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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 employers are exempt from the FMCSRs, 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 large initial "D" and "H".

David Hobson

Executive Director

National School Transportation Association