide a quality pathway to enter this high demand occupation. Therefore, CVTA's legislative agenda is primarily concerned with the aspects relating to training, student funding, and sensible regulations that allow students to equip themselves with the skills needed in their future profession.

For drivers to get the training needed, schools and motor carriers must have the right policies in place to ensure success. The policies outlined in this document reflect, in our members' judgement, the right policies to ensure that students succeed and, therefore, the trucking industry succeeds.

Should you have any questions, please do not hesitate to contact us at CVTA. We appreciate your interest in understanding the policy dynamics, which will make students successful.

We look forward working with you now and in the future.

Sincerely,

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The Commercial Vehicle Training Association (CVTA) is the largest association representing commercial truck driver training programs in the United States. CVTA members represent nearly 200 training locations in 42 states and train over 50,000 commercial drivers annually. Advancing the interests of trucking's workforce providers and employers, CVTA advocates for policies that enhance safety through commercial driver training, enable students to secure employment within the trucking and bus industries, thus further advancing driver professionalism.

CVTA SCHOOL FACTS

- 50,000 graduates (annually)
- 200 training locations in 42 states
- Average age is 35
- 93% male and 7% female
- 10,000 truck driver trainees funded with WIOA¹
- ***CVTA members are the largest collective source of entry-level truck drivers recruited in the United States.***

TRUCKING INDUSTRY FACTS

- 70.6% of freight tonnage in the United States moves by truck; this accounts for 10.5 billion tons of goods worth \$738.9 billion (81.5% of the nation's freight bill).²
- 3.9 million commercial motor vehicle operators are employed by interstate motor carriers.³
- The trucking industry will have been short 50,000 drivers needed to fill every truck in their fleets in 2017; this number is expected to increase to 174,000 by the end of the decade.⁴
- Entry-level truck drivers are often pre-hired before beginning their driver training, thus they begin working almost immediately after completing their training. They make up 49% of new hires in the trucking industry.⁵
- Entry-level drivers enjoy an average starting salary of \$41,000-\$45,000 per year plus benefits, as well as bonuses and tuition reimbursement.
- The truck driver occupation is listed as an “occupation with the most growth” by the Department of Labor, Bureau of Labor Statistics.
- The truck driver workforce is expected to grow 6% by 2026.⁶
- The average age of a truck driver is 55 years old.⁷

¹ Based on a survey of CVTA members, NAPDTDS driver training programs, and other industry stakeholders.

² American Trucking Associations. Industry Fact Sheet (2016) available at http://www.trucking.org/ata%20docs/what%20we%20do/image%20and%20outreach%20programs/misc%20documents/pro%20Truck%20Drivers_final.pdf

³ Federal Motor Carrier Safety Administration. *2017 Pocket Guide to Large Truck and Bus Statistics*. <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/81121/2017-pocket-guide-large-truck-and-bus-statistics-final-508c-0001.pdf>

⁴ BOB COSTELLO, TRUCK DRIVER SHORTAGE ANALYSIS, AM. TRUCKING ASSOCIATIONS 6 (2017).

⁵ Id.

⁶ Department of Labor, Bureau of Labor Statistics. *Occupations with the Most Job Growth*. (2016). available at https://www.bls.gov/emp/ep_table_104.htm

⁷ <https://www.npr.org/2018/01/09/576752327/trucking-industry-struggles-with-growing-driver-shortage>

ENTRY-LEVEL DRIVER TRAINING FINAL RULE

BACKGROUND

Since the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress and the Department of Transportation (DOT) have sought to put forth a regulation that requires anyone seeking a commercial driver's license (CDL) to obtain formal training before taking the CDL skills test.¹ After years of back and forth between the agency and the courts, Congress again required the DOT to put forth a regulation on entry-level driver training (ELDT) via the Moving Ahead for Progress in the Twenty-First Century Act of 2012 (MAP-21).² In response, the Federal Motor Carrier Safety Administration (FMCSA) held a negotiated rulemaking in 2015. CVTA and 25 other industry leaders were chosen as participants in the Entry-Level Driver Training Advisory Committee (ELDTAC). The negotiated rule produced by the ELDTAC served as the blueprint for the Final Rule, which was issued on December 8, 2016.³ Implementation of the rule began in June 2017⁴ after a nearly six-month regulatory freeze was put in place at the beginning of the Trump administration.⁵

When fully implemented in February 2020, all states, at a minimum, must require:

- All students to undergo a three-part curriculum comprised of classroom (theory), and behind-the-wheel (range and road). This collectively embodies approximately 30 subjects and requires students to demonstrate proficiency in all subjects and skills.
- All training providers to certify its students are “proficient” in the skills curriculum based on their performance before taking the CDL exam.
- Instructors must have two years teaching or industry experience.
- All training providers to register, be approved, and listed on the FMCSA's Training Provider Registry (TPR) (students who are not certified by a school on the TPR will not be able to test for a CDL).
- While there are no federal minimum hours of BTW training, all training providers must disclose how many BTW hours the student completed on the student's certificate.
- State driver's license authorities (SDLAs) to modify their data systems to be able to record BTW curriculum hours completed by each CDL applicant.

1 The Intermodal Surface Transportation Efficiency Act of 1991 § 4007, Pub. L. 102-240 (1991), 49 U.S.C. §§ 31701 et seq. (1991).

