

RESPONSE TO THE NOVEMBER 2015 NHTSA STATEMENT ON SEAT BELTS ON LARGE SCHOOL BUSES



JANUARY 2016

At the National Association for Pupil Transportation (NAPT) Summit in Richmond, Va., the Administrator of the National Highway Traffic Safety Administration (NHTSA), the federal agency responsible for regulating motor vehicle safety (including school buses) and promoting highway safety programs, announced, “Every child on every school bus needs a three-point seat belt.”

Referring to seat belts as an “icon of safety,” Dr. Mark Rosekind said, “Let me be clear now, seat belts save lives.”

He began his remarks by emphasizing that his Agency views school buses as “by far” the safest way for children to get to and from school. He repeated this statement twice for emphasis. None the less, he also said “every child on every school bus should have a three-point seat belt.”¹

The debate about whether seat belts should be installed in large school buses dates back many, many years. It is therefore important to put Administrator Rosekind’s remarks in context since, as stated by Dr. Rosekind, this is a change in direction for NHTSA.

Beginning in 1980, we evolved from a nation where few motorists used seat belts in cars to one where seat belt use is required by law in all but one state and more people than ever before now buckle up. So, it’s no surprise that many ask, “If my car has seat belts, why aren’t they required in my child’s school bus?” This is particularly true whenever there is a serious school bus crash, and emotions understandably run high.

NHTSA’s answer to that question heretofore has been straightforward. NHTSA:

“...considered the question of whether seat belts should be required on large school buses from the inception of compartmentalization and the school bus safety standards and has reassessed its decisions repeatedly. Each time, after analyzing the implications of a seat belt requirement and all available information, we have concluded that a seat belt requirement for large school buses has not been shown to be warranted.”²

NHTSA also said:

“After considering all views [including a recommendation by the NTSB - H-99-46], we could not agree with those asking us to propose to require seat belts in large school buses. We assessed the safety need for seat belts. Since school buses are the safest mode of school transportation, a seat belt mandate would result in very few benefits.”³

These and other similar statements were made by NHTSA in a public rulemaking, including a Final Rule published as recently as 2011 in the Federal Register, the official government record. Those statements have not been retracted, amended or refuted with data or a new analysis, nor has there been any significant statistical change in the school bus occupant injuries and fatalities that have remained relatively constant over many decades. Simply put, according to NHTSA’s own statistics, school buses have the best safety record in the transporting of students back and forth to school.⁴

So, what has changed leading Dr. Rosekind to now state unequivocally that every child on every school bus needs a seat equipped with a lap/shoulder belt?

Safety belt use is central to NHTSA’s mission because the agency believes it is the single most effective way to reduce motor vehicle-related injuries and deaths. For the past 35 years NHTSA has made increasing seat belt use a priority both through public awareness and convincing states to pass and enforce seat belt laws (all but New Hampshire have such a law). Accordingly, public opinion about belts is very favorable and most motorists now buckle up routinely.

Dr. Rosekind previously served as a member of the National Transportation Safety Board (NTSB), where he voted for NTSB recommendations that encouraged seat belt use and education. But since NTSB has no regulatory authority, it also has limited recourse. As NHTSA Administrator, Dr. Rosekind is now in a significantly different position to make recommendations he would like to see carried forward.

¹ <http://www.nhtsa.gov/About+NHTSA/Speeches,+Press+Events+&+Testimonies/mr-napt-11082015>

² <https://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21596.htm>

³ Id.

⁴ http://www.trafficsafetymarketing.gov/staticfiles/tsm/PDF/schoolbus_safety2.pdf

In the time since Dr. Rosekind's remarks on November 8, 2015, NAPT and the National School Transportation Association (NSTA) have received numerous inquiries and questions seeking guidance. We have compiled them and present them here as Frequently Asked Questions and Answers.

