



NATIONAL SCHOOL TRANSPORTATION ASSOCIATION

**Midwinter Meeting
January 21 – 25, 2012**

Wailea Beach Marriott Resort & Spa
Wailea, Maui, HI

**Government Relations Committee
Meeting Handouts**

Government Relations Committee Meeting Agenda

Tuesday, January 24

10:30am-12:00pm

Wailea Beach Marriott Resort & Spa

Maui, Hawaii

1. Call to Order, Chairman John Corr
2. Review/Approval of December 15, 2011 Minutes
3. Action Plans, Review/Update
 - a. Transit Action Plan Update
 - b. Privatization Action Plan Update
 - i. NSBA conference
 - c. Clean Diesel Action Plan Update
 - i. OMB Meeting
4. Updates
 - a. Legislative Activity Update
 - i. What's ahead: 2nd session of the 112th Congress
 - ii. Surface Transportation Reauthorization Update
 - b. Regulatory Activity Update
 - i. Sleep Apnea Comments
 - ii. URS Comments
 - iii. NHTSA requesting comments on school bus rules that impact small businesses
 - c. State Legislative Activity Update
 - i. Michigan Bill
 - ii. Suttons Bay/Yankton
 1. Conference call, Yankton
 2. FTA request, Suttons Bay
 - d. DERA Update
5. Sleep Apnea Update
 - a. NSTA comments filed, Dec. 28
 - b. MCSAC/MRB joint subcommittee meeting, Jan 5-6
 - c. Meeting with Anne Ferro
 - i. Next steps

6. Discussion Items
 - a. PAC solicitation and planning

7. Other business
 - a. Spring Fly-In
 - i. Event details
 - ii. Fundraisers
 - b. Other Issues

8. Next Call Date, February 2012?

9. Adjourn

GR Minutes

December 15, 2011

11am EST

Committee Members

Chairman John Corr; Bobbie Hartman; Dale Krapf

Board Member Participants

Magda Dimmendaal , Kevin Clifford, Kellie Dean, Donnie Fowler, John Gillie, Steve Hey, Bob Pape

Staff

David Hobson, Cathy Cuddy

Consultants

Chester DiBari, Prime Policy; Ron Kinney; Robin Leeds, Leeds Consulting; Gabe Rozsa, Prime Policy; Victoria Schiller-Givens, Prime Policy; Becky Weber, Prime Policy;

Guests

Rick Smith; Kent Tyler

Welcome and Call to Order

Chairman Corr convened the call at 11:04 am.

Review/Approval of November Minutes

The minutes from last month's conference call were approved as presented.

Action Plans, Review/Update

Transit Action Plan Update

The progress on bill (SB 575) in the Michigan State Senate that would allow stop arms and stop lights to be incorporated on the BATA/Sutton's Bay white buses has been significantly slowed in recent weeks as efforts by this industry to make the facts surrounding the situation have become known. Many Senators are now saying they will not support the bill and feel they have been misled by the Michigan DOT. Kellie Dean reached out to the Governor of Michigan who is now aware of the situation.

Steve Hey has spoken with the South Dakota Governor's Chief of Staff, Dusty Johnson. Hey's impression is that the governor will not take further action and is waiting for FTA to rule on the issue. SD DOT indicated that Yankton is now in compliance with federal regulations, but NSTA members have not yet confirmed. Rick Meyer, Steve Hey, Kellie Dean, and other South Dakota school bus contractors will hold a conference call sometime before Christmas.

The consensus of the group is that NSTA will not contact FTA officials to determine the status of the NSTA complaints regarding the Yankton or Suttons Bay situations.

Privatization Action Plan Update

NSTA is exhibiting at the NSBA conference on April 21-23 in Boston. It was decided that we would not attend the AASA conference due to scheduling difficulties with ASBC's Love the Bus event and the UMA Expo.

Clean Diesel Action Plan Update

David took part in an 'invitation only' meeting with DERA/EPA leadership in late November to discuss the future of DERA projects as Gabe could not attend. The purpose of the meeting was to review a 5 year plan being developed by EPA. At this point nothing addressed at the meeting, will have any immediate impact on the school bus industry. However, the meeting gave David the opportunity to meet privately with Julie Hennings, who had previously contacted Dale Krapf, Gabe and David, in separate phone calls, asking about the school bus industry's interest in taking part in a new pilot program that may be forthcoming with EPA. David pressed Ms. Hennings about NSTA's interests in an EPA voucher or coupon type program for new vehicles that use alternative fuel sources. Ms. Hennings received the message favorably.

Gabe gave a recap of the work being done in Congress to continue the DERA funding. Currently Congress is assembling a budget that will reduce funding for DERA from \$50 million to \$30 million, and funding may go as low as \$15 million. There is also a push in the administration for the money to be used for loan guarantees rather than grants. Members of the DERA coalition are to meet with the Office of Management and Budget to argue that loan guarantees don't work, particularly when it comes to retro-fitting school buses.

Updates

Legislative Activity Update

Becky summarized recent action on the surface transportation reauthorization bill. The Senate Commerce Committee marked-up a commercial motor vehicle safety bill and a national highway traffic safety reauthorization bill on Wednesday which will be rolled into the overall reauthorization bill on the Senate side. Becky highlighted provisions of interest to NSTA included in a summary to the GR Committee sent out on Monday, including a range of new registration, enforcement, regulatory, safety and compliance issues that will affect private operators. She specifically discussed provisions of particular interest to NSTA including a 9-15 passenger van driver study, EOBR requirement, graduated licensing

incentive grant program. Becky said the Senate Banking Committee might mark-up the transit title as early as Friday, but could be postponed to next week or after Christmas, dependent on the Congressional end-game on the omnibus appropriations bill and payroll tax extension package. Becky stated that House will hope to markup their version of the reauthorization bill in January or first of February.

