

February 26, 2015



A bold voice for transportation workers

Mr. Sean P. Gallagher
Office of Policy
Federal Motor Carrier Safety Administration
Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

**RE: Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers
Advanced Notice of Proposed Rulemaking
Docket No. FMCSA-2014-0211
RIN 2126-AB74
Federal Motor Carrier Safety Administration**

Dear Mr. Gallagher:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to comment on the Federal Motor Carrier Safety Administration's (FMCSA) Advanced Notice of Proposed Rulemaking (ANPRM) on Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers. By way of background, TTD consists of 32 affiliate unions that represent workers in all modes of transportation, including those who operate commercial motor vehicles (CMVs) for passenger motor carriers. We therefore have a vested interest in this rulemaking.¹

At the outset, we express support for FMCSA's consideration of updating its existing standard that requires motor carriers to maintain a specified minimum level of financial responsibility to provide coverage for public liability and property damage resulting from a commercial bus accident. TTD and our affiliates have a long history of advocating for strengthening market entry standards to help ensure only upstanding motor carriers are granted operating authority. Just last week, TTD's Executive Committee renewed the call for improving these standards, urging FMCSA to increase the current minimum level of financial responsibility.² We echo that statement in our comments that follow.

The deregulation of the 1980s deteriorated motorcoach entry standards, making it difficult to bar unsafe carriers from entering the market. In recent years, FMCSA has undertaken successful enforcement efforts to identify and remove unsafe carriers from the roadways. And while we believe those efforts are important to safety, more must be done to prevent bad actors from gaining market access in the first place.

¹ Attached is a complete list of TTD's 32 affiliated unions.

² TTD's Executive Committee adopted the policy statement entitled, "Time to Raise the Bar on Market Entry in Motorcoach Industry" on February 22, 2015. The policy statement is attached.

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



When Congress imposed the financial liability requirement in 1982, it believed the standard would improve safety by encouraging motor carriers to implement strong safety programs to keep their premiums at low rates. But the current standard (49 CFR Part 387) remains unchanged from the level that FMCSA set in 1985, failing to account for inflated medical costs and other crash-related expenses. According to FMCSA's report to Congress, adjusting the current minimum level for decades of inflation would increase the current minimum from \$5 million to over \$21 million for a large passenger carrier.³ Instead, the minimum has remained flat and the ability of insurance to cover the costliest of crashes has decreased, leaving the public exposed to unnecessary risks when serious bus accidents occur.

Congress likely established the financial requirement with the expectation that the minimum would provide coverage up to a certain level, and that beyond that limit would extend only the most expensive and rarest accidents. However, decades of inflation and decreased real value of carrier insurance not only means that crashes are more expensive today than in the 1980s, but that a growing number of crashes exceed the limit for which insurance can provide coverage. As a result, passengers involved in a greater number of dangerous crashes many not receive the compensation they deserve.

We are encouraged by FMCSA's ANPRM, and we urge the agency to issue a rulemaking that improves motorcoach safety by increasing the insurance requirement to a level capable of providing adequate coverage. Restoring the deterrent effect of the minimum by increasing it to modern levels will encourage insurance companies to diligently investigate prospective motor carriers to ensure they are safe operations. Likewise, carriers will once again be incentivized to maintain safe operations to keep their premiums low and reduce the chances of being dropped by their provider for poor safety performance. Additionally, low-cost, risky carriers that notoriously pay their workers absurdly low wages and evade safety standards could be eliminated when insurers discover their atrocious safety records and egregious business practices.

We appreciate the opportunity to comment on this important ANPRM, and we hope they will be taken into consideration.

Sincerely,



Edward Wytkind
President

³ Federal Motor Carrier Safety Administration's report: "Examining the Appropriateness of the Current Financial Responsibility and Security Requirements for Motor Carriers, Brokers, and Freight Forwarders – Report to Congress. A Report Pursuant to Section 32104 of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141)." April 2014, page 11.



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TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD



Attachment 2**TIME TO RAISE THE BAR ON MARKET ENTRY IN MOTORCOACH INDUSTRY**

Intercity bus transportation has grown rapidly in the last several years, offering Americans additional travel options as routes expand across the country. But this growth must not come at the expense of passenger and public safety, a fear that has become magnified by an influx of poorly regulated new entrants that have flooded the intercity bus sector.