1. So, do I have to add seat belts to all of my buses?

No. At this time it's a recommendation, not a Federal requirement. But stay tuned. Administrator Rosekind said NHTSA would be conducting additional research; reaching out to the governors of the six States that currently have belt requirements for school buses to get their feedback on experiences with belts; engaging safety interest groups; and trying to identify potential funding sources to help localities that want to put belts on their school buses. He also suggested the possibility of another rulemaking eventually.

We expect these and other ideas will be discussed in more detail at a January 27 "by invitation only" meeting NHTSA is holding in Washington, DC. Representatives of governors in the six states with school bus belt requirements are invited, but not representatives of the other 44 states. NSTA and NAPT have requested that we be included at the meeting to represent the full spectrum of school bus industry views.

2. Hasn't NHTSA previously said that the decision to install and use seat belts on large school buses is a matter for local decision-makers?

Yes. Here is NHTSA's last published position on this matter (which does not appear to have been refuted or changed):

"We believe that it is most appropriate if the decision to order seat belts on large school buses were left to the States and local jurisdictions rather than to NHTSA. States and local school districts are better able to recognize and analyze school transportation risks particular to their areas and identify approaches to best manage and reduce those safety risks. Local officials are in the best position to decide whether to purchase seat belts, since the officials must weigh a multitude of unique considerations bearing on purchasing decisions, especially when faced with budgetary restraints."⁵

Nevertheless, NHTSA has a long and successful history of engaging locally with public information and education campaigns – think seat belts in passenger cars and anti-impaired driving – and has many allied safety interest groups that work to influence behavior and public opinion. NHTSA cannot lobby States but its allied safety groups can and do. You should expect both media and legislative interest in your state/community because of this effort, and be prepared to respond to it.

3. Now that this announcement is out there, are parents going to think their child's existing school bus is unsafe and demand that they be replaced with "safer" buses?

This has been one of our industry's concerns, and now we view it as a "time will tell" situation. While Administrator Rosekind began his announcement by underscoring the safety of school buses, he then said they would be even safer with lap/shoulder safety belts, though he offered no new evidence to quantify the safety improvement. We remained concerned about this and look to you to inform us about local public reaction so we can craft information to help you address questions.

Administrator Rosekind also said there is a "gaping obvious hole in our safety measures." Frankly, we find this an unfortunate choice of words as we believe it sends an alarming signal to parents and others trying to understand the announcement and its ramifications for existing school buses, particularly since NHTSA's safety data, publications and official statements tell a very different story.

⁵ <https://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21596.htm>

While we support NHTSA's broad new interest in school bus safety, and intend to work with the agency cooperatively, we are not aware from NHTSA's own data of any "gaping holes in our safety measures."⁶

NHTSA has said in its most recent public rulemaking:

"School buses are designed to be safer than [other] passenger vehicles in avoiding crashes and preventing injury" and are "The safest mode of transportation for getting children back and forth to school."⁷

By NHTSA's own estimate, "School buses are approximately seventy times safer than passenger cars.⁸ The school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is considerably lower than the fatality rates for passenger cars or light trucks (1.44 per 100 million VMT)."⁹ The biggest risk involving school transportation is not school buses but the hundreds of lives lost every year during school transportation hours on regular school days when students get to/from school by some other means—walking, bicycling, driven by parents, or teens riding with other teens.¹⁰

Parents should have strong confidence in the safety of their child's existing school bus, as Dr. Rosekind stated in his remarks. We will ask NHTSA to continue reinforcing this message in its communications. Again, we have requested participation in the agency's January 27 meeting expressly for this purpose—to represent your interests and get more clarity for you to use locally in your communications.

4. Does adding belts to buses make them safer?

According to Dr. Rosekind, the answer is "yes." In fact, NHTSA previously estimated that adding belts to all seating positions on all buses might prevent up to two school bus passenger fatalities each year.¹¹ This estimate was premised on both 100 percent use and no misuse of those belts. NHTSA's analysis did not, however, offer an estimate on the number of fatalities that might be prevented if those two conditions are not met.