Discussion Items

Sleep Apnea

David reported on the recent meeting of the MCSAC/MRB on sleep apnea. On December 7, there was a joint meeting of the Motor Carrier Safety Advisory Committee {MCSAC} and the Medical Review Board {MRB}. The purpose of the meeting was to develop a recommendation for the Federal Motor Carrier Safety Administration {FMCSA} related to sleep apnea. At the end of the day a recommendation was developed wherein a Medical Examiner {ME} is to refer any driver with a BMI of 35 or greater to go through an evaluation for sleep apnea. The ME is to issue a 60 day conditional card to cover the period of the evaluation assuming the ME feels the driver may safely resume their duties to operate a commercial motor vehicle {CMV}. A second and separate part of the recommendation is that a driver who is impacted by the 35 or greater BMI rule, may be suspended based upon several factors (NSTA staff is trying to obtain the exact language). For example – a crash as a result of drowsiness or sleepiness; a suspension of sleep apnea treatment, without medical permission, yet the driver continues to operate a CMV. These two recommendations have been presented to FMCSA staff for review. It is anticipated that a guidance document will be issued by FMCSA to the ME community. The time period for such an action is uncertain, but it is highly likely that this issue will be 'fast-tracked' within the FMCSA Department of Transportation {DOT} as Secretary LaHood is well aware of this action. Subsequently, there will be formal rule-making with notice posted in the Federal Register giving all affected parties an opportunity for comment. The time frame for this is also uncertain.

After much discussion a decision was made that Robin will develop a letter to go to FMCSA stating NSTA's position.

MCSAC Subcommittee

Acting upon the Board and GR committee's interest in having a seat on the MCSAC committee, David made comments during the public comment period at the recent meetings indicating NSTA would like to be considered as a resource during the MCSAC deliberations. David reported that he believes a subcommittee to study the differences between the trucking industry and motor coach [of which MCSAC views school buses as a subset] will soon invite NSTA to participate. This does not mean that NSTA will have a seat on the main committee but only the subcommittee. He considers this an opportunity for NSTA which possibly could lead to a seat on the main committee. After discussion, a decision was made to ask the Krapf's to provide the delegate.

Unified Registration Plan

On October 26, a notice appeared in the Federal Register seeking comments about the final rule, issued in August of 2007, implementing fees under a Unified Registration System. This is in relation to a depository and clearinghouse of information on various motor-carriers and upon which NSTA commented in June of 2007. The supplemental rule-making is intended to streamline the registration process, change fees and ensure that FMCSA can more efficiently track motor-carriers. The new proposal continues to exempt school bus operations. NSTA staff is now in the process of submitting comments that will reiterate the points made back in June of 2007. The final document will soon be submitted to the GR committee for comment/approval. It must be filed by December 27, 2011. Staff intends to file it by December 22, 2011. The GR committee will be asked to approve the document before it is filed.

Other Business:

Spring Bus-In

It was agreed that NSTA will do a fundraiser in conjunction with the Spring Bus-In, as was done last year.

Other Issues

No other issues were raised.

The Chairman adjourned the meeting at 12:32 pm.

Respectfully submitted,

Cathy Cuddy
Membership and Marketing Assistant

NSTA
GR Report
January 24, 2012

Transit Use Activity of Interest

Bay Area Transit Authority (BATA) Traverse City, Mich. Update – On 1/5/12, NSTA received and e-mail for the FTA regarding exhibit #10, an unsigned letter, from NSTA’s complaint packet on BATA. David is in the process of getting the signed letter returned to the FTA ASAP. It appears that there is some movement on our complaint at this time. In the mean time, Dean’s Transportation Staff are continuing to pursue support from the Michigan State and/or Federal Legislators for NSTA’s position against BATA and apply pressure on the State DOT.

South Dakota Update – The Transit Use committee, Ron Kinney & Jim Seal conducted a conference call with several school bus contractors in South Dakota to discuss countermeasures to the transit encroachment activities in South Dakota. The Transit Use committee will be coordinating an effort over the next few weeks with key school bus contractors located throughout the state to gather data that confirms transit encroachment activities are continuing and on going statewide. We will keep you updated as this progresses.

2011-2012 State Legislative Session Snapshot

Business/Anti-Business Legislation: -HB 4306 & HB 4982, Michigan

Commercial Advertising: - HB 19, Florida

Shared Service Agreements: - A 4237, & A 4317, New Jersey

Outsourcing (foreign country prohibited). SB 231, Indiana

State School Transportation Funding. AB 1448. California

There are no anti-contracting bills that pose a significant threat to NSTA members active at this time.

NSTA’s website: As of 1/05/12, 7 active bills of interest are posted on NSTA’s website.

Regular Sessions: Fifteen states Federal & DC are currently in session.

2012 Filed and Prefiled Bills: Alabama, Arizona, Florida, Georgia, Illinois, Maryland, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin, Wyoming

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NY State bills introduced, 1/5/2012

Midwinter Meeting Transit Report

1/24/2012



[Select a different report](#)

January 2012 State Legislative Tracking Report

January 05, 2012

California

2011-2012

1 Bill

Number: **CA AB 1448** - Updated (New 01/05/2012)

Sponsor: Furutani

Title: [Home-to-school transportation: appropriation.](#)

Abstract: An act relating to home-to-school transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

Status: [Read first time. To print. - 01/04/2012](#)

Florida -

Prefiles

2012

1 Bill

Number: **FL HB 19** - Updated (Status 01/04/2012)

Sponsor: K-20 Competitiveness Subcommittee

Title: [Public School Buses](#)

Abstract: Provides for district school board policies that authorize commercial advertisements on school buses; provides policy requirements relating to reimbursement to school district, prohibited advertisements, & signage & equipment standards; requires school bus to be withdrawn from use under certain circumstances; provides for remittance & allocation of revenue.

Status: [H Now in PreK-12 Appropriations Subcommittee - 12/14/2011](#)

Indiana

2012

1 Bill

Number: **IN SB 231** - Updated (New 01/04/2012)

Title: [Contracting with persons that invest in Iran.](#)

Abstract: Provides that agencies of state government, state educational institutions, and political subdivisions may not enter into contracts with persons that engage in investment activities in Iran. Provides that a financial institution may not be designated as a public depository if the financial institution engages in investment activities in Iran. Requires the Indiana department of administration, using credible information available to the public, to establish a list of persons who engage in

Status: [S First reading: referred to Committee on Homeland Security, Transportation and](#)

[Veterans Affairs - 01/04/2012](#)

Michigan - Adjourned
2011-2012

2 Bills

Number: **MI HB 4306** - Updated (Status 05/11/2011)

Sponsor: Dave Agema

Title: [Education; school districts; contracting and competitive bidding for certain noninstructional services; require. Amends 1976 PA 451](#)

Abstract: To amend 1976 PA 451, entitled "The revised school code," (MCL 380.1 to 380.1852) by adding section 1245.

