

adequate investment and service quality levels are maintained? How would the adoption of an incentive regulation plan affect small carriers, and how would a low-end adjustment affect such plan? How would the adoption of either alternative regulation plan affect universal service? If the Commission should repeal or modify the Commission's all-or-nothing rule, how can it prevent the danger of cost shifting for small carriers? How would the proposals impact NECA pooling from the perspective of small carriers? Comments should be supported by specific economic analysis.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

60. None.

Report to the Small Business Administration

61. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Filing of Comments and Reply Comments

62. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before 30 days and reply comments on or before 45 days of publication of this *NPRM* in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form your e-mail address." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-

ET) at <http://www.fcc.gov/e-file/email.html>.

63. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

64. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

65. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Washington, DC 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street SW., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Douglas Slotten at (202) 418-1572, or Ted Burmeister at (202) 418-7389.

66. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on the *NPRM*, i.e., on or before 30 days after publication of the *NPRM* in the **Federal Register**. Written comments must be submitted by OMB on the proposed and/or modified information collections

on or before 60 days after publication of the *NPRM* in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or via the Internet to jberman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to JThornton@omb.eop.gov.

67. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at fcc504@fcc.gov.

68. Pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 254, and 403, this *Second Further Notice of Proposed Rulemaking* is adopted.

69. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Communications common carriers, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-6560 Filed 3-23-04; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390, 391, 392, 395, and 396

[Docket No. FMCSA-2000-7174]

RIN 2126-AA53

Interstate School Bus Safety; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) withdraws its October 22, 2001, advance notice of proposed rulemaking (ANPRM) concerning whether to extend the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to all interstate school transportation operations (excluding home-to-school or school-to-home transportation) by local governmentally operated educational agencies. After reviewing the public comments on the ANPRM, the agency determined that no regulatory action is needed. Therefore, interstate school transportation operations by local governmentally operated educational agencies will continue to be exempt from all FMCSRs except the commercial driver's license regulations and the controlled substances and alcohol testing regulations.

DATES: The advance notice of proposed rulemaking published on October 22, 2001, at 66 FR 53373 is withdrawn as of March 24, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Hanley, Jr., Office of Bus and Truck Standards and Operations, (202) 366-6811, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2001, FMCSA issued an advance notice of proposed rulemaking (ANPRM) to gather information, data, and recommendations that would assist the agency in determining whether to make the Federal Motor Carrier Safety Regulations (FMCSRs) applicable to interstate school bus transportation by local governmentally operated educational agencies (LEAs). Sec. 4024 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 107 at 416, directed FMCSA to determine whether to apply the FMCSRs to interstate school transportation operations (excluding home-to-school or school-to-home transportation) conducted by LEAs. Generally, the term LEA means a public board of education or other public authority legally constituted to perform service functions for public elementary and secondary school districts in a city, county, or other political subdivision of a State. LEAs do not include private schools or public colleges and universities.

In the ANPRM, the agency proposed to determine whether Federal regulatory

involvement in interstate school bus transportation operations by local educational agencies is necessary to enhance the safety of passengers and that of the general public. FMCSA also considered whether interstate transportation (other than home-to-school and school-to-home) by all governmental educational entities, such as public universities, should be subject to the FMCSRs. In addition, the agency considered holding educational agencies to the same standards that private schools and contractors are required to meet when operating interstate in other than home-to-school and school-to-home transportation. Examples of these standards include qualifications of drivers, hours of service, and maintenance of vehicles.

There are approximately 14,000 school districts (LEAs) in the United States that provide transportation to students. About two-thirds provide that service directly, and the remaining third hire a contractor(s) to provide the transportation service. These entities (LEAs and contractors) employ nearly 470,000 drivers, operate almost 460,000 school buses, and transport 23.5 million students 4.3 billion miles every year. It is estimated that less than 5 percent of all school bus trips are other than home-to-school, with less than 1 percent being interstate in nature. Virtually all school bus transportation that crosses State lines is for field trips and trips to school-sponsored sporting events, rather than being home-to-school transportation.

Although government operation of commercial motor vehicles (including school buses) has historically been exempt from the majority of the FMCSRs, drivers employed by governmental agencies, including LEAs, must comply with the commercial driver's license (CDL) requirements and drug and alcohol testing requirements. The LEA exemption originated in Sec. 206(f) of the Motor Carrier Safety Act of 1984 (Public Law 98-554, Title II; 98 Stat. 2833), which specifically required the Secretary to waive application of the regulations to school buses, unless the Secretary determined that such regulations are necessary for public safety.

Contractors hired by school districts must comply with all of the FMCSRs when providing transportation that is other than home-to-school and is interstate in nature. As with LEA bus drivers, contractor-employed school bus drivers must comply with the CDL and drug and alcohol testing requirements set forth in the FMCSRs regardless of whether the transportation is interstate or intrastate in nature.

The regulatory oversight of school bus operations has traditionally been a State function. While the States have adopted the FMCSRs or compatible regulations to meet the requirements of the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR part 350), they normally apply the same exemptions for government operations. The routine inspection of school buses is a State function and not a MCSAP-reimbursable activity.

Most States have some driver physical qualification standards, vehicle maintenance and inspection standards, background investigation requirements, and training standards that apply to school bus operations (both LEA and contractor). Only a few States have hours-of-service or fatigue management standards for school bus operators. LEA-performed school bus transportation operations are subject to Sec. 7 of the Fair Labor Standards Act (FLSA) (29 U.S.C. 207), which requires overtime pay for work in excess of 40 hours per week. (However, Sec. 13(b)(1) of the FLSA exempts from the provisions of Sec. 7 any employee for whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502. *See* 29 CFR part 782. Thus, certain contractor-performed school bus transportation operations subject to the Secretary's jurisdiction are exempt from the overtime provisions of the FLSA.)