5. So adding belts to buses will reduce student fatalities, right?

In his remarks in Richmond, Administrator Rosekind did not address the question of whether adding seat belts to large buses at all seating positions and requiring children to wear them would result in an **OVERALL** reduction in the number of injuries and fatalities among students going to and from school. This is disappointing because NHTSA has always been cautious of the unintended consequences of reducing school bus ridership and has previously said requiring seat belts on large school buses is likely to have the effect of increasing fatalities related to school transportation. In fact, NHTSA said as recently as 2011 that "...a National lap/shoulder belt requirement for large school buses could result in an increase of 10 to 19 student fatalities annually in the U.S."¹²

As stated previously, we are not aware that NHTSA retracted, amended or otherwise formally revised either of these statements or the analysis that led NHTSA to make them in the first place. Hopefully, they will do that soon if they no longer believe them to be accurate, and document any new data or testing that leads to such a conclusion.

We offer these NHTSA statements, and our concern about them, not to be argumentative or negative, but to point out a clear, unresolved conflict that faces State and community decision-makers who will be trying to make not just informed decisions about seat belts in school buses, but the best possible decisions about the safety of the children they transport.

⁶ <http://www.nhtsa.gov/About+NHTSA/Speeches,+Press+Events+&+Testimonies/mr-napt-11082015>

⁷ <https://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21596.htm>

⁸ Seat Belts on School Buses Public Meeting July 23, 2015 presentation Shashi Kuppa, Special Vehicle and Systems Division, NHTSA, Slide 10

⁹ <http://www.nhtsa.gov/Vehicle+Safety/Seat+Belts/Seat+Belts+on+School+Buses+---+May+2006>

¹⁰ <http://onlinepubs.trb.org/onlinepubs/sr/sr269.pdf>

¹¹ <https://www.gpo.gov/fdsys/pkg/FR-2011-08-25/html/2011-21596.htm>

¹² Id.

6. How should we explain to policy-makers, parents and the news media the things Dr. Rosekind DIDN'T say and the challenges that has created?

NHTSA's prediction that student fatalities will increase in the aftermath of a belt mandate is premised on the theory of "unintended consequences," meaning that a belt requirement would probably result in a reduction in the number of buses on the road each day.

As a real world analogy, consider the issue of child restraints on aircraft. According to Jim Simons, Retired NHTSA Office Director and Economist from the Office of Regulatory Analysis and Evaluation at the National Center for Statistics and Analysis, about a decade ago, NTSB recommended that NHTSA, the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (US DOT) require children two and under, who were to that point allowed to be held in their parents lap during commercial flights, to wear a seat belt. Two children were killed in airplane crashes over a 20-year period that could have been saved by using child restraints.

"NHTSA, and later the Secretary's office in DOT, examined this solution and both determined that forcing parents to purchase an airline seat for infants would result in some families driving rather than flying to their destination. Driving was much more dangerous than flying on a per mile basis and the unintended results were that more infants and more vehicle occupants would die as a result of people being diverted to driving rather than flying than could ever possibly be saved by requiring child restraints in air craft. The implicit decision by NHTSA's Administrator [Jeffrey] Runge, his FAA counterpart and DOT was that the government should not require society to spend money in one area to save lives if that requirement resulted in unintended consequences that caused more lives to be lost than could be saved. Today, parents are allowed to spend money for an airline seat for their infant if they want to, but the government does not require all children age 2 and under to be in a child restraint."¹³

We have the same type of situation here. In fact, this happens in school transportation all the time. Many local boards of education debate each year whether or not to change the distance children have to walk to school each day, commonly called the "walk radius." For example, if a local board of education decides to increase the walk radius from 3/4 mile to 1 mile from school, more children will be at greater risk, because the big yellow school bus is much safer statistically speaking than any other method of going to school. There are far more school transportation-related fatalities (nearly 800 annually) involving children walking, bicycling or riding to school with parents (or teens riding with teens) than there are of children aboard a school bus (an average of 5 each year among the 25 million children that ride a school bus to and home from school each school day). It only takes one car crash involving two students to offset a whole year of every student using lap/shoulder belts on school buses nationwide. Thus, on a national basis, it is likely there will be more students killed using alternative methods to school than could be saved on the school bus by lap/shoulder belts.