Status: [placed on third reading - 05/10/2011](#)

Number: **MI HB 4982** - Updated (Status 09/17/2011)

Sponsor: Ray Franz

Title: [Transportation; other; use of flashers and "stop arm" for public transit buses; allow. Amends secs. 682 & 688 of 1949 PA 300](#)

Abstract: To amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 682 and 688 (MCL 257.682 and 257.688), section 682 as amended by 1990 PA 188 and section 688 as amended by 2006 PA 14, and by adding section 45b.

Status: [printed bill filed 09/16/2011 - 09/20/2011](#)

New Jersey -
Adjourned 2010-
2011

2 Bills

Number: **NJ A 4237** - Updated (New 11/12/2011)

Sponsor: Dancer, Ronald S.

Title: [Concerning public school hazardous busing and amending P.L.2007, c.260.](#)

Abstract: Provides State transportation aid incentive to support shared services agreements between municipalities and districts with efficient transportation systems for the provision of public school hazardous busing.

Status: [Introduced, Referred to Assembly Education Committee - 11/10/2011](#)

Number: **NJ A 4317** - Updated (Text 12/17/2011)

Sponsor: O'Donnell, Jason

Title: [Concerning county consolidated purchasing programs, amending P.L.2007, c.63, and supplementing P.L.1971, c.198 \(C.40A:11-1 et seq.\).](#)

Abstract: Permits establishment of county-wide purchasing system by county employing qualified purchasing agent and requires participation by all municipalities and school districts within the county.

Status: [Introduced, Referred to Assembly Housing and Local Government Committee - 11/21/2011](#)

Totals

7 Bills

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NY State bills introduced, 1/9/2012

Midwinter Meeting Transit Report
1/24/2012



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Recently Introduced Bills in NY
January 09, 2012

New York
2011-2012

8 Bills

Number: **NY AB 54** - Updated (Status 01/07/2012)

Sponsor: Paulin (MS)

Title: [AN ACT to amend the vehicle and traffic law and the education law, in relation to engine fire suppression systems on school buses](#)

Abstract: Glick, Gottfried, Hooper, Latimer, Lavine, Mayersohn, Nolan, Pheffer, Reilly, Rivera J, Rivera N, Rivera P, Robinson, Rosenthal, Scarborough, Weisenberg, Wright Amd S375, V & T L; amd SS3621 & 3623-a, Ed L Requires school buses having a seating capacity in excess of fifteen passengers, purchased after September 1, 2013, to be equipped with engine fire suppression systems; requires state education transportation aid to cover costs of purchase by school districts of school bus engine fire

Status: [referred to transportation - 01/04/2012](#)

Number: **NY AB 1109** - Updated (Status 01/07/2012)

Sponsor: Crespo

Title: [AN ACT to amend the education law and the vehicle and traffic law, in relation to providing for the installation and use of video monitoring systems on school bu](#)

Abstract: Add S3624-a, amd SS3621 & 3623-a, Ed L; amd S375, V & T L Provides for all school buses to be equipped with one or more on-board video monitoring systems, for policies and procedures relating to their use, and for financing their purchase and installation as part of the apportionment of public monies for school transportation expenses.

Status: [referred to education - 01/04/2012](#)

Number: **NY AB 2740** - Updated (Status 01/07/2012)

Sponsor: Gantt

Title: [AN ACT to amend the vehicle and traffic law, in relation to safety seat and seat belt requirements](#)

Abstract: Amd S1229-c, V & T L Relates to child safety seat and seat belt requirements; requires that safety seats be secured according to the vehicle's manual or child restraint

system manufacturer's instructions and requires that all back seat passengers use a seat belt.

Status: [referred to transportation - 01/04/2012](#)

Number: **NY AB 3435** - Updated (Status 01/07/2012)

Sponsor: Calhoun

Title: [AN ACT to amend the education law, in relation to expenses incurred for school bus safety improvements](#)

Abstract: Add S3625-a, Ed L Requires school bus transportation contracts to include a provision holding school bus companies harmless for certain school bus safety improvements mandated during the course of the contract or contract renewal.

Status: [referred to education - 01/04/2012](#)

Number: **NY AB 3717** - Updated (Status 01/07/2012)

Sponsor: Rivera P

Title: [AN ACT to amend the education law, in relation to requiring the usage of seat safety belts by passengers of school buses which are equipped with such belts](#)

Abstract: Amd SS3623 & 3635-a, Ed L Requires every passenger of a school bus which is equipped with seat belts to wear the seat belt while the bus is in operation; provides that the commissioner of transportation place on every school bus equipped with seat belts a sign warning passengers that seat belt use is required.

Status: [referred to education - 01/04/2012](#)

Number: **NY AB 7531** - Updated (Status 01/07/2012)

Sponsor: McKevitt

Title: [AN ACT to amend the education law, in relation to requiring school buses to display a toll free number for reporting an improper operation of such school bus](#)

Abstract: Amd SS3623 & 3623-a, Ed L Requires school buses to display a toll free number for reporting improper operation of such school buses.

Status: [referred to education - 01/04/2012](#)

Number: **NY SB 286** - Updated (Status 01/07/2012)

Sponsor: DIAZ

Title: [AN ACT to amend the education law and the vehicle and traffic law, in relation to providing for the installation and use of video monitoring systems on school bu](#)

Abstract: Add S3624-a, amd SS3621 & 3623-a, Ed L; amd S375, V & T L Provides for all school buses to be equipped with one or more on-board video monitoring systems, for policies and procedures relating to their use, and for financing their purchase and installation as part of the apportionment of public monies for school transportation expenses.

