**ANNEX 9**

**Training Provider Registry [Draft Regulatory Text]**

**[Facilitator’s Note: This section describing the working of the National Training Provider Registry mechanism is the only part of the package that is drafted as actual regulatory text. FMCSA Counsel’s office would like to clarify that this draft regulatory text is offered at the stage solely for the purpose of identifying policy issues and seeking consensus on those issues. Actual regulatory text proposed in the published NPRM may differ from language agreed herein. As with all provisions in this Term Sheet, FMCSA commits that it will, to the maximum extent possible consistent with its legal obligations, use the policy consensus of this group reflected in this document as the basis for” the NPRM. Note also that much of this regulatory language tracks requirements agreed upon in other documents such as the Eligibility Requirements set forth in Annexes 6 and 7 and will be amended as appropriate to reflect the final agreed versions of those documents.]**

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**Training Provider Registry**

**§ 3XX.10X Scope.**

 The rules in this subpart establish the qualifications for inclusion on the list of ELDT providers in FMCSA's Training Provider Registry (TPR). The TPR is designed to improve highway safety and operator knowledge by requiring providers to meet FMCSA requirements under part 3XX of this chapter.

**§ 3XX.10X Definitions.**

 Training Provider means an entity that administers commercial motor vehicle entry-level driver training as defined in this subpart.

**§ 3XX.10X Requirements for the Training Provider Registry.**

1. To be listed on the Training Provider Registry, a training provider must:
2. Have a curriculum that meets the applicable criteria set forth in § 3XX.XXX;
3. Have driver training instructors that meet the criteria set forth in §3XX.XXX (Driver-Instructor Qualifications);

(3) Provide vehicles that meet the criteria set forth in § 3XX.XXX (equipment);

(4) Have a designated range facility that meets the requirements of § 3XX.XXX (Facilities) or have access to an area in which driver trainees can safely complete the required behind-the-wheel range training. .

1. **[**Submit registration form MCSA-X stating the provider’s information and

attest that the training provider meets all the applicable requirements of this section to obtain a unique Training Provider Registry number**]**. If a training provider has more than one campus or training location, the training provider must submit a registration form MCSA-X for each campus or training location to obtain a unique Training Provider Registry number for each such location.

(6) Create and maintain student records of enrollment and completion and/or withdrawal, in accordance with applicable State and Federal requirements.

(7) Allow FMCSA or its authorized representative to audit the training provider to ensure that the provider meets the criteria set forth in this section.

**§ 3XX.10X Driver Training provider.**

(a) Training providers must require that all accepted applicants for on-road training must meet minimum DOT, state, Federal and/or local law and regulations related to drug screens, age, physical condition, licensing, and driving record.

(b) Training providers must supply sufficient training to offer reasonable assurance that trainees can demonstrate proficiency in the theory and behind-the-wheel portions of the curriculum.

(c) Driving must be practiced under representative roadway and traffic conditions, including a demonstration of required driving maneuvers, as outlined in the *FMCSA Curriculum Standards for CMV Drivers*.

(d) Instruction must include all elements identified in the applicable FMCSA Curriculum Standards for CMV Drivers.

(e) Training materials that address the applicable FMCSA-prescribed curriculum must be provided to each trainee.

(f) When a provider meets the requirements of § 3XX.XXX and § 3XX.XXX, FMCSA will issue the provider a unique Training Provider Registry (TPR) number and will add the provider's name and other provider related information to the TPR website.

**§ 3XX.10X Facilities.**

(a) The learning facilities must comply with all applicable federal, state, and local statutes and regulations.

(b) During the range/skill practice portion of the curriculum, there must be an instructor present on site to demonstrate skills and correct deficiencies of individual students.

 (c) The range/skill practice area must be free of obstructions and the surface must enable the driver to maneuver safely and free from interference from or involving other vehicles and hazards.

(d) There must be adequate sight lines available to the instructor and trainees.

**§ 3XX.10X Equipment**

(a) All training vehicles must be in safe mechanical condition. Vehicles used for on-road training must comply with applicable federal/state safety requirements.

(b) Training vehicles must be in the same class (A, B, or C) and type (bus/truck) as those that the individual will be operating for their CDL skills test.

**§ 3XX.10X Driver-Instructor Qualifications/Requirements.**

 (a) On-road trainers must utilize experienced drivers as defined in paragraph (b). On-road trainers must maintain a driving record that meets applicable state requirements and Federal Motor Carrier Safety Regulations.

(b) Experienced driver means a CMV driver with experience driving with a CDL of the same (or higher) class and with all endorsements necessary to operate the CMVs for which training is to be provided and who:

(1) has at least [1 or 2 years] of experience driving with a CDL of the same or higher class or endorsement; or

(2) has at least [1 or 2 years] years of experience as an on the road CMV trainer; and

(3) meets all applicable State training requirements for CMV trainers.

