DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-187]

Organization and Delegation of Powers and Duties; Federal-Aid Highway Act of 1982 and Bus Regulatory Reform Act of 1982

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Highway Administrator and the Urban Mass Transportation Administrator functions vested in the Secretary by the Federal-Aid Highway Act of 1982, and to the Federal Highway Administrator functions vested in the Secretary by sections 18 and 25(c) of the Bus Regulatory Reform Act of 1982.

DATES: The effective date of this amendment is May 20, 1983 for 49 CFR 1.48(c)(18), and October 18, 1982 for 49 CFR 1.48(z).

FOR FURTHER INFORMATION CONTACT: Robert L Ross, Office of the General Counsel, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Federal-Aid Highway Act of 1982 (October 15, 1982; Pub. L. 97-327) vests certain authority in the Secretary of Transportation related to the construction and financing of highways. It also amends section 401(a) of the Surface Transportation Assistance Act of 1978 to extend the applicability of the "Buy America" provision of that statute.

To carry out her responsibilities under the Act, the Secretary is delegating to the Federal Highway Administrator all functions vested in the Secretary by the Act, except those which relate to the "Buy America" restriction imposed upon the programs of the Urban Mass Transportation Administration.

The Bus Regulatory Reform Act of 1982 (Pub. L. 97-261; September 20, 1982) vests in the Secretary of Transportation two responsibilities—under section 18 to develop minimum levels of financial responsibility for motor carriers of passengers and under section 25(c) to conduct a rulemaking to determine the propriety of the use of citizens band radio by motor common carriers of passengers regulated by the Interstate Commerce Commission. Both of these functions are being delegated to the Federal Highway Administration, which includes the Bureau of Motor Carrier Safety.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.46(c)(1), ", as amended," is inserted immediately after "Title IV".

2. In § 1.48, a new paragraph (18) is added at the end of paragraph (c), and a new paragraph (z) is added at the end of the section, to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(c) Administer the following laws relating generally to highways:

* * * * *

(18) The Federal-Aid Highway Act of 1982 (Pub. L. 97-327), except section 6 as it relates to matters within the primary responsibility of the Urban Mass Transportation Administrator.

* * * * *

(z) Carry out the functions vested in the Secretary by sections 18 and 25(c) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261; September 20, 1982).

§ 1.51 [Amended]

3. In § 1.51(l), ", as amended," is inserted immediately after "Title IV".

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on November 16, 1983.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 83-31368 Filed 11-18-83; 9:07 am]

BILLING CODE 4910-62-M

Federal Highway Administration

49 CFR Part 301

Delegation of Authority Relating to Motor Carrier Safety

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The authority to prescribe minimum levels of financial responsibility for motor carriers of passengers was vested in the Secretary of Transportation by the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261) effective September 20, 1982. Elsewhere in today's **Federal Register**, is a final rule published by the Office of the Secretary of Transportation delegating to the Federal Highway Administrator the authority to carry out the functions vested in the Secretary by Section 18 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261), relating to establishment of minimum levels of financial responsibility for motor carriers of passengers (49 CFR 1.48(z)). By this document, this authority is being further delegated from the Federal Highway Administrator to the Associate Administrator for Safety, Traffic Engineering, and Motor Carriers and then from the Associate Administrator to the Director of the Bureau of Motor Carrier Safety. The Bureau of Motor Carrier Safety is the entity within the Federal Highway Administration primarily responsible for all other programs dealing with motor carriers of passengers.

EFFECTIVE DATE: May 20, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practices, notice and public comment on it are not required and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation.

No new or additional economic impacts are expected from this rule. Accordingly the preparation of a regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

PART 301—[AMENDED]

In consideration of the foregoing, and under the authority of Section 18, Pub. L. 97-261, 94 Stat. 793, 49 U.S.C. 1655, and 49 CFR 1.48, 49 CFR 301.60 is amended by revising paragraphs (d)(1)(i) and (e)(1) to read as follows:

§ 301.60 Delegations of authority relating to motor carrier safety.

* * * * *

(d) * * *

(1) * * *

(i) Perform the functions, powers, and duties enumerated in § 1.48, paragraphs (a), (d), (e), (f), (g), (h), (k), (p), (u), (v), (w), and (z) in Part 1 of this title.