Status: [REFERRED TO EDUCATION - 01/04/2012](#)

Number: **NY SB 1745** - Updated (Status 01/07/2012)

Sponsor: GOLDEN

Title: [AN ACT to amend the vehicle and traffic law and the education law, in relation to electronic monitoring equipment on school buses in the city of New York](#)

Abstract: Amd S375, V & T L; add S3624-a, amd S3623-a, Ed L Requires monitoring systems on school buses in the city of New York; requires retrofitting, notification and record keeping.

Status: [REFERRED TO TRANSPORTATION - 01/04/2012](#)

Totals 8
Bills

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Regulatory Report

January, 2011

Sleep Apnea

Last month, a recommendation was developed for FMCSA by its' advisory group, wherein a Medical Examiner {ME} is to refer any driver with a BMI of 35 or greater to go through an evaluation for sleep apnea. The ME is to issue a 60 day conditional card to cover the period of the evaluation. This is assuming the ME feels the driver may safely resume their duties to operate a commercial motor vehicle {CMV}. A second and separate part of the recommendation is that a driver who is impacted by the 35 or greater BMI rule, may be suspended based upon several factors. As promised, NSTA has since obtained the exact language of the recommendation and it is attached. These two recommendations have been presented to FMCSA staff for review. It is anticipated that a guidance document will be issued by FMCSA to the ME community in February or March. Subsequently, there will be formal rule-making with notice posted in the Federal Register giving all affected parties an opportunity for comment.

On January 4-5, there was a meeting of the Motor Carrier Safety Advisory Committee {MCSAC} and the Medical Review Board {MRB} joint subcommittees wherein they began the process of a rule-making related to sleep apnea. This subcommittee meeting was open to the public and NSTA representatives attended. NSTA leaders spoke with many of the subcommittee members privately and during the open public comment session; NSTA reps spoke forcefully about the potential impact on the school bus sector. In addition, NSTA filed formal comments on December 22 and reinforced these comments during the open forum. UMA also submitted comments that mirrored NSTA's. This is just the start of what many expect to be a lengthy rule-making process.

NSTA also sent a letter to FMCSA Administrator Anne Ferro requesting an opportunity to talk with her and agency personnel about this rule. She has indicated a willingness to meet and that meeting is projected for February 21.

Other FMCSA- MCSAC actions

During the last GR committee discussions, it was noted that the MCSAC was planning to hold a subcommittee meeting on the differences between the truck and motor-coach sectors. Due to the above noted MCSAC/MRB subcommittee on sleep apnea, this meeting was not held. As of this date, this subcommittee will now meet February 9. It is not clear if NSTA will be invited to be part of the subcommittee. Since David Hobson will be at the UMA Expo he will not be able to monitor the meeting.

Unified Registration Plan

As was noted in last month's report, on October 26, a notice appeared in the Federal Register seeking comments about the final rule, issued in August of 2007, implementing fees under a Unified Registration System. This is in relation to a depository and clearinghouse of information on various motor-carriers and upon which NSTA commented in June of 2007. The supplemental rule-making is intended to streamline the registration process, change fees and ensure that FMCSA can more efficiently track motor-carriers. The new proposal continues to exempt school bus operations. Comments were approved by the GR committee and were filed on December 22. As of the last inspection of the public docket, no one else from the school bus sector filed any comments.

Economic Impact of Rulings on Small Businesses

On November 28 a notice appeared in the Federal Register with NHTSA requesting comments on the economic impact of recent rulings on small businesses as they specifically focus on the school bus sector. These areas are: 1) school bus pedestrian safety devices 2) bus emergency exits and window retention release 3) rollover protection and body joint strength 4) passenger seating and crash protection. As was noted previously, David has now talked with the manufacturers for their input and if the GR committee and NSTA leadership approve, they would appreciate NSTA filing comments. They all feel the rules have impacted the cost of new vehicles and that sales have certainly declined in the last several years. No contractors have as yet come forward and indicated an adverse impact. It is not clear that NAPT or that NSDPTS will file comments. David has spoken with the ED of each association and both promised to get back to him, once their respective committees has reviewed the matter. Many feel this periodic review will not lead to any meaningful action by the agency. Comments are due by January 27, 2012. [None of these are new rules or proposed rules].

DERA/OMB Meeting

Hobson took part in a meeting related to DERA funding at the Office of Management and Budget {OMB} right before Christmas, with Gabe Rosza, to discuss the future of DERA projects. The purpose of the meeting was to encourage the administration to continue future funding for DERA in the budget.

FTA Issues

NSTA received an email on January 5, 2012 from the FTA, asking for a signed copy of one of the exhibits that was attached to the April 19, 2011 complaint letter filed by NSTA about BATA activities in Suttons Bay, MI. A signed copy is now being furnished to them. No other information from FTA regarding the complaints against Yankton, SD, or Suttons Bay is available. Staff continues to wait for an answer from the FTA as per GR committee direction. Ron will give an update on other related actions.

NTSB

On December 13, 2011, the NTSB Board met, in open forum, to discuss a highway accident report related to the collision involving two school buses, a bobtail, and a passenger vehicle which occurred on August 5, 2010 in Gray Summit, MO. Rachel McCleery attended to monitor the hearing for NSTA. As a result of this accident, the driver of the GMC pickup and one passenger seated in the rear of the lead school bus were killed. A total of 35 passengers received injuries ranging from minor to serious. These included 2 bus drivers, and the driver of the Volvo. Eighteen people were uninjured. The National Transportation Safety Board has determined that the probable cause of the initial Gray Summit collision was distraction, likely due to a text messaging conversation being conducted by the GMC pickup driver, which resulted in his failure to notice and react to a Volvo tractor that had slowed or stopped in response to a queue that had developed in a work zone. The second collision, between the lead school bus and the GMC pickup, was the result of the bus driver's inattention to the forward roadway, due to excessive focus on a motor-coach parked on the shoulder of the road. The final collision was judged to be due to the driver of the following school bus not maintaining the recommended minimum distance from the lead school bus in the seconds preceding the accident. Supposedly contributing to the severity of the accident was the lack of forward collision warning systems on the two school buses. The hearing was at 10 am in the morning and at 2pm that same afternoon, a lengthy list of recommendations were issued as was a proposed ban on the use of cell phones by all drivers all across the nation. This ban was widely reported.

