



## National School Transportation Association

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### COMMENTS

#### **Docket No. FTA-2008-0015, Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations**

The National School Transportation Association appreciates the opportunity to comment on the Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations.

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. All are committed to providing safe, efficient and economical transportation for America's school children.

As the organization representing private school bus companies, NSTA is very aware of the shifting interpretations of tripper service and how those interpretations have strayed from Congress's intent in passing the protections for private school bus companies codified in 49 USC 5302 and 5323. As FTA has documented in the notice, Congress was clear in its purpose when it drafted, argued, and passed the prohibition on school bus operations by federally-funded public transportation operators: funds intended for the provision of public transportation must not be used to compete with private school bus companies.

Competing with private school bus companies does not necessarily mean replacing private school bus companies. When transit agencies design special routes at the request of school administrators—especially when those routes allow students to bypass the route system used by the general public—they are competing with school bus operators, whether or not private operators have been afforded the opportunity to provide the service. The fact that a school district neglects to solicit proposals from private school bus companies before collaborating with the local transit district to devise school routes does not make the service non-competitive; it preempts private operators who are willing and able to provide the service, in violation of the express intent of Congress.

The two governing statutes that inform this regulation differ somewhat: while §5302(a)(10) excludes any "school bus transportation," §5323(f)(1) requires grantees to agree not to provide school bus transportation that "exclusively transports students and school personnel" in competition with a private school bus operator. [Emphasis added] This difference has resulted in some ambiguity, which has been exploited by those who choose to ignore §5302. FTA, as the agency charged with carrying out and enforcing Congressional intent in this area, has the responsibility to reconcile the conflicting language, and does so by its clarifying interpretation.

In interpreting the definition of "school bus operations" to encompass any service that a reasonable person would conclude primarily accommodates students and school personnel, and only incidentally serves the nonstudent general public, FTA addresses the troublesome conflict between "any" and "exclusive." The proposed guidance sets forth an acceptable test that reflects Congressional intent, while retaining the ability for FTA to exercise its discretion in examining individual cases.

Likewise, FTA's proposed guidance on tripper service—a concept that does not appear in either of the statutes—represents an effort to clarify the current regulation. At issue is the phrase "which is designed or modified to accommodate the needs of school students and personnel . . ." As FTA notes, such modifications were originally limited to fare collections or subsidy systems, as specified in the regulation. Over the years, FTA has liberalized its interpretation to include modifications that challenge Congressional intent and statutory limitations; and courts have broadened the interpretation even further.

NSTA believes that the proposed guidance strikes a balance between the original literal interpretation and the overly broad recent interpretations. In the context of the complete tripper service definition, the three modifications that FTA proposes to allow will provide grantees with limited flexibility to adjust schedules and routes to meet demand while recognizing Congressional intent and statutory restrictions.

NSTA supports FTA's efforts to clarify and reassert its interpretation of the current regulation at 49 CFR Part 605. We view this as an interim measure, however, and welcome the notice that FTA will expeditiously issue rulemaking to amend and update the school bus regulations. We are concerned, though, that FTA expressly intends to provide a clearer definition of "tripper service" in the proposed notice of rulemaking. As we have noted above, there is no statutory basis for "tripper service;" the concept and definition were created when the regulation was promulgated. In inserting "tripper service" into the regulation as an additional exception to the prohibition against school bus operations, FTA exceeded the statutes, which allow only three exceptions, and opened the door for grantees to design services expressly for transporting students to and from school. Therefore, NSTA urges FTA to eliminate "tripper service" in the proposed rulemaking, and to concentrate instead on redefining "school bus operations" in a way that reconciles the conflicting statutes.

Thank you for the opportunity to comment. For additional information, please contact our Industry Specialist, Robin Leeds, at 800-560-1645 or [rleeds@yellowbuses.org](mailto:rleeds@yellowbuses.org).