



National School Transportation Association

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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 for the Advance Notice of Proposed Rulemaking on Financial Responsibility for Motor Carriers, Freight Forwarders and Brokers (FMCSA-2014-0211)

Dear Sir or Madam:

The National School Transportation Association (NSTA) is pleased to offer written comments for the Federal Motor Carrier Safety Administration's (FMCSA) Advance Notice of Proposed Rulemaking on Financial Responsibility for Motor Carriers, Freight Forwarders and Brokers as published in Volume 79 of the *Federal Register* on November 28, 2014.

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 a range 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 school buses across many states, all committed to the safe, efficient, and economical transportation of America's children.

School transportation contractors across the country must follow Federal regulations when providing transportation services for any trips other than home-to-school. Home-to-school operations are narrowly and literally defined as home-to-school and school-to-home and are exempt from these regulations. Thus, a school bus contractor is federally required to carry a minimum of \$1.5 million in insurance on every school bus with 15 passengers or less and \$5 million of insurance on every school bus with 16 passengers or more on the school buses they are using for any work they are performing outside of home-to-school operations, which includes activity trips, field trips and charter work. As companies need flexibility with the vehicles and drivers in their operations to allow for the best and most efficient service possible to the school districts they serve, the vast majority of our members insure their entire vehicle fleets to at least the federal minimums and make certain that all of their drivers meet all federal requirements.

School bus carriers, public and private, operate the largest mass transportation fleet in the country. Each day, 480,000 yellow school buses travel the nation's roads carrying 26 million children to and from school. Compare that to transit, with 140,000 total vehicles, 96,000 of which are buses; to the motor coach industry with 35,000 buses; to commercial airlines with 7,400 airplanes; and to rail, with 1,200 passenger cars. In fact, the nation's school bus fleet is 2.5 times the size of all other forms of mass transportation combined.

According to the Department of Transportation's own statistics, the safety record of the school bus industry is unparalleled. According to the August 2014 National Highway Traffic Safety Administration (NHTSA) *Safety in Numbers Newsletter*, of the over 30,000 annual deaths from traffic accidents on average just four per year were students inside school buses. In addition, travel by school bus is 23 times safer than traveling with a parent driver and 58 times safer than traveling with a teen driver. While every life is precious, the unique safety design of school buses and the continued attention to the training of our dedicated driver force have led to the school bus being the safest form of transportation available today. The industry is incredibly proud of this safety record and it is not something we take lightly. Every day we are entrusted with the safety of the nation's children and we work hard each and every day to ensure that we continue to provide the very safest way for them to be transported.

With not only the largest mass transportation fleet, but also the best safety record of all mass transportation fleets, we urge the Agency to consider the unique characteristics of school buses as compared to the rest of the commercial motor vehicle industry and agree with us that the school bus and its safety record is not comparable to other types of commercial motor vehicles. Simply put, we do not think Federal minimum insurance requirements for school buses can be viewed through the same prism as other commercial motor vehicles.

FMCSA has utilized several bodies of work in its research on this issue but we note that none of the studies considered school bus transportation accident or claims data, compared school bus transportation to other types of commercial motor vehicles, or considered the capacity or claims history of major insurers of private school bus companies. We find this extremely troublesome. School buses are vehicles with unique safety features and a dedicated and skilled driver force which operate in unique environments not readily comparable to all other commercial motor vehicles. Without the research or data to indicate specific problems showing current minimum insurance levels for school bus operators to be inadequate, we cannot support an increase in the federal minimums. The lack of school bus specific data makes it impossible at this time for the Agency to conduct a reliable analysis of the costs and benefits of any potential increase on the private school bus industry.

NSTA has attempted to provide answers to the specific questions relative to our industry posed in the Advance Notice of Proposed Rulemaking (ANPRM) below. We welcome further discussions with the Agency on this issue in general or specific elements in particular. However without objective and serious research and data showing current levels to be inadequate as well as discussion with private school bus industry insurers on the specific questions raised, we do not support an increase in the federal minimum levels of financial responsibility being applied to the private school transportation industry. We urge the Agency to consider the unique characteristics of school buses as compared to the rest of the commercial motor vehicle industry.