2 The Moving Ahead for Progress in the 21st Century Act § 32304, 49 U.S.C. § 31305 (2012).

3 *Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators*, 81 Fed. Reg. 88732 (December 8, 2016) (to be codified at 49 CFR Parts 380, 383, and 384).

4 <https://www.federalregister.gov/documents/2017/02/01/2017-02150/minimum-training-requirements-for-entry-level-commercial-motor-vehicle-operators>

5 Memorandum for the Heads of Executive Departments and Agencies, Reince Preibus (January 20, 2017), *available at* <https://www.whitehouse.gov/presidential-actions/memorandum-heads-executive-departments-agencies/>

RECENT DEVELOPMENTS

Implementation of the ELDT rule has encountered several hurdles since the rule was finalized in December 2016. In January 2017, President Donald Trump signed an executive order freezing implementation of rulemakings that had not yet been finalized. While the ELDT rule was made final, implementation of the rule did not yet start until June 2017. The rule is again in jeopardy since a notice of regulatory review was published in the October 2, 2017 Federal Register outlining 20 DOT rulemakings slated for review to consider whether they are necessary.

In the Unified Agenda, published on December 14, 2017, the FMCSA announced it will be putting forth an NPRM to determine what should be required for upgrading from a Class B to a Class A CDL. DOT is already in the beginning stages of proposing a rule that would likely mend ELDT by reducing the requirements for an individual seeking to upgrade to a Class A CDL from a Class B. The rule currently states that anyone seeking to upgrade from a Class B to a Class A must undergo the entire Class A curriculum.

CVTA'S POSITION

CVTA strongly supports the Final Rule as it is written. This Final Rule sets forth a comprehensive classroom and behind the wheel curriculum and requires individuals to demonstrate proficiency before being certified to take the CDL exam. While FMCSA did not incorporate all of the ELDTAC's recommendations into its Final Rule, specifically an agreed upon minimum of 30-hours of required BTW training, CVTA believes it will greatly enhance highway safety because the curriculum requirements and demonstration of student skills performance far exceeds what most states currently require. For too long, sub-standard training providers ("CDL Mills") have been able to exist with little or no oversight with the express purpose of simply preparing CDL applicants for the skills test without adequate training. While CVTA recognizes that regulatory fixes may be necessary from time to time, we believe this Final Rule is a common-sense measure that will improve safety. CVTA is strongly opposed to any attempts to further delay or water down this important regulation that improves highway safety.

COMMERCIAL DRIVER'S LICENSE (CDL) TESTING DELAYS

BACKGROUND

To obtain a commercial driver's license (CDL), a student driver must follow a two-step process similar to that of someone seeking a traditional driver's license. First, the driver must pass a written knowledge test to obtain his or her Commercial Learner's Permit (CLP). The CLP holder must then wait a minimum of 14 days to take the behind-the-wheel CDL skills test.¹

After successfully passing the skills exam and obtaining a CDL, the new driver is ready to begin their new career. Upon satisfying all requirements, new CDL drivers have little, if any trouble, getting placed in a well-paying job operating a truck, since the truck driver shortage is expected to surpass 50,000 drivers by the end of 2017.²

The Federal Motor Carrier Safety Administration (FMCSA) sets minimum CDL testing standards for all states. While all states must meet or exceed these minimum testing standards in terms of content, states are free to determine the entity that administers or conducts the CDL skills exam within their borders. States can either use state employees, such as examiners within its Department of Motor Vehicles (or equivalent agency), and/or delegate the testing function, in part or whole, to a state-certified third party, including commercial driving schools, trucking companies, municipalities, or independent test centers. This practice of allowing a non-state entity to conduct skills testing is referred to as "third party testing." Forty states have adopted some form of third-party testing to ensure that there are enough personnel, testing sites and resources to test students expeditiously. Though states are not required to test students within a certain amount of time, delays in offering a skills test within a timely manner can cause extreme hardships to students, motor carriers, and schools.

CURRENT PROBLEM

In 2015, the GAO found that 15 states have CDL skills testing delays and backlogs that force students to wait for more than 14 days to test for their CDL.³ Students in eight of these states wait more than 21 days to take their initial CDL test.⁴ Most importantly, because 20-50% of students fail their initial CDL skills test, students in states with testing delays are often forced to forgo income for additional weeks or months while waiting for a retest appointment to become available.⁵ These delays are being further exacerbated by the fact that some states are closing down state run testing facilities either for budgetary reasons or due to their failure to meet increased size requirements for testing facilities. Since the GAO report was published, the FMCSA implemented new testing requirements,⁶ which have actually increased delays in many states.

Delays are primarily due to not having enough testing sites and personnel to meet the demand. Additionally, states

1 See 49 C.F.R. § 384.301(f) (requiring states to substantially comply with the 2011 and 2013 revisions to CDL regulations by July 8, 2015).

2 BOB COSTELLO, TRUCK DRIVER SHORTAGE ANALYSIS, AM. TRUCKING ASSOCIATIONS 3 (2017).

3 See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-607, COMMERCIAL DRIVER'S LICENSES: FEDERAL OVERSIGHT OF STATE PROGRAMS COULD BE IMPROVED (2015), 19-21 (Fig. 3) (noting that states reported using third party testing in order to increase availability or access to skills tests for prospective students, supplement state testing resources, cut costs, and reduce testing wait times) [hereinafter GAO Report].