Community leaders need to factor this into their decision-making, and also when debating involvement in national and state campaigns encouraging "walking school buses," walking and bicycling to school days, and similar awareness events that involve other public policy agendas.

After giving your local policy-makers this information, you should pose the following question: "How can we put seat belts on school buses without reducing the number of children that ride in school buses or by reducing safety in some other way (for example by reducing school bus maintenance)?"

¹³ <http://www.regulations.gov/#!documentDetail;D=NHTSA-2015-0069-0013>

7. Is emergency evacuation a concern on school buses with seat belts?

We have strongly encouraged NHTSA to carefully consider and study whether or not seat belts would impede passenger evacuation in the event of a thermal or immersion emergency, or in the case of a rollover situation with an incapacitated driver. We are most concerned with the youngest passengers and those with special needs, but the safety of all passengers is critical in an emergency when every second counts. A young or disabled child who may need assistance buckling/unbuckling a belt when no danger is present would almost certainly have difficulty unbuckling a belt in the aftermath of a crash with fire, smoke or water filling the bus.

8. Has NHTSA talked about requiring retrofitted seat belts on current buses?

Administrator Rosekind did not discuss retrofits during his recent remarks. Historically, NHTSA has not required retrofits, but that has not yet been determined on this issue.

9. Why is NHTSA focusing on seat belts when loading zone accidents and illegal passing of stopped school buses cause more fatalities and injuries? Shouldn't this problem be the first priority to address?

On average there are indeed twice as many school transportation-related fatalities outside the bus than there are inside.¹⁴ Moreover, there are effective mitigations—such as stepped up police enforcement against drivers who pass stopped school buses with lights flashing—and NHTSA help in fostering this with police would be tremendously helpful. For several decades NHTSA has made police enforcement of belt/child safety seat laws and anti-DUI its top priority and pupil transportation could similarly benefit from such a priority. Administrator Rosekind said in Richmond that seat belts are but one component of the Agency's interest in further improving the safety of school buses. We are pleased he made a clear commitment to also address loading zone safety, illegal passing of school buses, school zone speeding and general school bus safety messaging. We look forward to engaging with NHTSA on these and similar school bus safety issues.

10. What impact will the use of belts have on school transportation operations? In other words, how will belts affect routing, staffing, and driver and student training?

These are critical questions, but at this time we only have somewhat anecdotal answers. But there are States and school systems that have already or are in the process of evaluating these issues. Dr. Rosekind indicated he would be reaching out to Governors in States that already require seat belts to gauge and assess their experiences and issues. He also noted NHTSA would be doing more research and data collection. We look forward to having this information from NHTSA in the public discourse, and will continue to encourage the agency to include representation of all states in the discussion.

That being said, we do expect that the local cost of school transportation will increase with the addition of seat belts on school buses. NHTSA estimates that the “average incremental cost of equipping a large school bus with lap/shoulder belts without loss in capacity will be between \$7,346 and \$10,296” per bus.¹⁵ According to NHTSA, this “greater cost to buy and operate a school bus with seat belts may reduce the number of school buses available for pupil transportation.”¹⁶

In addition, NHTSA recommends “those States and local districts requiring seat belts on school buses also provide training to drivers and students on their proper use.”¹⁷ This begs the question “If students are required to use these seat belts, who will ensure they are being worn and will that same individual also be required to ensure the seat belts are being worn properly?” In any event, ensuring compliance will increase route time, potentially affect bell times, and could ultimately have a ripple effect system-wide.