Transportation labor has a long history of promoting federal regulations that ensure the diverse motorcoach industry is held to the highest safety standards. Previously TTD's Executive Committee called for action to eliminate the bus carve-out in the Fair Labor Standards Act (FLSA) that denies overtime protections for drivers and in turn makes the bus industry more dangerous. We renew our call for action to close this loophole.

Since sweeping deregulation policies were enacted almost 40 years ago, there has been a steady deterioration of "entry standards" that are imposed on those seeking to do business as interstate bus carriers. The lowering of these standards has severely limited the ability to ensure that only well-capitalized companies willing and able to uphold federal safety requirements are granted operating authority. Fortunately, the Federal Motor Carrier Safety Administration (FMCSA) has recognized this problem and undertaken an aggressive enforcement effort to remove unsafe bus carriers from our highways. While we support FMCSA's efforts, we believe it is just as important to prevent bad actors from gaining operating authority in the first place by establishing a new floor for market entry standards. As part of this effort, FMCSA must raise the minimum level of financial responsibility required to be maintained by a passenger motor carrier to satisfy liability claims and property damages resulting from a commercial bus accident.

We were therefore pleased when Congress included section 32104 of MAP-21, which required FMCSA to report on the appropriateness of the current liability minimums. Last year, FMCSA sent that report to Congress, and we are encouraged that the study's findings offer preliminary support for increasing the minimums. We also are encouraged by the agency's consideration of a rulemaking to increase the financial requirements, and we strongly urge the agency to pursue such a rulemaking as a necessary next step in making bus transportation safer.

When Congress imposed minimum liability requirements in the 1982 Bus Act, it intended for this new requirement to enhance safety, believing that "motor carriers would have greater incentives to create and maintain more effective safety programs to help keep their premiums lower." The DOT fulfilled the congressional mandate, and the minimum financial responsibility requirements became effective in 1985. But to the detriment of safety, those minimum requirements have remained unchanged from the original levels established 30 years ago. It is indefensible that the minimum liability insurance requirements in a safety-sensitive industry such as intercity bus transportation have been frozen since the 1980s.

Over the past three decades, medical costs and other expenses related to bus crashes have vastly increased due to inflation. According to a recent FMCSA report, adjusting the 1985 financial liability requirement for inflation would increase the current minimum level from \$5 million to over \$21 million for a large passenger carrier. But the minimums have languished, decreasing in real terms and thus eroding the ability of a carrier maintaining the current standard to adequately cover the growing costs of fatal or catastrophic injury crashes. Further, as the minimums have eroded, the deterrent effect of requiring adequate insurance coverage has eroded as well.

The original minimum levels were likely put in place with the expectation that they would provide adequate coverage for most crashes and that beyond that limit of protection would extend only the most expensive and rarest accidents. However, due to inflation and the decreased real value of the insurance minimums, not only are serious crashes more expensive today than in 1985, but the cost of a growing number of crashes exceed that upper limit above which insurance cannot provide coverage. As a result, passengers involved in a greater number of crashes may not receive the compensation they deserve.

FMCSA should help restore passenger protection by increasing the current minimums to levels that will provide crash victims with the most comprehensive coverage. In doing so, FMCSA will also restore the incentives Congress intended for the limits to create. Increasing insurance companies' exposure will encourage them to diligently investigate prospective motor carriers to ensure they are safe operations and to monitor insured carriers' safety performance. Likewise, higher premiums will incentivize carriers to maintain strong safety programs in order to keep premiums low and to prevent being dropped by their insurer due to crashes or violations. Additionally, low-cost, risky carriers that notoriously pay their workers abysmal wages and violate safety regulations could be eliminated from the market when insurers unearth their atrocious safety records and egregious business practices.

Surely, advocates of deregulation cannot defend a federal regulatory regime that does not insist on the highest level of safety for bus travelers. It is time for our government to update bus market entry standards, not as a new policy direction, but as a recognition that current standards are out of date. Absent these actions, we will continue to see bad actors flood the bus marketplace, placing carriers that play by the rules at a competitive disadvantage and ultimately exposing bus passengers and employees to carriers that are unsafe and poorly insured.

Policy Statement No. W15-01
Adopted February 22, 2015