4 Id.

5 GAO Report, *supra* note 3, 25-26.

6 See 49 C.F.R. § 384.301(f) (requiring states to substantially comply with the 2011 and 2013 revisions to CDL regulations by July 8, 2015).

are either unable to expend additional budget resources to solve its delay problem or are unwilling to implement a full range of third-party testing options to reduce the delays. The result is that new drivers are not able to take their CDL skills exam, enter the job market and make an income within a reasonable time. Commercial driver training schools are also hurt, as they typically cover the costs of training to preserve their students' newly acquired skills while they wait for an available testing slot. Moreover, trucking companies and the economy are harmed by these delays, as there are not enough CDL holders to fill the nation's growing driver shortage.

STATE-LEVEL DEVELOPMENTS

Industry and member concerns regarding testing delays prompted CVTA to urge Congress to take action. Our efforts, and Congress' commitment to addressing these delays resulted in the July 2015 publication of a Government Accountability Office (GAO) report outlining the extent of testing delays across the country. This report led Congress to include Section 5506 in the Fixing America's Surface Transportation Act (FAST Act).⁷ Section 5506 requires the FMCSA to track and provide an annual report describing (1) testing delay times across the country by state; and (2) the steps that FMCSA is taking to ensure that states with test, or retest delays of seven days or longer, reduce them. The first report was due in June 2017, but as of October 2017 FMCSA is still in the process of collecting the necessary data from state SDLAs to draft its first report.

CVTA has made significant progress to address this problem at the state level.

- In Texas, CVTA worked directly with the governor's office to ensure third-party CDL testing was fully implemented state-wide.
- CVTA sponsored legislation (AB301) in the California State Assembly to reduce wait times to seven days or less. This prompted the state DMV to take action to reduce wait times before there was further action on the legislation.
- In New Jersey, CVTA was successful in getting legislation passed that requires the state's Motor Vehicle Commission (MVC) to implement a pilot program for third-party CDL testing.
- CVTA hopes to continue its success at the state-level in New York, where delays are beginning to exceed 6 weeks since Fall 2017.

CVTA'S NEXT STEPS & LATEST FEDERAL ACTION

In an effort to ensure that skills testing delays are solved and that efforts on an individual state level are not undone, Reps. John J. "Jimmy" Duncan (R-TN-02) and Steve Cohen (D-TN-09) introduced H.R.4719 on December 21, 2017. H.R.4719 requires states to keep skills test delay times to seven days. Its passage or inclusion in infrastructure legislation is a top priority for CVTA.

In the meantime, CVTA continues to address this issue at the state level but looks forward working with both the states and the FMCSA to find workable solutions to this growing problem. We encourage states to consider expanding public-private partnerships that permit third-party testing vendors to make the process more efficient.

⁷ GAO Report, *supra*, note 3; Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 5506, 129 Stat. 1311, 1553 (2015).

WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) GRANTS

BACKGROUND

Congress reauthorized federal workforce programs funded under the Workforce Investment Act (WIA) through the passage of the 2014 Workforce Innovation and Opportunity Act (WIOA). As with WIA, WIOA allocates federal funds to states, which then push these funds into their local workforce through state “one-stop” workforce centers. WIOA funds enable unemployed individuals to receive training in “in- demand” careers. Over the years, WIA/ WIOA grants have allowed thousands of individuals to attend truck driver training schools and begin their careers as commercial drivers.

Under WIOA, the “in-demand” occupation requirement requires state and local workforce boards to determine occupations that are in high demand based on local, state, or regional jobs data. In other words, under WIOA, grants will be awarded to pay for training programs only if state and local workforce boards have already determined that the applicant’s target industry has adequate job openings in that state or locality.¹

CURRENT PROBLEM

CVTA believes lawmakers need to fully fund WIOA programs. WIOA remains a major source of funding to get individuals into trucking. Without robust funding, CVTA fears that less individuals will look to commercial trucking as a career option, thereby exacerbating the driver shortage. Additionally, CVTA is concerned about instances in states where driver training programs are not being classified as “in demand” occupations. Specifically, CVTA knows of several workforce boards who have chosen not to list trucking as an “in-demand” occupation” because it is based solely on local data. Thus, drivers in these states are denied WIOA grants to attend training because commercial vehicle driving jobs are not “in-demand” when, in fact, plenty of national trucking companies are anxious to hire them.

Although WIOA allows state workforce boards to choose which data they will use when determining jobs that are “in-demand,” CVTA fears that too much reliance on state and local data at the expense of national data may unintentionally discriminate against non-domiciled companies. As such, this may actually lead to an increase in the driver shortage. Furthermore, WIOA program metrics may need to be adjusted to capture those residents who are employed by out of state companies but remain a resident of their state. Otherwise, trucking companies will unduly be punished because they hire in numerous states but may not be headquartered in these states.

¹ See Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. § 3102(23)(B) (2014), *also see* <http://www.doleta.gov/wioa> (“The determination of whether an industry sector or occupation is in-demand under this paragraph shall be made by the State board or local board, as appropriate, using State and regional business and labor market projections, including the use of labor market information.”).

CVTA'S POSITION

To ensure that qualified job seekers in each state have access to driver training programs, it is imperative that all governors and workforce boards understand the current driver shortage and recognize that many trucking companies will hire from any state in the U.S. Therefore, CVTA urges members of Congress to:

1. Fully fund WIOA appropriations at authorized levels; and
2. Be prepared to act – through letters, appropriations riders, or additional legislation – should this be necessary to ensure that commercial driver training is recognized as an “in-demand” occupation or to overcome additional WIOA implementation hurdles that could prevent future drivers from accessing quality driver training programs.