### **FMCSA Questions**

1. What are the current insurance premium rates (baseline) for each category of carriers (property, hazardous materials, and passenger) covered under the current financial responsibility regulations? To what extent do the premiums vary based on carriers' safety performance information from FMCSA?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

2. For each 10% increase in insurance requirements, how much would the premium rates increase? How much additional capital would insurers have to raise to cover the new exposure associated with each 10% increase?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

3. What percentage of fleets, based on size and type of operation of the carrier (passenger, property, hazmat), already have liability coverage that exceed the minimum financial responsibility requirement and by how much? What are the premiums for the policies that exceed the Federal minimums?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

4. How are insurance premium rates determined? Is it by driver? Is it by credit or safety history? Is there a discount for a certain number of vehicles in a fleet? Is there a discount for bundling? Are there any other unique methods of determining rates? In the event of a crash, are carriers responsible for paying a deductible? If so, what are the most common deductible amounts? What are some of the major thresholds that result in changes in premium costs?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

5. How often is the minimum level of financial responsibility insufficient to meet the actual costs associated with a crash, specifically for lifelong medical support? How often are carriers liable for crash costs in excess of the financial responsibility requirements unable to pay damages? How often do carriers go bankrupt following a crash with damages in excess of the minimum requirements? How often do carriers attempt to reincarnate in order to avoid paying damages? How would increasing the insurance requirements change the behavior of such carriers?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

6. How often is the minimum level of financial responsibility exceeded by damages caused by the unintentional release of hazardous materials from a carrier required to have \$5 million in coverage?

*This question is not applicable to the school transportation industry.*

7. Would an increase in financial responsibility requirements affect small and large motor carriers differently? If so, how?

*While we believe that the best information and data available to answer this questions would be from the insurance industry, we are concerned that if this proposal were to be implemented it would disproportionately affect smaller contractors. While we have clearly stated that we do not support FMCSA's proposal to increase federal minimum financial responsibility levels due to the lack of sufficient data showing that such increases are necessary, we are certain that an increase in the minimum requirements would cause an*

*increase in premium rates. Given the safety record of the yellow school bus, it is of paramount importance that children continue to have access to school bus transportation. If higher costs affect smaller carriers' ability to operate, school children and the districts they live in are the ones who will suffer. In addition, ultimately increased costs are borne by our customers – public school districts. Higher costs are difficult to defend if they have not been shown to be necessary for this industry.*

8. How would increasing the minimum financial responsibility requirements affect the ability of a carrier to obtain insurance?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

9. How would increasing the minimum levels of financial responsibility affect safety, e.g., would carriers put off “optional costs” such as safety programs, preventative maintenance and investments in new technology, to cover the high costs of premiums? Would higher minimum levels drive unsafe carriers out of business? Is there any evidence that CMV carriers take more risks because they know they are insured? How could these effects be measured?

*The school bus industry is committed to safety above all. While we have clearly stated that we do not support FMCSA's proposal to increase federal minimum financial responsibility levels due to the lack of sufficient data showing that such increases are necessary if insurance levels would be raised unnecessarily, we believe some contractors would have to shut down their businesses as opposed to compromising student safety.*

*With respect to the other questions in this section, we believe the best information and data available to answer these questions would come from those in the insurance industry.*

10. What are the current State insurance requirements and how do they vary from the Federal requirements?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

11. How many carriers currently participate in the Risk Retention Groups (RRG)? If FMCSA raised the minimum levels of financial responsibility requirements, how would that affect RRGs? What are the current RRG rates and how would they change if the minimum level of financial responsibility is raised?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

12. What percentage of insurance-related cases settles before trial at the current minimum levels of financial responsibility? If the minimum levels are increased, would the same percentage of cases settle before trial?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

13. What minimum levels of financial responsibility are needed to adequately protect against uncompensated losses associated with crashes?

*We believe the best information and data available to answer these questions would come from those in the insurance industry.*

14. What other mechanisms, besides increased minimum levels of financial responsibility, are available to more fully compensate persons who suffer catastrophic loss? Should FMCSA consider creating a compensation fund for such purposes? If so, how would such a fund be administered? Who would be eligible to receive compensation from the fund? What claims would be covered? Would a compensation fund create a disincentive for self-insured or less well insured motor carriers to make safety improvements? Are there other potential administrators of such a fund?