Additionally, NTSB issued the following recommendation to NSTA [and NASDPS and NAPT]:

“Inform your members of the circumstances and events that contributed to the Gray Summit accident; discuss solutions for the driver, pre-trip evacuation briefings, and vehicle, inspection, and technological issues presented in the report; and urge the implementation of these solutions among your members”

David has spoken with Dwight Foster of NTSB and during the opening general session at the Mid-winter meetings David will cover the hearing and NTSB conclusions. Then during the subsequent Safety & Security meeting he will ask the committee to revisit the matter

[Federal Register Volume 76, Number 228 (Monday, November 28, 2011)]
[Proposed Rules]
[Pages 72888-72891]
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
[FR Doc No: 2011-30277]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2011-0160]

Federal Motor Vehicle Safety Standards; Small Business Impacts of
Motor Vehicle Safety

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

ACTION: Notice of regulatory review; Request for comments.

SUMMARY: NHTSA seeks comments on the economic impact of its regulations on small entities. As required by Section 610 of the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to school buses and other buses.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than January 27, 2012.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA-2011-0160] by any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

[[Page 72889]]

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: (202) 493-2251.

Instructions: For detailed instructions on submitting comments and additional information see the Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Juanita Kavalauskas, Office of Regulatory Analysis, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone (202) 366-2584, fax (202) 366-3189).

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 22, 1999, listing in Appendix D (64 FR 64684) those regulations that each operating administration will review

under section 610 during the next 12 months. Appendix D contained DOT's 10-year review plan for all of its existing regulations. On November 24, 2008, NHTSA published in the Federal Register (73 FR 71401) a revised 10-year review plan for its existing regulations.

The National Highway Traffic Safety Administration (NHTSA, "we") has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process--an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda. The newly revised 10-year plan will assess years 9 and 10 of the old plan in years 1 and 2 of the new plan. Year 1 (2008) began in the fall of 2008 and will end in the fall of 2009; Year 2 (2009) will begin in the fall of 2009 and will end in the fall of 2010; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review. The following table shows the 10-year analysis and review schedule:

National Highway Traffic Safety Administration Section 610 Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1.....	49 CFR 571.223 through 571.500, and parts 575 and 579.	2008	2009
2.....	23 CFR parts 1200 and 1300.....	2009	2010
3.....	49 CFR parts 501 through 526 and 571.213.	2010	2011
4.....	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222.	2011	2012
5.....	49 CFR 571.101 through 571.110,	2012	2013

	and 571.135, 571.138 and 571.139.		
6.....	49 CFR parts 529 through 578, except parts 571 and 575.	2013	2014
7.....	49 CFR 571.111 through 571.129 and parts 580 through 588.	2014	2015
8.....	49 CFR 571.201 through 571.212....	2015	2016
9.....	49 CFR 571.214 through 571.219, except 571.217.	2016	2017
10.....	49 CFR parts 591 through 595 and new parts and subparts.	2017	2018

C. Regulations Under Analysis

During Year 4, we will continue to conduct a preliminary assessment of the following: 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222.

Section	Title
571.131.....	School bus pedestrian safety devices.
571.217.....	Bus emergency exits and window retention and release.
571.220.....	School bus rollover protection.
571.221.....	School bus body joint strength.
571.222.....	School bus passenger seating and crash protection.

[[Page 72890]]

We are seeking comments on whether any requirements in 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of

the requirements in 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

Have we organized the material to suit the public's needs?

Are the requirements in the rule clearly stated?

Does the rule contain technical language or jargon that is not clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under ADDRESSES. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- (1) Go to the Federal Docket Management System (FDMS) at <http://regulations.gov>.
- (2) FDMS provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: (a) "Quick Search" to search using a full-text search engine, or (b) "Advanced Search," which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, Federal Register reference, CFR citation, etc. Each data field in the advanced search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in FDMS that is relevant to the requested subject or topic.
- (3) You may download the comments. However, since the comments are

[[Page 72891]]

imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Terry Shelton,
Associate Administrator for the National Center for Statistics and
Analysis.

[FR Doc. 2011-30277 Filed 11-25-11; 8:45 am]

BILLING CODE 4910-59-P

December 21, 2011

Docket Clerk

Federal Docket Management System (FDMC)

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

December 22, 2011

Docket Clerk

Dockets 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 ID Number FMCSA-97-2349

The National School Transportation Association appreciates the opportunity to comment on the Supplemental Notice of Proposed Rulemaking (SNPRM) related to the Unified Registration System and the proposals to improve the registration process for entities that register with FMCSA.

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.

As we noted in 2005 and again in 2007 in regard to the NPRM on the Unified Registration System, private school bus operators occupy a unique position among motor carriers. Many of their operations are exempt from regulation, but in other ways they are treated as commercial carriers. This makes use of the URS more complex for school bus companies than for other motor carriers. Therefore, NSTA is seeking clarification on the following items of the proposed registration form:

- 1) As we understand the rule, school bus operations (home-to-school-to-home routes) continue to be exempt. Therefore, a for-hire school bus contractor would register only if he or she provides charter transportation such as school activity trips; and would check the box on the proposed form in Sec. 17a for Charter and Special Operations. We would appreciate clarification from FMCSA that under the sections on the form that ask for the number of vehicles and the number of drivers that will be operating in the United States, the contractor need enter only the portion of his vehicles and drivers that are used in charter operations, and not the portion that are used in school bus operations.

- 2) Please clarify whether in question 36, Government Funding Status, government financial assistance includes a contract between a municipality and a school bus contractor for school transportation service, if such contract includes activity transportation.

For additional information on school bus operations we refer you to our comments of June 18, 2007 on the NPRM docket No. FMCSA-2007-27871.

Thank you for the opportunity to comment. For further information or clarification, please contact me at 800-560-1654.