LEA-performed and contractor-performed school bus transportation operations are equally safe. The overall fatality rate for school buses is 0.2 per 100 million vehicle miles traveled (VMT), compared with 1.5 fatalities per 100 million VMT for passenger cars (1990-2000). The fatality rate for trucks is 2.5 per 100 million VMT (2000). In calendar year 2001, 129 people died in school bus-involved fatal crashes; 16 of those fatalities were bus occupants. From 1975 through 2001, the number of school bus occupant fatalities averaged 14 per year. All fatalities occurred during home-to-school operations. There has not been a single fatal crash involving an interstate school activity trip during the last 10 years.

Comments Received on the ANPRM

The ANPRM invited responses to specific questions that FMCSA considered relevant to its need to decide whether to make the FMCSRs applicable to interstate school bus transportation by local educational agencies. We received comments from six State governmental organizations, five organizations, a consulting group, five corporations, and 13 individuals. Few

commenters responded to FMCSA's specific questions. Most merely stated that they were either for or against LEAs being subject to the FMCSRs.

Beyond the information provided in the comments, FMCSA gleaned little specific data from the answers supplied. Some commenters stated that much of the information the agency requested was not readily obtainable, or that States do not maintain such information. The major points of the substantive responses are summarized below.

Summary of comments in favor of applying the Federal safety regulations to LEAs:

1. Many of the commenters simply stated that the Federal safety regulations should apply equally to all passenger-carrying vehicles, regardless of controlling entity. These commenters believe that if a contractor is subject to the safety regulations, then LEAs also should be subject to them. Commenters expressing this view included the National School Transportation Association, the Montana School Boards Association, the American Bus Association, the United Motorcoach Association, and Advocates for Highway and Auto Safety.

2. The United Motorcoach Association (UMA) expressed concern that there are no universal minimum standards applicable to every school bus operation, leaving safety decisions to each State or local district. Nonetheless, UMA acknowledged that "We can cite no circumstances where school bus providers—either contracted or governmentally-owned—have demonstrated anything less than the highest standards of and attention to safety. Many States have implemented greater safety oversight on the school bus community than they have on the commercial operators."

3. Several commenters, including the National School Transportation Association and the New Jersey Department of Transportation, noted that, among the FMCSRs, hours-of-service regulations are least likely to be replicated at the State level. These commenters envisioned potential safety benefits from applying the hours-of-service regulations to all interstate school transportation.

Summary of comments in opposition to applying the safety regulations to LEAs:

1. Since the current LEA exemption (at 49 U.S.C. 31136) applies to all government-owned and -operated vehicles, any proposal to apply the safety regulations to LEAs should include all government vehicles operated in interstate commerce. The

governmental exemption has not compromised safety.

2. Virtually all commenters who opposed the proposed regulatory action agreed that most States impose vehicle inspection and maintenance requirements on all school buses, regardless of type of operation. The Colorado Department of Education stated that Colorado already has and is continuing to revise "tough regulations for the safety of our children we transport, including when we transport these children into other states." Subjecting Colorado LEAs to the Federal safety regulations would introduce "problems of overlapping regulations."

3. There is a lack of specific data indicating that LEA pupil transportation is unsafe. The National Association of State Directors of Pupil Transportation Services reinforced the point by adding that any change to the FMCSRs should be based on data.

FMCSA Decision

FMCSA finds a lack of identifiable data indicating that this segment of transportation is unsafe. The evidence shows that not a single fatal crash in the past 10 years would have been avoided had this proposed rule change been in existence. Since the major source of safety benefits is potential fatal crashes avoided, FMCSA believes that the benefits of imposing the FMCSRs on all interstate school transportation operations would be extremely low. Even though the costs of compliance would be modest, potential benefits would not appear to outweigh those costs.

Further, Executive Order 13132, dated August 4, 1999, dealing with Federalism, states that "the national government should be deferential to the States when taking action that affects the policymaking discretion of the States * * *." and "[i]ntrusive Federal oversight of State administration is neither necessary nor desirable." A 1988 Federal Highway Administration final rule, "Federal Motor Carrier Safety Regulations; General" (53 FR 18042, May 19, 1988), invokes this principle with regard to school bus transportation operations. The rule's preamble states, at 53 FR 18043, that "the transportation of school children and school personnel from home to school and back again involves problems which are common to the States, and which, in accordance with the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987), can best be left to the individual States * * *." FMCSA has reached the same conclusion in this rulemaking proceeding.

Although FMCSA has decided not to pursue this regulatory action, the agency is committed to continuing to work with school bus associations and local school districts to maintain the safety of school bus transportation. We are working closely with two school bus associations to learn the extent to which school buses and school bus operations are regulated at the State level. We recently launched an outreach program, "Moving Kids Safely," that provides guidance to school officials responsible for the transportation of school children. As an integral part of this program, FMCSA assists the school-system decision maker in selecting a safe transportation company and the appropriate type of vehicle for the trip.

For these reasons, FMCSA has decided not to extend the applicability of the FMCSRs to all interstate school transportation operations (excluding home-to-school or school-to-home transportation) by local governmentally operated educational agencies. The ANPRM of October 22, 2001 (66 FR 53373) is withdrawn.

Issued on: March 11, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04-6585 Filed 3-23-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004-17365]

RIN 2127-AG87

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document withdraws a 1998 notice of proposed rulemaking (NPRM) that would have amended the Federal motor vehicle safety standard on lighting to reorganize the sections related to headlighting. The intention of the rulemaking was to remove inconsistencies and to facilitate easy reference to the standard, in an effort to improve its comprehensibility. We have decided to terminate the rulemaking for the administrative rewrite of headlighting requirements, due to other regulatory priorities and limited agency resources.