* * * * *

(e) * * *

(1) Perform the functions, powers, and duties enumerated in § 1.48, paragraphs (a), (d), (e), (f), (g), (h), (k), (p), (u), (v), (w), and (z) in Part 1 of this title except the powers to call a matter for a hearing, appoint a hearing officer, and issue a final decision under Part 386 of this chapter.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Part 301

Authority delegations (government agencies), Organization and functions (government agencies).

Issued on: November 17, 1983.

R. A. Barnhart,

Administrator, FHWA.

[FR Doc. 83-31367 Filed 11-18-83; 9:07 am]

BILLING CODE 4910-22-M

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49 CFR Part 387

[BMCS Docket No. MC-107; Amdt. No. 81-13]

Minimum Levels of Financial Responsibility for Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends 49 CFR Part 387 by adding a new Subpart B to establish minimum levels of financial responsibility for for-hire motor carriers of passengers involved in interstate or foreign transportation. This document further provides for the implementation and enforcement of the regulations. This action is in accord with the provisions of Section 18 of the Bus Regulatory Reform Act of 1982.

EFFECTIVE DATE: November 19, 1983 except that the endorsement requirement of § 387.39 will not be enforced until 90 days after publication or approval by the Office of Management and Budget, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It has further been determined that it contains a significant regulation under the regulatory policies of the Department of Transportation.

A regulatory evaluation and a regulatory flexibility analysis is available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading "**FOR FURTHER INFORMATION CONTACT.**"

The statute requires the new minimum levels of financial responsibility to take effect on November 19, 1983. This document establishes the required limits of liability which will satisfy the statutory requirements and provides for the implementation and enforcement of the requirements. The highest levels provided for in the Bus Regulatory Reform Act will take effect on November 19, if publication of this document should be delayed beyond that date. Such delay would be likely to cause substantial disruption for both the insurance and motor carrier industries.

In light of the statutory deadlines, the FHWA finds good cause to publish this document without a 30-day delay in effective date.

Background

On September 20, 1982, the President signed the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (the Act). Section 18 of the Act establishes minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers by for-hire motor vehicles in interstate or foreign commerce.

The Act establishes minimum levels of financial responsibility that must be met by affected persons as of November 19, 1983 unless the Secretary of Transportation issues regulations that require higher or lower levels. The Secretary may promulgate those regulations to require higher levels and the Secretary's authority to reduce these levels is limited. The statute precludes the Secretary from reducing the minimum levels below specified levels and provides that the authority to impose reduced levels applies only to a period of up to 2 years beginning either on: (1) The effective date of the rule provided that the rule is made effective by November 19, 1983, or (2) the 366th day after the effective date of Section 18 of the Act provided a rule is made effective 1 year after enactment or later.

The purpose of the financial responsibility provision of the Bus Regulatory Reform Act of 1982 is to create additional incentives to motor carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility sufficient to satisfy claims covering public liability and property damage. The legislative history of Section 18 indicates a congressional belief that the establishment of minimum levels of financial responsibility to enhance safety will also ensure that adequate sources of compensation are available to compensate those who may be injured while traveling by bus. It is also believed, given the interstate nature of many motor carrier operations, a single Federal standard for financial responsibility coverage will be more efficient for carriers and more equitable and certain for consumers.

The FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on Tuesday, May 31, 1983 (48 FR 24147), concerning the minimum levels of financial responsibility for motor carriers of passengers. The NPRM requested comments and information concerning what limits would best meet the requirements of the Act.

A total of 10 comments were received in response to the NPRM from bus and insurance companies and one State as shown below.

1. American Insurance Association,
2. Professional Insurance Agents,
3. American Bus Association,
4. Greyhound Lines, Inc.,
5. United Bus Owners of America,
6. R. W. Harmon & Sons, Inc.,
7. New Ulm Bus Lines,
8. Bill Rohrbaugh's Charter Service Inc.,
9. Charter Bus Unlimited, and
10. State of Michigan's Department of Transportation. The following is a discussion of the final rule.

Purpose, Scope and Applicability (§§ 387.25 and 387.27—Subpart B)

The minimum levels of financial responsibility requirements, covering public liability and property damage, apply to for-hire motor carriers of passengers involved in interstate or foreign commerce.