Sincerely,

David F. Hobson

Executive Director

National School Transportation Association



NSTA Legislative Update

January 10, 2012

HIGHLIGHTS



THIS ONE PAGER SUMMARIZES IMPORTANT RECENT ACTIVITY

Surface Transportation Reauthorization

Senate

- Commercial motor vehicle safety and highway safety marked up in December
- Transit and revenue title expected to be marked up in January
- Senate Finance Committee searching for @\$13 billion in additional revenue/offsets
- Planned Senate floor consideration in February

House

- Planned release of House bill late January with expected Committee mark ups first week of February and floor consideration to follow in mid-February

Commercial Motor Vehicle Safety

- Report to Congress on whether 9-15 passenger van drivers should have a CDL and undergo drug and alcohol testing
- EOBR mandate
- Labor membership on MCSAC

Graduated Driver Licensing

- GDL Incentive grant program included in Senate bill

Fuel Tax Exemption

- Working with Senate Finance and House Ways and Means Committee to ensure continuation of school bus fuel tax exemption as part of any diesel tax increase only proposal

Charter Service Protections

- Working with Senate Banking Committee to oppose any weakening of charter service protections

School Bus Protections

- Working with Senate Banking Committee to oppose any weakening of school bus protections

DERA

- Working with the DERA coalition to push for funding in the FY13 budget
- Working with EPA on a potential “rebate” program for school buses

Distracted Driving

- Senate bill prohibits use of cell phones by motorcoach operators

Ambush Elections

- House passage of Workforce Democracy and Fairness Act
- Final Rule issued December 21 Coalition for Democratic Workplace/US Chamber filed suit for injunctive relief on enforcing the NLRB Final Rule on December 20
- President made 3 recess appointments to NLRB on January 4

THE FOLLOWING SECTION PROVIDES ADDITIONAL DETAIL ON ISSUES

Surface Transportation Reauthorization

Federal highway, transit, motor carrier, and safety programs were last reauthorized in 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These programs expired October 1, 2009 and have been extended through eight Congressional extensions, the last one for six months until March 31, 2012. The highway trust fund, which funds the bulk of these programs primarily through federal fuel taxes, is not keeping pace with expenditures and has had to be bailed out by infusions from the General Treasury three times over the last two years to keep it afloat.

House Republican leadership decided in December that there was not time to bring the surface transportation reauthorization and energy exploration bill to the House floor before the end of the year. Accordingly, House Transportation and Infrastructure Committee chairman John Mica (R-FL) announced that the T&I Committee will likely introduce his bill and attempt to mark it up in early February.

On December 2, seven Senate Finance Republican Senators, including Ranking Member Hatch (UT), Charles Grassley (IA), Olympia Snowe (ME) and others sent a letter to Finance Chairman Max Baucus (D-MT) that listed their suggestions for finding the \$12 billion necessary to fund the bill. The letter states twice their opposition to raising fuel or other taxes. On December 14, the Senate Commerce Committee reported out four individual bills all of which will be made a part of Senate's surface transportation reauthorization. Two of them impact NSTA, Senator Lautenberg's Commercial Motor Vehicle Safety Enhancement Act of 2011, and a highway safety bill that reauthorizes the National Highway Traffic Safety Programs. Provisions of interest to NSTA in both bills are discussed below. Senate Commerce Committee intends to markup other bills to also be rolled into the global surface transportation reauthorization in late January or early February, which will include a rail title and possibly Senator Rockefeller's infrastructure fund bill.

The Senate Banking Committee is expected to mark-up the transit title of the bill perhaps as soon as the week of January 23rd, when the Senate reconvenes. The Senate Finance Committee must mark-up a revenue title for the bill and find \$12.9 billion additional revenue to fund the two year proposal at current levels. Majority Leader Reid has stated that he expects the reauthorization bill to be one of the first bills considered by the Senate.

111 House Members (62 Democrats and 49 Republicans) also sent a letter to President Obama in December urging enactment of a six year, fully funded and paid for reauthorization bill. The House is scheduled to convene for the second session of the 112th Congress on Tuesday, January 17. It is expected that the House Transportation and Infrastructure Committee will mark-up its reauthorization bill the first week of February, as well as the House Resources Committee and House Ways and Means Committee and plan to be on the floor by mid-February.

Many issues of concern to NSTA will be considered as part of this comprehensive legislation.

Commercial Motor Vehicle Safety

High profile motorcoach accidents this year have generated interest in improved safety requirements for motorcoach operators, particularly as they relate to occupant protection. This spring, Senators Kay Bailey Hutchison (R-TX) and Sherrod Brown (D-OH) introduced the Motorcoach Enhanced Safety Act (S.453). Both Senators have introduced similar bills in the previous two

Congresses, but have been unsuccessful in passage despite pressure from safety advocates and victims groups. U.S. Congressman John Lewis (D-GA) has introduced a companion bill (HR 873) in the House of Representatives. The bills are opposed vigorously by the motorcoach industry because the volume of regulations they would put in place are misguided and would not ultimately increase safety. On the House side, Mr. Shuster re-introduced an updated version of last year's BUSES Act, The Bus Uniform Standards and Enhanced Safety Act of 2011 (H.R. 1390), which the industry helped draft. From the perspective of the industry, we believe the House Transportation and Infrastructure Republican leadership is taking a much more reasonable approach to bus safety than the Senate.

On December 14, the Senate Commerce Committee reported out the Commercial Motor Vehicle Safety Enhancement Act of 2011, and a highway safety bill that reauthorizes the National Highway Traffic Safety Programs.

The Commercial Motor Vehicle Safety bill contains many new provisions affecting registration, enforcement, licensing and compliance for all commercial motor vehicle operators which would affect private school bus operators, as well as a revised version of the Brown/Hutchison motorcoach safety bill. After a hostile exchange in committee, the final vote to report the bill was on a party line vote of 13-11, with all Republicans voting against it. Senator Hutchison lamented that due to the fact that the Committee was divided, problems will ensue for the surface transportation bill when it comes to the floor as now there will be holds on the motor carrier section of the bill.

Of specific interest to NSTA are the following provisions in the CMV bill:

9-15 Passenger Van Driver Provision

The bill contains a provision asking the Secretary to report to Congress on whether drivers of 9-15 passenger vans should have a CDL passenger carrying endorsement and undergo drug and alcohol testing, and to look at the safety benefits, scope of population, cost to federal and state governments and impact of limiting application of the any requirement to drivers who are compensated for driving.