*We have great concerns about the creation of a victims' compensation fund. Given the significant number of vehicles that make up the school transportation industry, we have no doubt that we would be a significant contributor into this fund if assessed on a per vehicle fee while rarely having an accident triggering use of the fund. Thus, we do not believe the concept itself is equitable. Our vehicles service public school students across the country. To add an additional fee to those vehicles to support victims of truck and motor coach accidents is patently unfair. Furthermore, we believe, the mere existence of a victims' compensation fund could increase settlement and claims expenses for all commercial motor vehicles, even for minor accidents.*

15. How would increasing the minimum financial responsibility requirements affect out-of-court crash damage settlement agreements?

*While we have clearly stated that we do not support FMCSA's proposal to increase federal minimum financial responsibility levels due to the lack of sufficient data showing that such increases are necessary, we do believe that any increase to the federally required minimum levels of industry could potentially affect awards for damages by likely increasing those awards.*

16. As noted in its report to Congress, FMCSA has had difficulty obtaining information of insurance company underwriting procedures and motor carrier premiums. The insurance industry understandably regards such information as trade secrets and motor carriers are likewise reluctant to disclose what they pay to competitors or other insurance companies. What procedures might FMCSA follow to obtain such underwriting and pricing data?

*Any suggestion we could offer on how to actually secure this information is simply beyond our scope and mission, but we do strongly advise that the securing of this information is pivotal before the Agency proceeds further on this issue.*

17. In addition to the information discussed above, what other sources of information should FMCSA evaluate in connection with potential changes to minimum required financial responsibility levels?

*As we have previously stated, FMCSA utilized several bodies of work in its research on this issue and note that none of the studies considered school bus transportation accident or claims data, compared school bus transportation to other types of commercial motor vehicles, or considered the capacity or claims history of major insurers of private school bus companies. We find this extremely troublesome. School buses are vehicles with unique safety features and a dedicated and skilled driver force which operate in unique environments not readily comparable to all other commercial motor vehicles. Without any research or data to indicate specific problems with current minimum insurance levels for school bus operators being inadequate, we cannot support this proposal.*

18. If the required amount of financial responsibility is increased, what is a reasonable phase-in period for insurance companies and motor carriers to adjust to the new requirements?

*As we have previously stated, without any research or data to indicate specific problems with current minimum insurance levels for school bus operators being inadequate, we cannot support this proposal.*

19. Should there be a standard process for updating the minimum levels of financial responsibility (e.g., using core CPI, medical CPI, etc.)? How often should the update occur, and to what data source should the minimum be linked (a risk-based or inflation-based measure)?

*As we have previously stated, without any research or data to indicate specific problems with current minimum insurance levels for school bus operators being inadequate, we do not support an increase in current levels and also cannot support any proposal to automatically increase minimum levels.*

20. What information regarding claims should FMCSA require trust fund providers (BMC-85 filers) to make publicly available on their websites?

*This question is not applicable to the school transportation industry.*

21. If a broker or freight forwarder fails financially, how should BMC-85 trust providers make public notification?

*This question is not applicable to the school transportation industry.*

22. Should the BMC-84 and BMC-85 forms be adjusted to provide claims handling instructions to the surety or trustee? If so, how?

*This question is not applicable to the school transportation industry.*

23. Does the trip insurance authorized for Mexican commercial zone carriers in 49 CFR 387.7(b)(3) provide compensation comparable to the insurance that FMCSA requires for domestic carriers , and what are suggested methods for verifying the validity of a carrier’s trip insurance in a timely manner?

*This question is not applicable to the school transportation industry.*

24. In regards to trip insurance, as an aid to verification and to reduce fraud, should policy coverage periods be no less than seven days as opposed to the current 24 hour minimum?

*This question is not applicable to the school transportation industry.*

25. Should bus brokers be required to file evidence of financial responsibility pursuant to 49 USC 13904(f)? What benefits would accrue from such a requirement?

*This question is not applicable to the school transportation industry.*

26. Should the requirement in 49 CFR 387.309(a)(3) that carriers in the self-insurance program have “an adequate safety program” be enhanced? If so, how?

*This question is not applicable to the school transportation industry.*

**Conclusion**

In closing, we appreciate the opportunity to offer our comments on this Advance Notice of Proposed Rulemaking 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. We willingly support new regulatory mandates when data and research exists to justify them as necessary to improve safety.

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