(c) Any theory/classroom trainers who are not experienced drivers as defined in paragraph (b) above must have previously audited or instructed that portion of the driver-training course that he/she intends to instruct.

**§ 3XX.10X Assessments.**

Trainees must successfully complete a course of instruction that meets the FMCSA Curriculum Standards for CMV Drivers including appropriate subject matter tests and road skill tests.

(a) Written tests must be used to assess proficiency of a sample of knowledge objectives for each unit of instruction per FMCSA Curriculum Standards for CMV Drivers. The trainee must receive a score of 80% or above on the theory assessment.

(b) Range/skill practice area tests or assessments must be used to assess student proficiency in fundamental vehicle control skills and routine driving procedures for the appropriate vehicle per FMCSA Curriculum Standards for CMV Drivers.

(c) Road assessments must be administered to assess proficiency in road driving skills that permit observations of specified driving maneuvers as described in § 3XX.XX and must be conducted in traffic per FMCSA Curriculum Standards for CMV Drivers described in § 3XX.XXX. Road assessment must be administered in a vehicle of the same class (A, B, or C) and type (bus/truck) that the trainee will be operating for their CDL skills test.

**§ 3XX.1XX Issuance of the certificate.**

 On the day an individual completes training successfully at a provider on the Training Provider Registry (TPR), that provider must upload a certificate by close of business that day indicating completion of the class of training or endorsement to the TPR. The certificate must include the following:

(a) Driver name, CDL/CLP number, and State of licensure;

(b) Class or Endorsement training the trainee received;

(c) Name of the training provider and its unique TPR identification number;

(d) Name of Certifying Official of the training provider; and

(e) Date of completion of the training provider.

**§ 3XX.XXX Requirements for continued listing on the Training Provider Registry.**

 (a) To continue to be listed on the Training Provider Registry, a provider must:

 (1) Continue to meet the requirements of this subpart and the applicable requirements of part 3XX of this chapter.

 (2) Biannually updated information

(3) Report to FMCSA changes to key information submitted under § 3XX.XXX within 30 days of the change.

 (i) Key information includes training provider name, location, phone number, levels of training offered, and any change in State licensure, certification, or accreditation status.

 (ii) Changes must be reported by submitting an updated MCSA-X to FMCSA.

 (4) Continue to be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations of each State where training is provided.

 (5) Maintain documentation of State licensure, registration, or certification verifying the provider is authorized to provide training in that State.

 (6) Allow an audit or investigation of the training provider to be completed by an authorized representative of FMCSA, if requested.

(7) The provider must make all required documentation available on request to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The provider must provide this documentation within 48 hours of the request.

**§ 3XX.XXX Reasons for removal from the Training Provider Registry**

 FMCSA may remove a provider from the Training Provider Registry (TPR) when a provider fails to meet or maintain the qualifications established by this subpart, the requirements of other State and Federal regulations applicable to the provider, or otherwise does not meet the requirements of 49 U.S.C. XXXX. If FMCSA removes a provider from the Training Provider Registry, all training certificates issued after the removal date will be considered invalid.

(a) The reasons for removal may include but are not limited to the following:

 (1) The provider fails to comply with the requirements for continued listing on the TPR, as described in § 3XX.XXX.

 (2) The provider denies FMCSA or its authorized representative the opportunity to conduct an audit or investigation of its provider.

(3) The audit conducted by FMCSA or its authorized representative identifies material deficiencies..

 (4) The provider falsely claims to be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations in each State where training is provided.

(5) Less than 50% of those who complete the provider’s training successfully obtain a CDL or endorsement for which they received training.

(b) In instances of fraud or other criminal behavior in which drivers have knowingly participated, FMCSA reserves the right to retroactively deem invalid training certificates that were issued by training providers removed from the Training Provider Registry.

**§ 3XX.XXX Procedure for removal from the Training Provider Registry**

 (a) Voluntary removal. To be removed voluntarily from the Training Provider Registry, a provider must submit a written request to the FMCSA Director, Office of Carrier, Driver, and Vehicle Safety Standards (“Director”). Except as provided in subsection (b) of this section, the the removal will become effective immediately upon the Director’s receipt of such request. On and after the date of issuance of a notice of proposed removal from the Training Provider Registry, as described in paragraph (b) of this section, however, the Director will not accept the provider’s request for voluntary removal from the Training Provider Registry.

