



May 23<sup>rd</sup> 2011

Federal Motor Carrier Safety Administration  
Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE.  
West Building, Ground Floor, Room W12-140  
Washington, DC 20590-0001

RE: Docket No. FMCSA-2010-0167  
Electronic On-Board Recorders and  
Hours of Service Supporting Documents

Dear Sir/Madam:

The National School Transportation Association appreciates the opportunity to comment on the Notice of Proposed Rulemaking concerning Electronic On-Board Recorders. 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.

NSTA salutes the FMCSA effort to improve safety within the motor carrier industry and particularly with regard to passenger transportation. We agree with FMCSA that a correlation exists between HOS violations and fatigue related accidents. As such NSTA finds it hard to object to further enforcement or monitoring of those companies with such violations. Safe transportation of students and passengers in general is a major component of every aspect of our members businesses, so much so that it is stated as the first, most important value in the association's strategic plan.

As further evidence of this point, there has not been a fatality in a school bus in regulated operations in at least twenty years and no record of driver fatigue as a factor in a crash. Additionally, when one reviews statistics regarding the school bus sector, HOS violations are rare or non-existent. The school bus industry's safety record is exemplary and additional monitoring or enforcement will not improve student passenger safety. This means there is no effective safety benefit to be gained from installing EOBRs in school buses and the current exemption for school buses, under 49 U.S.C §395.8 which exempts school bus drivers from RODS because they operate within a 100 mile radius should remain in place.

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 (see the Notice of Withdrawal of the ANPRM on Interstate School Bus Safety) 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. Within that four percent, the vast majority of trips fall within the short-haul exemption in 395.1(e).

In our comments to the ANPRM on Electronic On-Board Recorders published in 2004, NSTA argued for an exemption from an EOBR mandate for school bus operations. We based our argument on a cost-benefit analysis, comparing the safety record of school bus operations to the projected cost of compliance. That analysis has not changed; the safety record of for-hire school bus drivers in interstate activity transportation is far stronger than any other mode of commercial transportation. As stated earlier, there has not been a fatality in a school bus in regulated operations in at least twenty years, which means that even under the increased VSL, there is no effective safety benefit to be gained from installing EOBRs in school buses.

Since there is no benefit to be gained, any cost becomes a negative overall benefit while not improving the safety issue at all. Even assuming that commercial school bus carriers equipped the minimum number of buses with EOBRs (which is unrealistic and impractical, for reasons outlined in our earlier comments), we estimate the initial purchase cost at \$14 million, with an annualized cost of \$6.3 million. Since any savings from reduced paperwork associated with RODS is negligible in school bus operations, the net benefit from an EOBR mandate is -\$6 million or more annually.

While NSTA continues to believe that a blanket exemption from the proposed rule for school buses is justified, we can also support FMCSA's current proposal as long as it includes the exemption for short haul operations (Option 1). Our specific comments on that proposal follow.

#### **V.A.1. Scope**

Should motor carriers whose drivers usually operate within the limits of the 49 CFR 395.1(e)(1) and (2) provisions, but occasionally beyond them, be required always to use EOBRs?

NSTA cannot comment on the universe of short haul carriers, such as those involved in HM operations; but as stated in the proposal, the safety exposure of short haul operations is significantly less than that of long haul operations and the cost for benefit is higher. NSTA's primary concern is that FMCSA is considering removing all passenger carriers from the exemption, based on the higher potential for death and serious injury in passenger operations, and notes that requiring EOBRs in motorcoaches is the first priority of DOT's Motor Coach Safety Action Plan. NSTA urges FMCSA to recognize the distinction between motorcoach and school bus operations. Even though both are passenger carriers, the differences warrant separate treatment. As we stated above, the safety record of school buses operating as CMVs is unparalleled: not a single fatal crash in at least 20 years, irrespective of trip distance. That record is a result not only of low exposure but also of higher federal safety standards for both buses and drivers, and much greater regulation on the state level. Extending the EOBR requirement to short haul passenger carriers without exempting school bus operations would be in direct conflict with FMCSA's statement that "[This] approach strikes an appropriate balance between

promoting highway safety and minimizing cost and operational burdens on motor carriers in certain operations that have inherently less crash risk.”

For these carriers, what threshold should trigger EOBR use?

NSTA recommends that a percentage of trips be used as the threshold for EOBR use, as it is the best way to determine overall exposure. Using number or percentage of drivers that exceed the time/distance limits in 395.1 is an inaccurate measure, since one driver may make more than one excessive trip during a specified period. Using a number of days per week ignores the seasonal nature of some operations where there may be no excessive trips for several months and then a period of a few weeks when it happens more frequently. Using an excessive mileage or time measure is also less valid, as it could result in a requirement that a carrier install EOBRs for one trip a year or less. We believe the fairest and most accurate process is to determine how often a carrier can exceed the restrictions—as an annual percentage of overall operations—and still be within an acceptable safety risk. We suggest that carriers who do not exceed the limits of 395.1 on more than 10% of their total trips annually be exempt from EOBR use.

#### **V.A.2 Compliance Date**

Are there other potential phase-in schedules FMCSA should consider?

School bus operators work under contract to public school districts, and those contracts often cover five-year periods. In general, they do not allow for increases based on the additional cost of mandated equipment, so school bus contractors are not able to recoup the expense of compliance by passing it on to their customers, as other carriers may do. If the final rule does not exempt school bus operations either as a distinct carrier group or as short haul carriers, we ask that FMCSA set the compliance date for this industry at five years so that contractors can figure the cost into new contracts.

#### **Final Comments**

The stated purpose of the proposed rule is to improve commercial motor vehicle safety and reduce the paperwork burden on carriers. In the case of school buses operating as CMVs, the proposal will not improve safety, given the fact that there has been no fatal crash in 20 years and no record of driver fatigue as a factor in a crash. The percentage of trips that require school bus drivers to maintain RODS is less than 1%, making the paperwork burden negligible. The cost of an EOBR requirement, however, is significant: a minimum of \$6.3 million annually. That amounts to a \$6.3 million negative net benefit to applying the rule to school buses in CMV operation yet does not improve the passenger safety.

While NSTA could support the proposal to exempt short haul carriers with the modifications we have described, we note that FMCSA expresses some concern in a footnote that such an exemption may not be practical since it is difficult for enforcement officers to distinguish between long haul and short haul operations. NSTA offers the obvious: it is very easy for enforcement officers to distinguish a school bus.

An exemption for school bus carriers from the requirement to use EOBRs would be as easy to enforce as it is to justify.

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 has no data to suggest, much less prove, that a requirement to equip school buses operating as CMVs with EOBRs will prevent fatalities and injuries. On the contrary, the data show that had such a requirement been in effect during the past 20 years, not one life would have been saved. Given the lack of safety improvement and the annual cost of compliance, applying this mandate to school buses is contrary to both FMCSA principles and President Obama's recent Executive Order.

In closing, thank you for the opportunity to submit these comments.

For further information, please me at 703-684-3200 or [dhobson@yellowbuses.org](mailto:dhobson@yellowbuses.org).

Sincerely,

A handwritten signature in black ink, appearing to read "David F. Hobson". The signature is fluid and cursive, with a large initial "D" and "H".

David F. Hobson  
Executive Director  
National School Transportation Association