18-TO-21-YEAR OLD DRIVERS

BACKGROUND

Current Department of Transportation regulations require a driver to be 21 or older in order to operate a Commercial Motor Vehicle (CMV) in interstate commerce.¹ The Motor Carrier Act of 1935 (“MCA”) created the Interstate Commerce Commission (ICC), which was responsible for regulating the transportation of passengers and property by motor carriers operating in interstate or foreign commerce.² In 1937, the ICC created and implemented safety regulations for commercial drivers, which included a minimum age of 21 years old.³

Therefore, an 18- to 21-year old who has the skills and maturity to obtain a CDL and begin working as a commercial driver can drive 250 miles from Kansas City, MO to St. Louis, MO, but that same driver is barred from simply crossing the Missouri river from Kansas City, MO to Kansas City, KS. Moreover, federal law bars drivers under 21 from driving a truck within any state’s borders if the cargo on that truck originated outside of the state or will eventually leave the state by any mode (otherwise classified as “interstate” cargo).⁴

Since the requirement for interstate drivers to be 21 years of age or older is a regulation, not a law, the Department of Transportation can amend the regulation to allow drivers from 18- to 21-years of age to operate in interstate commerce through the rulemaking process.

CURRENT PROBLEM

Current limitations on commercial drivers under 21 are impractical considering under-21 drivers are permitted to drive intrastate trucks within their own home state boundaries. The age restriction is particularly problematic given the growing shortage of drivers in the trucking industry is approximately 50,000 drivers short of what is necessary to fill empty trucks.⁵ This shortage is expected to increase rapidly over the next decade because of retirements and industry growth.⁶ In fact, this shortage is expected to increase so dramatically that trucking companies will have to recruit an estimated 89,000 new drivers (net) each year over the next decade to meet these growing demands.⁷

RECENT DEVELOPMENTS

Congress included a provision in the Fixing America’s Surface Transportation Act (FAST Act),⁸ which creates a pilot program that allows certain veterans from ages 18-21 to drive commercial motor vehicles in both interstate and

1 49 C.F.R. 391.11(b)(1)

2 Motor Carrier Act of 1935, Section 204(a)(1)-(2), Pub. L. 74-255, 49 Stat. 543 (1935) (granted the ICC powers under section 204 created the ICC, which was a precursor of what is now the FMCSA.

3 2 Fed. Reg. 110 (January 22, 1937).

4 See FMCSA Frequently Asked Questions: What is the age for operating a CMV in Interstate Commerce?, <https://www.fmcsa.dot.gov/faq/what-age-requirement-operating-cmv-interstate-commerce> (last visited Feb. 6, 2017) (stating that individuals must be 21 to operate a CMV in interstate commerce); see also guidance relating to 49 C.F.R. § 390.5 (stating that the Federal Motor Carrier Safety Regulations are only “applicable to drivers and CMVs in interstate commerce which transport property” and therefore, even “a driver transporting an empty CMV across State lines for purposes of repair and maintenance would be considered interstate commerce.”).

5 BOB COSTELLO, TRUCK DRIVER SHORTAGE ANALYSIS, AM. TRUCKING ASSOCIATIONS 6 (2017).

6 Id.

7 Id.

8 Fixing America’s Surface Transportation Act, Pub. L. No. 114-94, § 5404, 129 Stat. 1311, 1549-50 (2015).

intrastate commerce. The Federal Motor Carrier Safety Administration (FMCSA) published a request for comments⁹ in which CVTA urged the administration to adopt performance-based training requirements as proposed in the Entry-Level Driver Training Proposed Rule. CVTA also commented that the same training or types of equipment should be used by both the test group (18- to 21-year-olds) and the control group (comprised of 21- to 26-year-old drivers). This ensures consistency in the type of equipment being operated, which in turn ensures consistency in how drivers in the control and test groups are compared.

In the meantime, legislation introduced by Rep. Claudia Tenney (R-NY-22), the Waiving Hindrances to Economic Enterprise and Labor (WHEEL) Act, expands this pilot program to include any eligible 18- to 21-year-old driver with a valid CDL and a clean driving record. While the original pilot program established under the FAST Act is a good start to verifying the safety of younger drivers in trucks, expanding the program to include any eligible driver aged 18-21 will provide a larger and more diverse study group from which to collect critical data. CVTA supports this legislation and is advocating for its timely passage.

⁹ Commercial Driver's Licenses; *Proposed Pilot Program To Allow Persons Between the Ages of 18 and 21 With Military Driving Experience To Operate Commercial Motor Vehicles in Interstate Commerce*, 81 Fed. Reg. 56745 (Aug. 22, 2016).

AUTOMATED VEHICLE POLICY

BACKGROUND

Advanced Driver Assisted Systems (ADAS) and Highly Autonomous Vehicle (HAV) technology has evolved from a curious experiment undertaken by Silicon Valley years ago into a real and ambitious commitment by the information technology (IT) sector, original equipment manufacturers (OEMs), and the broader ground transportation industry. As recently as a few years ago, it was assumed that automated vehicles would not be commercially viable until well into the mid-21st century. However, we can expect this technology to be deployed by the driving public much sooner given recent technological breakthroughs. There are already passenger vehicles currently available to the public that have some autonomous capabilities (SAE Level 2) such as adaptive cruise control, automatic braking, and lane departure warning systems. Commercial trucks are also adopting this technology. New technologies are advancing at an exceptionally rapid pace. If automated vehicles are the future of ground transportation – and there is little doubt that it is – all segments of the transportation economy need to play a role in guiding its development and influencing the policies that will regulate this new technology.

