



National School Transportation Association

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June 10, 2016

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Ground Floor
Room W12-140
Washington, D.C. 20590-0001

Attention: Written Comments to the Advance Notice of Proposed Rulemaking on the Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea (FMCSA-2015-0419)

Dear Sir or Madam:

The National School Transportation Association (NSTA) is pleased to offer written comments to the Federal Motor Carrier Safety Administration's Advance Notice of Proposed Rulemaking (ANPRM) on the Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea as published in Volume 81 of the *Federal Register* on March 10, 2016.

NSTA is the membership organization for school bus companies engaged primarily in transporting students to and from school and school-related activities under contract to public school districts. Our members offer an array of services to our school district partners, from full turn-key service to management operations and specialized transportation. NSTA members range from small family businesses serving one district to large corporations operating thousands of buses across many states, all committed to the safe, efficient, and economical transportation of America's children.

NSTA submitted comments on obstructive sleep apnea to FMCSA (Docket: FMCSA-2006-26467) on December 21, 2011 and also wrote a letter to then FMCSA Administrator Anne Ferro on this issue on November 30, 2012. Both documents are attached at the end of these comments. Our primary concerns, which were detailed in both communications, include:

- Private operators of school buses are subject to the Federal Motor Carrier Safety Regulations (FMCSRs) when providing interstate transportation for student activities or similar charter trips. NSTA members estimate that approximately five percent of school bus trips are activity trips, both interstate and intrastate.
- Most private fleets require all of their drivers to meet FMCSA qualifications as this allows the greatest flexibility in their work force.

NSTA does not track the data necessary to answer the specific questions posed in this ANPRM. We offer the following concerns as FMCSA considers the development of its Notice of Proposed Rulemaking:

- School transportation has very different operating characteristics from all other modes of commercial motor vehicle transportation. Our home-to-school working environment, which encompasses 95% of our trips fosters alertness and is anything but routine as it involves frequent stops, interaction with children and parents, travel during daylight hours, and travel only on school days. This working environment is very different from that of a motor coach or a commercial truck, for example. In addition, due to the specialized and continual training of school bus drivers and the safe design of the yellow school bus, the safety record of the school bus is unmatched by any other mode of travel. According to National Highway Traffic Safety Administration (NHTSA) statistics, travel by school bus is 70 times safer than all other passenger vehicles. Moreover, NSTA is not aware of any data showing undiagnosed obstructive sleep apnea as a significant safety issue with private school bus drivers.
- Although safety is our primary concern, we would be remiss if we didn't recognize that testing and treatment costs are a significant financial burden without a defined safety benefit, especially in an industry that operates differently from all others and given the safety statistics of the school transportation industry. In addition, school bus drivers earn an hourly wage and often do not have health insurance benefits. NSTA is concerned about imposing additional screening, testing and treatment costs and the impact this requirement may have on the availability of qualified school bus drivers. NSTA urges FMCSA to show significant evidence of a safety issue with private school bus fleet drivers before proceeding toward the mandating of additional screening, testing and treatment costs on the industry.
- We recognize that an Advance Notice of Proposed Rulemaking (ANPRM) is an effort to gather information. We strongly urge FMCSA to proceed independently on this issue from the Federal Railroad Administration (FRA) as each agency contemplates the issuance of a Notice of Proposed Rulemaking (NPRM). The two modes have completely different operational concerns which will need to be considered and integrated into the development of a proposal to address the agencies' concerns.

In closing, we appreciate the opportunity to offer our comments on this issue and look forward to continuing to work with the Federal Motor Carrier Safety Administration on this issue. We take safety very seriously and are very proud of the work we do each and every day to transport children to school safely as well as the charter work we operate.

Thank you for the opportunity to provide these written comments. If you require further clarification, please do not hesitate to contact me at (703) 684-3200.

Sincerely,



Ronna Sable Weber
Executive Director

Attachments



National School Transportation Association

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November 30, 2012

The Honorable Anne S. Ferro
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.W.
Suite W60-300 Washington, D.C. 20590

Dear Administrator Ferro:

The National School Transportation Association, which represents school bus companies that provide student transportation services under contract to public school districts and private schools, understands through various public statements made by agency officials that FMCSA is considering issuing guidance to the medical community regarding screening for obstructive sleep apnea and other sleep disorders for commercial motor vehicle drivers in the very near future. While we commend the agency's effort to address this component of fatigue-related crashes, we believe this issue is more appropriately handled in the full rulemaking process rather than through guidance. This issue is simply too significant to do in any other manner.