 (b) Notice of proposed removal. Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a provider from the Training Provider Registry by issuing a written notice of proposed removal to the provider, stating the reasons that removal is proposed under § 3XX.XXX and any corrective actions necessary for the provider to remain listed on the TPR. If a notice of proposed removal is issued, the provider must notify current trainees and trainees scheduled for future training of the proposed removal. [Facilitator Note: A stakeholder participant in the IE WG conference call of 5/26/15 raised the issue of what happens to students who enroll in good faith in a training program only to discover, mid-course, that their training provider may lose its certification. What recourse do they have vis a vis their training provider or what obligations does their training provider have to them? A stakeholder on the call noted that some states require that licensed trainers post a surety bond to cover such contingencies, and the question was asked whether FMCSA has authority to make this a federal requirement. After the call, FMCSA Counsel’s office informed the Facilitator that this may be a possibility, theoretically and legally, but as a practical matter such a requirement would be very complex and controversial among interests not necessarily at the table, and is probably not doable at this late stage. Since this is more of a minor, technical issue than a fundamental policy decision, the plenary may wish to leave this issue unresolved and allow the FMCSA to be guided by public comment in the course of normal rulemaking.] In addition, no new training sessions may commence until FMCSA withdraws the proposed removal.

 (c) Response to notice of proposed removal and corrective action. A provider that has received a notice of proposed removal from the Training Provider Registry must submit any written response to the Director, Office of Carrier, Driver, and Vehicle Safety Standards no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the provider believes FMCSA has relied on erroneous information in proposing removal, as described in paragraph (c)(1) of this section, or that the provider will take any corrective action specified in FMCSA’s notice of proposed removal, as described in paragraph (c)(2) of this section.

 (1) Opposing a notice of proposed removal. If the provider believes FMCSA has relied on erroneous information in proposing removal from the Training Provider Registry, the provider must explain the basis for that belief and provide supporting documentation. The Director, Office of Carrier, Driver, and Vehicle Safety Standards will review the explanation.

 (i) If the Director, Office of Carrier, Driver, and Vehicle Safety Standards finds that FMCSA has relied on erroneous information to propose removal of a training provider from the TPR, the Director, Office of Carrier, Driver, and Vehicle Safety Standards will withdraw the notice of proposed removal and notify the provider of the determination in writing. No later than 60 days after the date the Director, Office of Carrier, Driver, and Vehicle Safety Standards modifies a notice of proposed removal, the provider must comply with this subpart and correct any identified deficiencies as described in paragraph (c)(2) of this section.

 (ii) If the Director, Office of Carrier, Driver, and Vehicle Safety Standards finds FMCSA has not relied on erroneous information in proposing removal, the Director, Office of Carrier, Driver, and Vehicle Safety Standards will affirm the notice of proposed removal and notify the provider in writing of the determination. No later than 60 days after the date the Director affirms the notice of proposed removal, the provider must comply with this subpart and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

 (iii) If the provider does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the provider will be removed from the Training Provider Registry.

 (2) Compliance and corrective action. (i) The provider must comply with this subpart and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director, Office of Carrier, Driver, and Vehicle Safety Standards affirms or modifies the notice of proposed removal, whichever is later. The provider must provide documentation of compliance and completion of the corrective actions to the Director, Office of Carrier, Driver, and Vehicle Safety Standards. The Director, Office of Carrier, Driver, and Vehicle Safety Standards may conduct any investigations and request any documentation necessary to verify that the provider has complied with this subpart and completed the required corrective action(s). The Director, Office of Carrier, Driver, and Vehicle Safety Standards will notify the provider in writing whether it has met the requirements to continue to be listed on the Training Provider Registry.

 (ii) If the provider fails to complete the proposed corrective action(s) within the 60-day period, the provider will be removed from the Training Provider Registry. The Director, Office of Carrier, Driver, and Vehicle Safety Standards will notify the provider in writing of the removal.

 (3) At any time before a notice of proposed removal from the Training Provider Registry becomes final, the recipient of the notice of proposed removal and the Director, Office of Carrier, Driver, and Vehicle Safety Standards may resolve the matter by mutual agreement.

 (d) Request for administrative review. If a provider has been removed from the Training Provider Registry under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, the provider may request an administrative review no later than 30 days after the effective date of the removal. The request must be submitted in writing to the FMCSA Associate Administrator for Policy. The request must explain the error(s) committed in removing the provider from the Training Provider Registry, and include a list of all factual, legal, and procedural issues in dispute, as well as any supporting documentation.

 (1) Additional procedures for administrative review. The Associate Administrator may ask the provider to submit additional data or attend a conference to discuss the removal. If the provider does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

 (2) Decision on administrative review. The Associate Administrator will complete the administrative review and notify the provider in writing of the decision. The decision constitutes final Agency action. If the Associate Administrator deems the removal to be invalid, FMCSA will reinstate the provider on the Training Provider Registry.

 (e) Emergency removal. In cases either of willful disregard of the regulations in this subpart or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and the Director, Office of Carrier, Driver and Vehicle Safety Standards may immediately remove a provider from the Training Provider Registry and invalidate the certification issued under § 3XX.XX. A provider who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

 (f) Reinstatement on the Training Provider Registry. No sooner than 30 days after the date of removal from the Training Provider Registry, a provider who has been voluntarily or involuntarily removed may apply to the Director, Office of Carrier, Driver, and Vehicle Safety Standards to be reinstated.

 (5) In the case of a provider that has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.