In 2017, two bills were introduced in Congress to establish a regulatory framework for autonomous vehicles. H.R. 3388, the Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution (SELF DRIVE) Act passed the House on September 6, 2017. Companion legislation in the Senate, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies (AV START) Act is currently under consideration in the Senate. While the legislation focuses exclusively on passenger automobiles, it will likely set the foundation for future legislation addressing automated commercial vehicles. Both bills would preempt individual state laws regarding the manufacturing, testing, and deployment standards of automobiles in favor of the National Highway Traffic Safety Administration (NHTSA), the federal agency leading the policy discussion to date.

CURRENT PROBLEM

For now, OEMs and technology firms, particularly car and light truck manufacturers, are taking the lead in developing automated vehicle technology. CVTA supports preemption of the current patchwork of individual state laws currently governing this technology. We believe this will speed up the deployment of life saving technologies. However, CVTA also has several concerns that we believe must also be addressed in concert with any legislation establishing a national framework for manufacturing, testing, and deployment of ADAS or automated technologies.

With the entry-level driver training (ELDT) final rule scheduled to be implemented in 2020, it may be necessary to amend the ELDT final rule every 2-3 years to ensure the curriculum and training requirements match the deployment of the technology. At the very least, the Department of Transportation (DOT) may need to determine whether a person operating a highly automated truck needs an endorsement or restriction on his or her CDL.

CVTA'S PROPOSAL

CVTA proposes a five-point, common-sense approach as part of a broader federal framework for autonomous vehicle technology.

1. Require a driver.

Any legislation addressing highly automated commercial vehicles needs to require the presence of a driver/operator/pilot/technician (driver) who has had formal training that meets the operational and safety needs of this new technology. Current law is silent as to whether a driver is required if a commercial motor vehicle (CMV) is capable of driving itself. While industry experts believe drivers will maintain an active role in operating CMVs, there is still uncertainty. Therefore, CVTA believes that Congress should require a driver in any legislation. Doing so reaffirms the important role of the operator, while significantly mitigating cybersecurity or other system malfunction risks if encountered. Most importantly, it also provides short-term certainty for new entrants that this career will remain viable for the foreseeable future, a sentiment that most industry stakeholders share. Several CVTA school members have encountered individuals who are reluctant to enter the trucking industry because of the perceived threat that this will replace drivers, not enhance their ability to do their job.

2. Create an Advisory Committee to advise the Secretary on training, testing, and licensing.

Training is an essential part of safety and training institutions must be considered when establishing the framework for ADAS and automated technologies. What is currently required to obtain a Commercial Driver's License (CDL) may change in the next 10 years. Therefore, CVTA believes a federal advisory committee should be created to proactively deliver recommendations to the Secretary of Transportation (Secretary) on commercial driver training, CDL testing, and CDL licensing reforms that will be needed as a result of ADAS and autonomous technologies. This advisory committee must include key stakeholders from the commercial driver training industry, truck and bus industries, safety groups, labor groups, motor vehicle administrators, state government, law enforcement, and CMV manufacturers.

3. Allow drivers age 18 and older.

ADAS and automated vehicle legislation in Congress presents an opportunity to mitigate the truck driver shortage by requiring the Secretary to develop minimum licensure standards for 18-to-21-year-old drivers to operate in interstate commerce. Currently, 48 states (lower 48) allow all drivers to drive CMVs in *intrastate* commerce. Requiring the Secretary to conduct a rulemaking to allow 18-year-old drivers to operate in *interstate* commerce when safety conditions dictate is sensible. Congress and the trucking industry will be able to fulfill current and future workforce needs, adapt to advancing technologies, and provide good paying jobs to a new generation of professional drivers.

4. ADA Provisions.

Automated technologies hold promise for persons with disabilities. Currently, the FMCSA has granted certain persons with disabilities medical waivers to hold a CDL. CVTA would like the FMCSA to identify specific technological advancements that recognizes an individual with disabilities to be as safe or safer to drive upon being granted a medical waiver to receive or renew a CDL. Currently, the FMCSA is not required to identify these technologies and schools are unclear how to provide the training, particularly the over the road training to certain individuals with disabilities. We believe that adding this requirement helps training institutions evaluate whether they are capable of delivering such training in a safe manner by identifying new technology to accommodate individuals with disabilities.

5. Create V2V and V2I certainty by requiring the FCC to act.

Vehicle-to-vehicle (V2V) and vehicle-to-infrastructure (V2I) communications technology will play a critical role in improving highway safety. Sufficient broadband spectrum must be allotted exclusively for the use of dedicated short-range communication (DSRC) between vehicles and surrounding infrastructure to ensure safe transportation. The Federal Communications Commission (FCC) should be required to reserve all 7 channels of 5.9 GHz broadband spectrum dedicated as Safety Spectrum. To date, FCC has failed to act, and we believe this will greatly increase the chances of having zero accidents in future years.