Section 18(f) of the Act specifically exempts the following:

1. A motor vehicle transporting only school children and teachers to or from school;

2. A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated

on a regular route or between specified points; and

3. A motor vehicle carrying less than 16 individuals in a single, daily round trip to commute to and from work.

It should be noted that the language of the Act clearly indicates that motor vehicles for-hire, carrying 16 or more individuals, even in a single, daily round trip to commute to and from work, are subject to these rules.

The legislative history of Section 18 indicates that the purpose of requiring increased levels of financial responsibility is to enhance safety. The NPRM quoted the congressional belief that "the public will be better served by the proposed limits, especially considering that motor carriers would have greater incentives to create and maintain more effective safety programs to help keep their premiums lower." (48 FR 24147).

In its comments, the American Insurance Association (AIA) discounts the belief that increased insurance will enhance safety. It states "The principal function of insurance is not safety. No amount of insurance will curtail driver error which is the dominant factor in a vast majority of motor vehicle accidents." Further it states that the residual market mechanism is available to provide insurance to any motor carrier, regardless of its accident experience, and that Congress is in error to expect higher insurance levels to enhance safety.

The comments of the AIA, the Professional Insurance Agents (PIA), and New Ulm Bus Lines, share the belief that the higher limits will have an adverse effect on safety. They stated that the increased levels would place economic pressure on small carriers since many operate on a tight budget. New Ulm Bus Lines points out that "More money will have to be spent for insurance and those dollars will have to come from other areas such as maintenance and vehicle replacement." The PIA also suggests that this substantial financial burden cannot easily be passed on in increased bus fares because many buses are presently competing with lower cost van pools. The AIA asserts that while large carriers can offset increased premiums, small carriers will cut into optional cost items such as safety programs.

Other comments were received which support the intent and purpose of Section 18. Greyhound Lines, Inc., for example, stated its belief that higher premiums for unsafe carriers would encourage safe operations. Likewise, some commenters expressed the belief that increased insurance will act as a sort of safety net in the marketplace which has grown since the onset of deregulatory efforts. Charter Bus Unlimited (CBU) expressed concern for safety in light of eased entry and commented on what it referred to as many new carriers operating dilapidated buses with obvious safety defects with the statement "With larger dollar amounts of exposure, insurance companies would be likely to establish standards for the carriers they insure." It also feels that "carriers would have greater financial incentive to spend money and devote more effort to safety in an attempt to keep higher premiums from going higher."

The United Bus Owners of America (UBOA) expressed concerns similar to those of the CBU. UBOA offered its safety patrol's appraisal that "regulatory reform has generated no dramatic increase in human occupancy of mobile deathtraps; but that there has been a frightening increase in the number of such vehicles which bear imprimaturs of ICC certification."

Another commenter, Bill Rohrbaugh's Charter Service, Inc., expressed agreement with the purpose of Section 18. Its comments focus on the belief that the industry is being flooded with new operators who are buying outdated and obsolete equipment and who buy the minimum amount of insurance. This, it says, keeps their costs as low as possible as well as their charges to the general public.

The FHWA agrees with the commenters who focus on the need for the increased levels of financial responsibility in light of the eased entry generated by the Bus Regulatory Reform Act of 1982. The Act is intended to establish levels which are adequate to protect the public rather than, as some commenters assume, establish levels which are adequate to cover the carriers' assets and still provide for competitive rates.

The FHWA does not view this rulemaking as an opportunity to squeeze out the small carrier who has little operating capital or to mandate levels which will ease competition for those carriers whose fares are being undercut. The principal question which the FHWA has addressed is what levels provide "adequate protection" for the public without creating undue economic burden or disruption in the transportation and/or insurance industries. It should be noted that not only does Section 18 require the Secretary to focus on safety without creating undue economic burdens on the affected industries, but so does Executive Order 12291, dated February 17, 1981. Further, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980; 5 U.S.C. 601; et seq.) requires more flexible regulatory approaches for small business entities.

In accordance with these requirements, a regulatory evaluation/regulatory flexibility analysis has been prepared. The finding contained in this document will be discussed in the section of this preamble entitled "Financial Responsibility, Minimum Levels" (§ 387.33).

Definitions (§ 387.29)

The NPRM stated the FHWA's intent to use definitions for this subpart, particularly those referencing terminology commonly used in the insurance industry, identical to those found in 49 CFR 387.5. It was explained that these definitions were developed with the assistance of the insurance and motor carrier industries during an earlier rulemaking action concerning liability requirements for motor carriers of property.