EOBR's

The bill contains a provision to require the Secretary to issue regulations requiring EOBR's, including performance standards and certification for such devices, effective 2 years after the rule is final.

MCSAC

The bill contains a provision mandating that labor representatives of commercial motor vehicle drivers be permanent members of the Motor Carrier Safety Advisory Committee.

Of specific interest to NSTA is the following provision in the NHTSA bill:

Graduated Driver Licensing

On December 14, 2011 the Senate Commerce Committee marked up their reauthorization of the National Highway Traffic Safety Administration which includes an authorization of funding for incentive grants to pass GDL laws, which must include a requirement that in the first year a driver holds a license, the driver is limited to one non-familial passenger.

Preserving Federal Fuel Tax Exemption for School Buses

School buses (both public and private) are fully exempted from the federal fuel tax. The exemption is worth at least \$146 million per year. Trucking groups and reauthorization commissions have suggested that the exemption be reconsidered. In 2010, Congress passed legislation requiring the exemption to be borne by the General Treasury rather than the Highway Trust Fund. NSTA continues to advocate for continuation of the federal fuel tax exemption. This issue will be considered during reauthorization of SAFETEA-LU when fuel taxes will be extended or possibly increased. In December, seven Senate Republican Senators on the Finance Committee sent a letter to Finance Chairman Max Baucus (D-MT) that listed their suggestions for finding the \$12 billion necessary to fund reauthorization of the surface transportation bill. The letter states twice their opposition to raising fuel or other taxes. NSTA has weighed in with both House and Senate tax Committees in December to ensure a potential diesel only tax increase apparently supported by ATA would not impact the fuel tax exemption.

Preserving Charter Service Protections

For over 35 years, Federal transit law has prohibited federally funded public transit systems from providing charter service work in competition with private operators, including private school bus operators. School bus operators provide school activity trips and charter service. Federal regulations on charter prohibitions were significantly revised in 2008 pursuant to a Congressional directive for a comprehensive negotiated rulemaking proceeding. NSTA served on the advisory committee to develop the rules. The rules provide needed clarity, accountability and transparency to the process.

Senator Patty Murray (D-WA) included the provision exempting Seattle from enforcement of the FTA Charter Service Rule in its FY 2012 DOT Appropriations bill. The provision was held unconstitutional by a Federal District Court in June of 2010, but the decision was reversed by the Appellate Court for the DC Circuit in June of this year, removing any purely legal impediments to its continuation. Subcommittee Chairman Latham and full Committee Chairman Rogers, as well as House Republican Leadership were opposed to the provision, but despite efforts by UMA, NSTA and ABA to influence the conference negotiations and remove the provision from the bill, it was ultimately included. The bill was signed by the President on November 18th. Senate Banking Committee plans to markup the transit title of the reauthorization bill in late January or early February. NSTA is reminding Committee members of the importance of preserving the charter bus protections in this legislation.

Preserving School Bus Transportation Protections

For over 35 years, Federal transit law has prohibited federally funded public transit systems from providing transportation that exclusively transports students and school personnel in competition with a private school bus operator. Tripper service, defined as regularly scheduled mass transportation service, which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems, is an exemption to this prohibition.

In 2008, the FTA sued the Rochester Transit Authority over what it believed to be school bus service in violation of the law and regulations. The District Court issued a decision in the case in favor of the transit agency and allowing for a very permissive definition of tripper service. While the FTA decided not to appeal the decision, they issued a Policy Statement on School Bus Operations which provided for a strict interpretation of tripper service and confines the Rochester court's interpretation to the Western District of New York only. The Policy Statement is very

important and without it, school bus protections would be at risk. NSTA has advocated with the Obama administration for the Policy Statement to stay in force and thus far, it has.

Continuation or revision of the school bus transportation prohibition is likely to be considered as part of SAFETEA-LU reauthorization. Some public transit agencies are advocating for the school bus prohibitions to be removed or revised in order for transit to provide transportation for students without restriction. NSTA supports continuation of the prohibition and Policy Statement. NSTA believes the statute and regulations are in need of clarification, but NSTA is not proposing any revisions to the current Congress to avoid the risk of losing existing protections. Senate Banking Committee plans to mark up the transit title of the reauthorization bill in late January or early February. NSTA is reminding Committee members of the importance of preserving the school bus protections in this legislation.

Tax Credits for Commercial Motor Vehicle Safety Technologies

In an effort to reduce commercial motor vehicle crashes, a coalition of industry groups has come together to support tax credits for certain crash avoidance technologies as an incentive method rather than a mandate. Bills in House and Senate were introduced in the last Congress that would provide tax credits of up to \$1,500 for each qualified commercial vehicle advanced safety system, including: brake stroke monitoring systems, lane departure warning systems, collision warning systems or vehicle stability systems. Private school bus operators would be eligible for the credit. NSTA is part of a coalition with UMA, ABA, ATA, CVSA and technology manufacturers supporting the effort.

On May 4, Congressman Mike Thompson (D-CA) and Congressman Geoff Davis (R-KY) introduced H.R. 1706, the Commercial Motor Vehicle Advanced Safety Technology Tax Act of 2011, a virtually identical bill to the one introduced in the last two Congresses. The bill currently has 12 cosponsors including Congressman Peter DeFazio (D-OR), Congressman David Dreier (R-CA), Congressman Brett Guthrie (R-KY), Congressman Michael Michaud (D-ME), Congresswoman Sue Myrick (R-NC), Congressman Gary Peters (D-MI), Congressman Heath Shuler (D-NC), Congressman Melvin watt (D-NC), Congressman mike Thompson (D-CA), and Congresswoman Betty Sutton (D-OH). School buses and motorcoaches would be eligible for the tax credit.