MEDICAL WAIVERS FOR HEARING-IMPAIRED INDIVIDUALS

BACKGROUND

The Federal Motor Carrier Safety Administration (FMCSA) establishes minimum federal requirements governing how commercial drivers are licensed nationwide. In addition to passing the knowledge and skills testing requirements necessary to obtain a commercial driver's license (CDL), all new interstate commercial drivers are required to obtain and maintain a current Medical Examiner's Certificate, which states that the driver meets certain Physical Qualifications Standards outlined by the FMCSA. Since 2014, the FMCSA has granted medical exemptions to several hundred deaf and hearing-impaired individuals. Specifically, these individuals – regardless of driving experience – were able to obtain a Medical Examiner's Certificate although they could not pass the hearing test. FMCSA's willingness to repeatedly grant these exemptions to those who have no commercial driving experience poses an enormous safety risk to the motoring public and is very problematic for commercial driving schools.

Granting exemptions to deaf or hearing-impaired individuals with no prior experience is extremely dangerous. Communication is needed to train drivers. Because it is often difficult for deaf and hearing-impaired drivers to accept real-time direction, guidance, or commands from their instructors, other methods must be used. CVTA is unaware of any available technology or accommodations that would permit an individual, who is unable to pass the federal hearing test, to safely complete CDL training.

There are other complications in light of the FMCSA's decision to grant these medical waivers. Assuming a school could train a hearing-impaired student, it is entirely possible that he or she may be barred from sitting for the CDL exam in their state. Currently, some states like Florida will not allow hearing impaired students to test, and others will not allow an interpreter during the test, thus complicating the test for the individual. Moreover, it may be difficult for new drivers who are hearing impaired to secure employment, especially as an entry level driver.

It is ethically questionable at best for schools to admit certain students and collect tuition to train them for a vocation in which they are highly likely to be denied by employers upon graduation. Furthermore, federal and state regulators have condemned various educational institutions for enrolling students in programs with the knowledge that those students are unlikely to obtain certification or employment due to circumstances beyond their control, because these practices are considered misleading and predatory. Therefore, if the school admits the student, and is then unable to find a job because he or she cannot test for the CDL exam, the school may face legal liability. On the other hand, if the school denies admission to the student because of safety concerns, the institution may be faced with costly and time-consuming litigation under the Americans with Disabilities Act (ADA) even if those claims do not ultimately succeed.

CVTA'S NEXT STEPS

CVTA believes that rather than continuing to grant exemptions, the FMCSA needs to study how to train these individuals and whether such technology exists to enable this training. To the extent that technologies and other accommodations are available to enable a hearing-impaired individual to safely enroll in a driver training program, and

successfully complete it despite his or her disability, CVTA would support medical exemptions that permit such an individual to secure a Medical Examiner's Certificate before seeking admission to a truck driving school. However, CVTA is unaware of any such technology. Therefore, until our industry understands more about how to safely train drivers who are not currently able to meet the FMCSA's hearing requirement, and until more studies demonstrate that these drivers do not pose a safety risk to the motoring public, CVTA urges FMCSA to refrain from granting exemptions to hearing impaired individuals.

SLEEP APNEA

BACKGROUND

The Federal Motor Carrier Safety Administration (FMCSA) establishes minimum federal requirements governing how commercial drivers are licensed nationwide. In addition to passing the knowledge and skills testing requirements necessary to obtain a commercial driver's license (CDL), all interstate commercial drivers are required to obtain and maintain a current Medical Examiner's Certificate, which requires the driver meets certain Physical Qualifications Standards outlined by FMCSA.¹ These standards are meant to ensure that drivers operating commercial motor vehicles (CMVs) on U.S. roads are free of any medical conditions that would make them unsafe. Therefore, without a Medical Examiner's Certificate, or an appropriate waiver, a driver cannot operate a CMV in the U.S.

Obstructive Sleep Apnea (OSA) – a sleep-related breathing condition that can lead to impaired cognitive abilities, mood swings, and increased risks for heart disease and stroke – is one condition that, absent treatment, can signal a failure to meet the FMCSA's Physical Qualifications Standards.² The FMCSA considers OSA to be a “respiratory dysfunction that interferes with oxygen exchange, which may be ‘detrimental’ to safe driving.”³ Therefore, if a medical examiner detects signs of OSA, the FMCSA instructs the examiner to refer that driver to a specialist “for further evaluation and therapy.”⁴

CURRENT PROBLEM

There has been enormous confusion surrounding how rigorously medical examiners should screen drivers for OSA. This confusion largely results from guidance that the FMCSA published – and then rescinded – in 2012.⁵ This now rescinded guidance instructed medical examiners to apply a more rigorous standard when screening drivers for sleep apnea because it listed specific steps and fixed criteria that the Medical Examiner was to use during each screening. However, the criteria were never adopted nor put forth through a rulemaking as required by law. Moreover, sleep apnea tests and treatments can cost hundreds or even thousands of dollars in medical bills and lost wages, as well as obligate drivers to provide records of treatment compliance for years to come. Therefore, this improper guidance conceivably costs many drivers millions of dollars.

In August 2016, the FMCSA's Medical Review Board (MRB), a committee of Department of Transportation (DOT)-certified medical examiners (CMEs) developed recommendations for treating sleep apnea for CMV operators that while not yet approved or implemented by the FMCSA, would apply an excessively rigorous standard for treating OSA.

1 49 C.F.R. § 391.41 (2017).