Only one totally new definition was introduced in the NPRM. The definition was for "seating capacity", a term used in Section 18 to differentiate between vehicle size and liability limits. No comments were received in response to the proposed definition of this term and it will be adopted in this rule.

Another definition found in the NPRM, however, generated a significant response from the commenters. The term, "for-hire carriage," was defined in the NPRM as "transportation of passengers by motor vehicle except when (a) The passengers are transported by a person engaged in a business other than transportation; and (b) The transporation is within the scope of, and furthers a primary business (other than transportation) of the person." This is similar to the definition used in 49 CFR 387.5 to define "for-hire carriage" of property.

The ABA, the State of Michigan's Department of Transportation, and the CBU all submitted comments opposing the use of this definition for the transportation of passengers. The general concern of these commenters revolves around the belief that the proposed definition leaves too many loopholes for buses used by businesses such as gambling houses, hotels, camps, and amusement parks.

The ABA contends that "the need to define 'for-hire carriage' only applies to property carriers—the need for which arose to curb the operations of pseudo-private carriers who used 'buy and sell' transactions to circumvent ICC regulation." To support its comments it cites an ICC Decision (No. MC–C–10797) in which the ICC declared that the primary business test has no relevance to passenger transportation.

While such a Declaratory Order by the ICC has little bearing on the definitions used by the FHWA, it is believed that the definition used in this rule should be consistent with that used by the ICC. By adopting the same definition as that used by the ICC, the FHWA is sure to include all of the for-hire carriers Congress intended while alleviating the possibility of including any carriers intentionally omitted by Congress. It is also believed to be to everyone's advantage if the definition is consistent for both the economic and safety applications.

It has, therefore, been determined that the definition of "for-hire carriage" for this subpart means a common or contract carrier of passengers.

Financial Responsibility Required (§ 387.31)

Congress clearly mandated that no motor carrier of passengers subject to the Act will operate a motor vehicle until the motor carrier has obtained and has in effect the mimimum levels of financial responsibility as required by the Secretary.

The NPRM proposed that policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. It also proposed to allow the motor carrier the right to obtain adequate coverage for a finite period (e.g. coverage by binder) of time to cover any lapse in continuous compliance without triggering the 35 day cancellation requirement. No comments were received concerning this proposal.

No comments were received to the proposed requirement that (an) endorsement(s) be attached to insurance policies for the purpose of assuring the insured that all criteria of Section 18 of the Act have been met in the policy. Nor were there any responses to the proposal that surety bonds on a prescribed form, using prescribed language, would be permitted in lieu of the policy of insurance and required endorsement.

The requirement for proof of coverage (Endorsement(s) or Surety bond) will not create an undue paperwork burden on the insurance industry as it consists of a single page form using simple language. Further, the FHWA believes that the benefits of having the endorsement attached to an insurance policy far outweigh any considerations against it, since it would provide confirmation of full coverage to the motor carrier and the public at a glance.

The proof of financial responsibility, whether it be an endorsement attached to a policy of insurance or a surety bond, will be required to be kept at a motor carrier's principal place of business. This proof will be required to be available to the public upon reasonable request for review. Such availability is in keeping with the intent of Congress to provide protection to the public. It would also provide the assurance needed by a lessor of a motor vehicle that the minimum levels of financial responsibility have been met by a motor carrier.

Financial Responsibility, Minimum Levels (§ 387.33)

The NPRM requested information from the regulated industry to assist the FHWA in its assessment of what limits will best protect the public's safety without seriously disrupting transportation service. It was stated that the initial findings of the draft regulatory evaluation indicated that the lowest levels permitted by the Act were adequate to cover liability claims in the majority of cases.

All but one of the comments received from the bus industry took exception to the concept of reduced levels for the 2-year phase-in period.

UBOA, which provides insurance for its membership, noted that in its three regional membership meetings held in February 1983, the "attendees were enthusiastic in their support of the $5 million floor." It adds that its members carry insurance as a spontaneous act of investment protection.

Similarly, the ABA commented, "The 46 Class I motor carriers of passengers who acounted for approximately 90% of all scheduled intercity passenger miles in 1981 already carry liability insurance in excess of $5 million per bus." Therefore, it says, "The industry's excess capacity will not be significantly reduced by minimal increases in insurance costs."