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

As we noted to you in our December 21, 2011 letter:

"As private operators of school buses, NSTA members are subject to the FMCSRs when they provide interstate transportation for student activities or similar charter trips. According to FMCSA estimates, only about one percent of school bus operations are interstate activity trips subject to the regulations. NSTA estimates from member surveys that about four percent of school bus trips are activity trips, both interstate and intrastate.

The fact that less than five percent of school bus operations involve activity trips does not mean that only five percent of a carrier's driver force is used for those trips. Because activity trips are typically assigned on a rotating basis, most if not all drivers at a location are eligible to take them; therefore, most private fleets require the majority of their drivers to meet FMCSA qualifications. Among respondents to a 2008 NSTA survey, an average of 83% of the driver force is eligible for interstate trips under the employers' policies or union contracts, and an average 17% of the drivers actually made an interstate trip during the previous year.

If 83% of private sector drivers are required to be medically qualified by employers, the universe affected by the recommendation is approximately 145,250 drivers. If 30% of the universe meets the BMI level (extrapolated from estimates of the incidence in the commercial driver population), more than 43,500 current drivers would be required to undergo testing. At a conservative \$1,000 per driver, the cost to the drivers or the industry just to screen would be approximately \$43.5 million in the first year.”

When one additionally considers potential treatment costs to include a \$1300 CPAP machine and monthly monitoring costs of approximately \$15 per month per individual, the cost to treat those 43,500 drivers, is \$60.13 million. Based on our conservative estimates, together, screening, diagnosis and treatment for 43,500 drivers would total \$103.63 million for the industry. This is a substantial additional burden on the industry and therefore, if imposed by rulemaking would be categorized as an economically significant rule according to OMB directives. We do not believe guidance is an appropriate vehicle for proposing to impose costs of this magnitude.

NSTA members are proud of our strong safety record. School bus transportation is the safest form of transportation available amongst all modes. Children are eight times safer traveling in a school bus than in their parent’s vehicles and nearly fifty times safer on a bus than traveling with a teen driver. As our record indicates, no industry takes safety as seriously as ours does. We are always considering new ways to improve upon our already stellar record, but we must ensure that any additional costs imposed on the industry are tied to proven safety benefits. In the area of school transportation, in particular, we must be attendant to the impact of any additional costs on the industry in a world of limited funds. Other pupil transportation expenses include the purchase of new school buses to ensure that as many children as possible are provided school bus transportation; driver and pupil training on safe loading practices; operational costs, such as fuel costs; and upkeep and maintenance of school buses and school bus equipment. All of these elements are essential to maintaining the industry’s strong safety record. Adding another layer of expense, especially of this magnitude, is worthy of very careful consideration – which the rulemaking process would bring. In addition, we are concerned about the possible unintended consequences that could result in pushing more children into less safe transportation options.

In addition, while NSTA acknowledges the views of the medical community on the impacts of obstructive sleep apnea and other sleep disorders, we believe there are valid operational differences between school bus operations and other commercial carrier operations which should be taken into account when considering applying the recommendations to all commercial drivers. The safety record of school bus drivers in regulated service is unparalleled. There has not been one fatal crash in interstate activity trips in at least the past twenty years.

NSTA is committed to the safety of the children we transport every day. Our commitment is evident in a recent University of Michigan report which shows that during the period 2004 through 2008, the involvement of private school bus contractors in fatal crashes decreased by 26%, while the involvement of public operators increased. NSTA urges FMCSA to evaluate fully the impact resulting from the joint MRB/MCSAC recommendation for OSD screening and treatment on the private school bus industry through rulemaking.

While we once again applaud your commitment to safety and join you as a full partner in those efforts, we respectfully request that this issue be handled through the formal rulemaking process so as to give it

the most thorough and comprehensive consideration it deserves. The implications are simply too great and the consequences too significant.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Sable Weber", is placed over a light gray rectangular background.

Ronna Sable Weber Executive Director

CC: The Honorable Ray LaHood Secretary of Transportation

Mr. Boris Bershteyn Acting Administrator
Office of Management and Budget, Office of Information and Regulatory Affairs



December 21, 2011

Docket Clerk

Federal Docket Management System (FDMS)

U.S. Department of Transportation

1200 New Jersey Avenue SE., West Building,
Room W12-140
Washington, DC 20590

RE: Docket Number FMCSA-2006-26367

The National School Transportation Association appreciates the opportunity to provide comments to the joint subcommittee that is addressing the issues related to Obstructive Sleep Apnea [OSA] as the Agency considers a potential notice-and-comment rulemaking.