2 *FMCSA Bulletin Regarding Obstructive Sleep Apnea*, issued January 20, 2015, available at <https://nationalregistry.fmcsa.dot.gov/NR-PublicUI/documents/OSA%20Bulletin%20to%20MEs%20and%20Training%20Organizations-01122015.pdf>

3 Id.

4 See *FMCSA Bulletin to Medical Examiners*, supra note 2 (explaining if a medical examiner detects a respiratory dysfunction that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy.).

5 *Proposed Recommendations on Obstructive Sleep Apnea; Withdrawal*, 77 Fed. Reg. 25226 (April 27, 2012).

Under the recommendations, CMV operators would be required to submit to sleep apnea testing if a driver has a body mass index (BMI) of 40 or higher, or if a driver has a BMI of 33 or higher and meets at least three of the following criteria:

- Age 43 or older;
- Post-menopausal female;
- Is male;
- Has diabetes;
- A male with a neck size greater than 17 inches or a female with neck size greater than 15.5 inches;
- History of heart disease;
- Snores loudly;
- Has witnessed apneas;
- Has a small airway;
- Has untreated hypothyroidism, or
- Has micrognathia or retrognathia.

The recommendations do include allowing CMV operators to continue driving if they are undergoing effective treatment for sleep apnea.

CVTA'S POSITION

CVTA is concerned that if these criteria are formally implemented into regulatory policy, it will prevent many otherwise safe and healthy drivers from working while compounding the financial burden of lost income with increased medical costs.

In the meantime, the federal government and the FMCSA have taken steps to clarify that medical examiners are to use their discretion in OSA screenings, rather than apply the specific steps outlined in the rescinded 2012 guidance. However, efforts to clarify the appropriate screening standard have not been effective and have led to even greater confusion. Many medical examiners continue to apply a heightened screening standard when examining drivers for OSA, forcing healthy examinees to spend hundreds or thousands of dollars on tests and equipment (such as a CPAP machine), while their CDL and ability to earn an income for themselves and their families hangs in the balance. There is simply no consistency or uniformity in the protocols medical examiners use to refer patients for further testing. Furthermore, CVTA is concerned that many medical examiners associated with clinics specializing in the treatment of OSA will be financially incentivized to refer more patients than necessary for further testing at the OSA clinics with which they're associated.

CVTA'S NEXT STEPS

CVTA fully supports federal regulations that ensure only qualified drivers are permitted to operate CMVs on our roads. The FMCSA's failure to clarify how medical examiners should conduct sleep apnea tests, however, is forcing healthy drivers to seek unnecessary and costly exams and treatment, placing their careers in jeopardy, and putting enormous financial stress on them and their families. This burden will be exponentially increased should the FMCSA fully implement the MRB's recommendations for treating OSA in CMV operators.

COMMERCIAL DRIVER'S LICENSES FOR CDL EXAMINERS

BACKGROUND

Though commercial driver's licenses (CDLs) are issued on a state-by-state basis, all states must meet certain federal requirements governing how commercial drivers are tested and licensed nationwide. The Federal Motor Carrier Safety Administration (FMCSA) is the department charged with setting these minimum federal licensing requirements. These federal requirements are meant to ensure that all commercial driver's license (CDL) holders have passed certain minimum testing standards, and that the administration of these tests is uniform and consistent across testing locations and states. Therefore, under these federal requirements:

1. States must ensure that all new drivers attempting to obtain a CDL follow a two-step licensing process similar to that of someone seeking a traditional driver's license. The driver must pass a written knowledge test to obtain a commercial learner's permit (CLP), and later, he or she must pass a behind-the-wheel skills test to obtain a CDL;¹
2. States are required to adopt a standardized set of minimum skills tests when testing a driver for his or her CDL;² and;
3. The FMCSA requires all CDL examiners to complete a formal examiner training course and certification exam to ensure that the examiners who administer the behind-the-wheel CDL tests in each state are qualified to do so effectively and consistently. While many states require CDL examiners to have CDLs, it is not a federal requirement.³

CURRENT PROBLEM

Though FMCSA implemented the above requirements to ensure that all CDL holders are qualified to drive safely on U.S. roads, the FMCSA has failed to take the most obvious step towards ensuring that state examiners are qualified to administer CDL exams – requiring state CDL examiners hold a CDL themselves.⁴

The FMCSA's failure to require examiners to hold a CDL undermines the integrity of the testing process and the truck driving profession. A pilot testing for a license would not take a test flight with someone who is not licensed to operate an airplane; a law student's bar exam would not be graded by someone who is not an attorney; even a driver seeking a traditional driver's license would not go onto the road with an examiner who is not licensed to operate a car. Requiring a tester hold the license for which they are testing is a logical requirement that is followed by nearly every industry. This requirement stresses the importance of the license and ensures that examiners are adequately positioned to judge the qualifications of their applicants.

Additionally, the FMCSA's failure to require state examiners to hold a CDL fails to comply with current law. As with a traditional license, student drivers taking the behind-the-wheel skills portion of their test – the CDL skills exam – will hold a CLP only, and therefore, may lawfully operate a commercial vehicle only if accompanied by a CDL

1 Commercial Motor Vehicle Safety Act of 1986, Pub. L. No. 99-570 §§ 12001-12015, 49 U.S.C. § 2701.

2 As of July 2015, FMCSA now requires states to use an FMCSA-approved State Testing System that is comparable to the 2010 Version of the American Association of Motor Vehicle Administrators' CDL Test System; *see* also 49 C.F.R. § 384.301(f) (requiring states to substantially comply with the 2011 and 2013 revisions to CDL regulations by July 8, 2015).