¹⁴ <http://www-nrd.nhtsa.dot.gov/Pubs/811890.pdf>

¹⁵ Seat Belts on School Buses Public Meeting July 23, 2015 presentation Shashi Kuppa, Special Vehicle and Systems Division, NHTSA, Slide 7

¹⁶ Id.

¹⁷ Seat Belts on School Buses Public Meeting July 23, 2015 presentation Shashi Kuppa, Special Vehicle and Systems Division, NHTSA, Slide 4

Finally, we are acutely aware of education budget realities in almost every State. Many operate under “zero sum game” budgeting where any new expense approved forces the cancellation of another. And many states and communities are resorting to supplemental tax levies just to keep school operations functioning. We will continue to articulate this reality in our discussions with NHTSA.

11. Is there an increased concern with being able to eradicate germs on seat belt mechanisms?

The Centers for Disease Control and Prevention (CDC) provides the latest recommendations for ensuring a clean, healthy learning environment, including school buses. We encourage you to visit www.cdc.gov for the most up-to-date information on cleaning, disinfecting, and sanitizing. You may also wish to consult your local Department of Health office. NAPT and NSTA are committed to working with the CDC and NHTSA to provide you with the most current information and resources designed to keep students safe and healthy while riding the school bus.

12. Where is compartmentalization in all of this?

Most everyone will acknowledge that NHTSA’s 1977 creation of the compartmentalization standard is a phenomenal success, yielding the lowest fatality rate in the transportation industry.

According to NHTSA, “Seat belts further enhance protection already provided by compartmentalization.” And, “Federal standards ensure no degradation of compartmentalization when seat belts are installed.”¹⁸

Might it be possible, however, to upgrade compartmentalization - a form of “automatic” crash protection, similar in concept to things like air bags and Electronic Stability Control - to passively advance the safety of school buses even more than the current standard? We have asked NHTSA both in a petition for rulemaking and several times subsequently to consider researching this matter. To date, we have received no response.¹⁹

From our perspective, it would be extremely disappointing if the Agency that conceived, created and codified compartmentalization simply defaulted to lap/shoulder belts as the best way to improve school bus passenger crash protection because it had no other ideas.

13. What about liability? Are we looking at increased exposure if we have only lap belts on buses, or no belts?

The responsibility for ensuring installed seat belts are used properly (even if the use of installed belts is not required by law) involves important liability considerations that currently remain unaddressed.

Any State or local decision to install seat belts should also address liability potential.

That being said, neither NAPT nor NSTA dispenses legal advice and we strongly recommend you consult with and seek guidance from your attorney(s). We will consult with legal experts familiar with our industry and share their counsel with you in future communications.

¹⁸ Id.

¹⁹ <http://napt.org/files/PublicPolicy/LetterFMVSS222revised2-16-07.pdf>

14. Bottom line, what do we need to do immediately?

For now, we encourage you to discuss NHTSA's new recommendation with your local school boards, school superintendents and other educational administrators so they are aware of Dr. Rosekind's opinions and can discuss their implications with State and local political leaders who ultimately decide educational resource allocations. Again, we encourage you to have legal counsel included in your discussions.

We all know that any school bus crash, however minor, often results in media coverage. From now on, however, every crash story is likely to have a "did the bus have belts?" and if not, "would the outcome be different with belts?" angle to it. Be prepared for these stories and ensure that you have a designated spokesperson skilled at answering the questions.

Finally, it's our recommendation that you read Administrator Rosekind's remarks²⁰ yourself, stay abreast of the situation unfolding and prepare for what is likely to be a robust debate driven by the media and safety advocacy groups in your community.

Ultimately, you should continue to consider all available safety improvements that could make a difference in pupil transportation, including lap/shoulder belts.

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²⁰ <http://www.nhtsa.gov/About+NHTSA/Speeches,+Press+Events+&+Testimonies/mr-napt-11082015>