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

The National School Transportation Association, representing school bus companies that provide student transportation service under contract to public school districts, understands the concerns that have prompted FMCSA's Medical Review Board (MRB) and Motor Carrier Safety Advisory Committee (MCSAC) to issue recommendations regarding medical examination and qualification of commercial drivers with a body mass index (BMI) of 35 or more. We understand FMCSA has these recommendations under immediate review for issuance of potential guidance and subsequent rulemaking. While we appreciate the safety considerations that prompted this recommendation, we want to ensure that FMCSA is aware of the unique characteristics of school transportation as it relates to the issue and how our employees and industry will likely be impacted.

As private operators of school buses, NSTA members are subject to the FMCSRs when they provide interstate transportation for student activities or similar charter trips. According to FMCSA estimates, only about one percent of school bus operations are interstate activity trips subject to the regulations. NSTA estimates from member surveys that about four percent of school bus trips are activity trips, both interstate and intrastate.

The fact that less than five percent of school bus operations involve activity trips does not mean that only five percent of a carrier's driver force is used for those trips. Because activity trips are typically assigned on a rotating basis, most if not all drivers at a location are eligible to take them; therefore,

most private fleets require the majority of their drivers to meet FMCSA qualifications. Among respondents to a 2008 NSTA survey, an average 83% of the driver force is eligible for interstate trips under the employers' policies or union contracts, and an average 17% of the drivers actually made an interstate trip during the previous year.

Private sector school bus operators employ approximately 175,000 drivers; the bulk of the school bus driver force--375, 000 drivers--is employed by public school districts, making them exempt from the FMCSR medical standards. If 83% of private sector drivers are required to be medically qualified by employers, the universe affected by the recommendation is approximately 145,250 drivers. If 30% of the universe meets the BMI level (extrapolated from estimates of the incidence in the commercial driver population), more than 43,500 current drivers would be required to undergo testing. At a conservative \$1,000 per driver, the cost to the drivers or the industry just to screen would be approximately \$43.5 million in the first year. These costs do not include the potential treatment costs of the diagnosed population, which NSTA is attempting to ascertain.

The private sector school bus industry is composed overwhelmingly of small businesses, with almost 75% owning fewer than 100 buses, and 66% owning fewer than 50 buses. FMCSA has previously used \$7,000,000 annual revenue to designate a small business in the bus industry. Estimated annual revenue per school bus is about \$60,000; therefore, a company that operates 116 school buses or fewer qualifies as a small business. The cost of sleep apnea testing would average almost two percent of revenue for these companies. The costs of treatment would be on top of this figure.

NSTA is concerned that the recommendation may have other negative unintended consequences as well. Some companies may decide that the cost of the requirement is not supported by the revenue from activity trips, and will decline to provide that service. This will leave schools without school buses for athletic teams and other student groups, pushing them into less safe transportation options.

Because public employees are exempt from the FMSCRs, driver candidates who are unwilling to go through obstructive sleep disorder testing, or who reject or cannot afford treatment, may simply decline employment with a private contractor and go to a public district instead. Not only will this exacerbate a driver shortage for private contractors and potentially impact the viability of the private school bus contracting industry, it will increase the number of drivers who are beyond the reach of all federal safety requirements other than CDL and drug/alcohol testing.

FMCSA's primary mission is to prevent commercial motor-vehicle related fatalities and injuries using data-driven regulations that balance motor carrier safety with industry efficiency. The agency must also evaluate the costs and benefits of imposed regulations. While NSTA acknowledges the views of the medical community on the impacts of sleep apnea and other sleep disorders, we believe there are valid operational differences between school bus operations and other commercial carrier operations which should be taken into account when considering applying the recommendations to all commercial drivers. The safety record of school bus drivers in regulated service-not a single fatal crash in interstate activity trips in at least the past twenty years-and the annual cost of compliance should also be fully considered.

NSTA is committed to the safety of the children we transport every day. Our commitment is evident in a recent University of Michigan report which shows that during the period 2004 through 2008, the involvement of private school bus contractors in fatal crashes decreased by 26%, while the involvement

of public operators increased. NSTA urges FMCSA to evaluate fully the impact of any guidance or rulemaking resulting from the joint MRB/MCSAC recommendation for OSD screening and treatment and the private school bus industry.

We look forward to partnering with you to evaluate this important issue and thank you for allowing us to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Hobson Executive Director
National School Transportation Association