DERA

The EPA's Diesel Emission Reduction Act (DERA), and its predecessor program, the Clean School Bus program that it replaced, has provided over \$580 million over ten years for diesel emission retrofits and bus replacements for diesel vehicles, including school buses, through competitive grants administered by EPA and state diesel emission reduction programs partially funded using DERA money. Until now, only governmental organizations and certain nonprofit agencies were eligible to apply for grant funds and NSTA has won over \$3 million in grants for member companies. NSTA strongly supports this program and has been able to generate new members on the strength of its eligibility and success in obtaining grant funds. We are also aware that other school bus contractors have received funding by partnering with their local school districts, state agencies and other eligible entities.

The program is funded annually and was up for reauthorization at the end of the current fiscal year which ends on September 30, 2011. Funding had been increasing in the recent past thanks in large part to an infusion of \$300 million in stimulus funding in FY09 and a continuing interest in the following three years in funding the program at a \$50 - 60 million per year level. The Washington, D.C. DERA Coalition, consisting of diesel engine and after treatment manufacturers, public health and environmental advocates, state and local agencies and end users (like

NSTA) of diesel vehicles and equipment, works each year to ensure the highest possible level of funding and has also been working on the reauthorization bill. The Coalition's recommendations to Congress on changes to the underlying authorizing legislation include those championed by NSTA. NSTA's top priorities include requiring EPA to streamline the application process including the use of rebates to replace formal grants and loans, providing a priority for grant applications affecting schools, and allowing private companies that are under contract to Federal, state or local governmental agencies to apply directly to EPA, rather than to have to go through governmental or nonprofit entity.

The House and Senate overwhelmingly approved DERA reauthorization late last year and, on January 4th, the President signed the DERA Reauthorization bill into law. The bill reauthorizes the program for an additional 5 years. However, when the Environmental Protection Agency released their budget, it did not include funds for DERA.

Funding for DERA during the current fiscal year (FY12) was included in the final Consolidated Appropriations bill approved by Congress two days before Christmas. Funding was set at 30 million, which would be a \$20 million reduction over last year's level but is a huge success given that the Administration zeroed out the program and sent up a termination report that essentially said it was not longer needed. We are also pushing both EPA and the White House to fund the program in the President's FY13 budget that is currently in development. We have heard that, unlike in 2010, they are likely to request funding but at levels that may be below the \$30 million we have been able to restore in 2012 funding levels. Prime helped to set up a meeting for December 16th with OMB officials in the White House to make one more push for a better outcome. We are also working with EPA and OMB to push for using at least some of whatever amounts are requested for FY13 to go towards a new rebate program that would be aimed at school buses using a more streamlined program modeled on the "Cash for Clunkers" program that helped stimulate passenger car sales a few years ago.

Distracted Driving

Secretary Ray LaHood has made the campaign against distracted driving a high priority during his tenure. DOT has taken many actions to address it including an initial Summit last fall, creation of Focus Driven, the first national non-profit victim's advocacy organization, bans on commercial truck and bus operators from texting and proposed regulations restricting the use of electronic devices by rail operators and revocation of commercial licenses for school bus drivers convicted of texting while driving. DOT is also working to promote state distraction laws. A second summit was held last fall in Washington, D.C. NSTA participated in both distracted driving summits and has a policy in place since 2007 opposing use of cell phones and portable electronic devices by school bus drivers while transporting students, except in an emergency. At the summit, Secretary LaHood announced that the FMCSA texting rule pertaining to commercial motor vehicles was made final. In December, the NTSB made a recommendation that there be a nationwide ban on use of cell phones while driving, its most sweeping recommendation yet. There were several bills introduced in the last Congress to address distracted driving at the federal level, through federal regulatory mechanisms and carrot and stick approaches to encourage enactment of state laws. The Senate commercial motor vehicle safety bill has a provision requiring issuance of regulations prohibiting use of electronic or wireless devices, including cell phones and other distracting devices by people employed as the operator of a motorcoach when it is determined their use interferes with safe operation of a motorcoach, except for safety of the driver or in a public emergency.

Federal Fuel Tax Exemption for Small School Buses

NSTA became aware in the spring of 2010 that some IRS offices were challenging some school bus operator's claim of fuel tax exemptions for smaller school buses. NSTA believes the school bus fuel tax exemption language is written to apply to all school buses regardless of size. NSTA brought the issue to the attention of several Members of Congress and the House Ways and Means Committee, resulting in five Members of Congress writing a joint letter to Treasury Secretary Timothy Geithner in June. In July, Secretary Geithner responded and stated that the school bus fuel tax exemption applies regardless of size of the school bus and promised to address the concern with IRS Commissioner, Douglas Shulman. Subsequently, all pending IRS cases with school bus operators on this issue that we are aware of have been dismissed. NSTA will continue to monitor this issue to ensure the interpretation remains enforced.

Ambush Elections

On November 30, the House voted 235 to 188 in favor of H.R. 3094, the Workforce Democracy and Fairness Act. The Coalition for a Democratic Workplace (CDW), of which NSTA is a part, sent a letter with the support of 243 organizations. The final letter is available [here](#). The Coalition is working hard to ensure the bill receives some attention in the Senate.

In addition, the NLRB held a hearing on November 30, where they voted 2 to 1 in favor of a resolution offered by Chairman Mark Pearce to streamline the ambush election proposed rule. Member Craig Becker and Chairman Pearce voted in favor of the proposal, while Member Brian Hayes dissented, criticizing the substance of the proposal as well as the Board's failure to follow procedural rules. The Board issued a final rule on December 21. CDW and US Chamber have sued for injunctive relief of enforcement of the final rule.

NLRB Appointments

On January 4, President Obama went around the Senate advise-and-consent process and appointed three individuals, Terence Flynn, Sharon Block and Richard Griffin, to the National Labor Relations Board. The three NLRB appointees will allow the board to continue on with a quorum making broad sweeping regulatory rulings that could threaten to transform employment law. The illegitimacy of the NLRB quorum makes it likely that every decision they make will end up in federal court on appeal. The Coalition for a Democratic Workplace, of which NSTA is a part, criticized the recess appointments in a press release saying, "the President violated the intent of the Constitutional separation of powers to avoid working with the Senate to clean up the destruction wrought by his previous recess appointee, Craig Becker."

PAC Report

- The current balance of the NSTA PAC as of January 6, 2012 is \$10,314.20. No contributions were made in December.