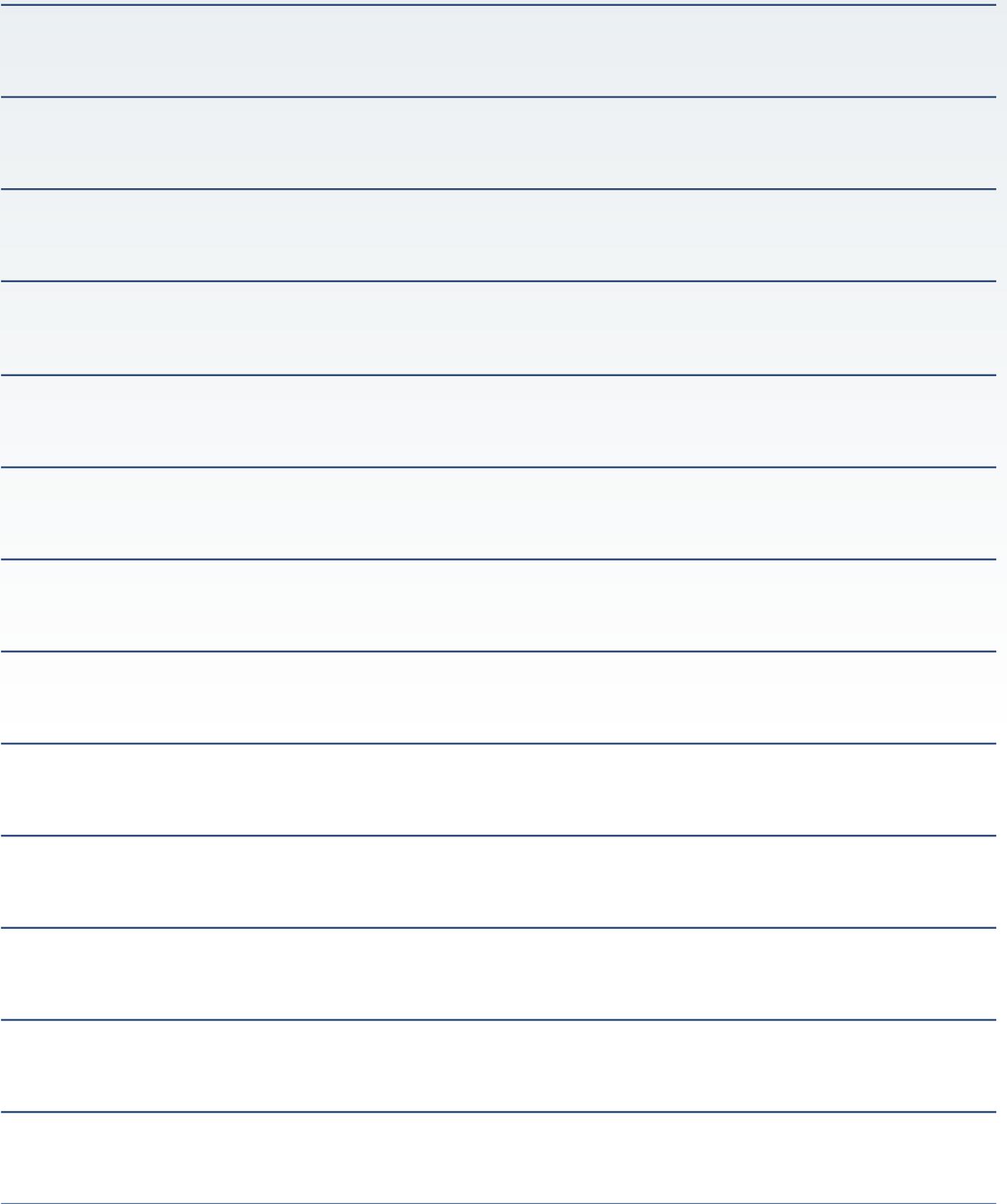
3 *See* 49 C.F.R. Section § 384.228 (requiring examiners to go through training with an AAMVA-certified trainer and to be regularly re-certified, but not requiring examiners to hold a CDL).

4 *Id.*

holder. However, because the FMCSA does not require state examiners to hold a CDL, it raises many questions related to the legality, safety, and appropriateness of allowing a CLP holder to operate a commercial motor vehicle (CMV) with a non-CDL holder in the passenger seat, especially when that person is determining the suitability of that driver to be behind the wheel. It does not reflect well on the FMCSA when it does not require CDL examiners to hold the very license for which they judge the performance of others. In addition, it sends mixed signals to new entrants about the FMCSA's enforcement priorities. Finally, FMCSA's failure to ensure that state examiners hold a CDL is a safety risk. Should a CDL applicant have an emergency on the road or becomes unfit to operate the commercial vehicle during testing, the examiner will be ill-equipped to assume control of the vehicle or otherwise take appropriate action.

CVTA'S PROPOSAL

CVTA urges the FMCSA to initiate a rulemaking requiring all skills examiners hold a CDL within five years of enactment of the rule. This simple and obvious requirement would ensure that those administering the CDL test are best positioned to safely and effectively judge the capabilities of an applicant.





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