In addition to these comments from bus associations, a small carrier, Charter Bus Unlimited which, it says, has only one bus, supports the high limits. It says, "Contrary to what some of your printed matter states, the high levels of insurance are not so expensive that it would prevent small businessmen from entering or remaining in the bus business." It continues, "The argument that small businesses would be hurt by higher premiums is wrong, because all bus companies have to pay for the same level of insurance. Each company has the opportunity to enjoy a lower premium by instituting safety programs that will lower its frequency and value of claims."

The comments of Bill Rohrbaugh's Charter Service, Inc. reflect the same belief. The company states that the "reduction of limits will hurt a lot of small carriers who believe in giving quality service and try to carry enough insurance in case an accident occurs."

Another argument offered by several of the commenters who support the highest levels concerns the need for adequate coverage when a catastrophic accident occurs. These commenters suggest that the passengers would be left without adequate financial recourse. UBOA, for example offers: "Should the unthinkable happen, all investments, capital and social, will be taken from a calamity-stricken carrier who is underinsured . . ." It stresses that the $2.5 million limit would provide an estimated $62,500 per passenger in the event of an accident. This, it states, is too low.

The ABA focused on the Triangle, Virginia accident of February 18, 1981 which resulted in claims of around $15 million. This, it says, demonstrates the need for the highest limits. It should be noted that even the highest limits prescribed in the Act would not cover these claims.

To further justify their belief that the highest levels are necessary and would not negatively affect small business, Greyhound Lines and ABA submitted cost estimates for purchasing the increased levels.

ABA states, "To the extent that higher minimum levels of insurance would discourage entry, the impact is negligible with respect to increases from $2.5 million to $5 million." It continues, "After the first million dollars of coverage, the cost of each additional million dollars of coverage up to $5 million would be only $300 per million for an operator of 20 buses or less depending to some extent, of course, on his or her experience. For operators of 21 to 40, 41 to 60, and 61 to 80 the additional cost would be only $600 per million, $700 per million, and $800 per million, respectively.

Greyhound offered similar information. It stated, "Generally, the incremental cost of insurance above the $2.5 million limit for carriers operating vehicles with a capacity of 16 passengers or more is small when compared to the increased coverage. It is reasonable to expect that the average bus company could obtain $2.5 million of excess insurance coverage (in addition to the base $2.5 million of insurance coverage) for 20–30% of the cost of insuring the base $2.5 million."

Both Greyhound and ABA assert the belief that the FHWA offered no substantial justification for reduced levels.

The comments received from the American Insurance Association (AIA) and the Professional Insurance Agents (PIA) take strong exception to the concept of requiring the highest levels. Generally, they state that the public safety will be adequately protected by the lower "phase-in" limits and that the lower limits will indeed prevent a serious disruption in transportation service.

In defense of its belief that the public will be adequately protected by the lower limits, the AIA reiterates that less than one one-hundredth of one percent (0.01%) of all commercial accidents result in damages in excess of $500,000. Further, AIA suggests that the implementation of the high limits may actually create a danger to the public. It asserts "Insurance cost associated with high minimum limit requirements will form an increased portion of the motor carrier's operating costs. While many of the large, established carriers may be able to offset these increased costs through additional revenues, the new or small carrier may not have this luxury. Some mandatory costs, such as fuel, licenses and taxes, cannot be decreased. However, optional cost items like safety programs, preventive maintenance and upgrading of equipment are controllable and may be reduced by the motor carrier of passengers. Reducing these operating expenses may well be the only alternative for the carrier who has newly obtained operating authority and must compete for business through lower rates. Any reductions in the area of maintenance, upgrading of equipment and vehicle inspections could well be detrimental to the public safety."

The AIA also takes exception to the congressional intent to enhance the safety with the higher levels of financial responsibility requirements. The AIA explains that all carriers have access to insurance, regardless of their experience. It explains, ". . . while insurers may refuse to provide coverage in the voluntary market due to poor accident history, financial instability, or failure to meet the minimum safety standards, *all* (emphasis supplied) motor carriers have access to insurance through a residual market mechanism. Residual insurance market mechanisms are available in all fifty States to serve motor carriers of both property and passengers. It must provide the limits and coverages required by law as long as a valid operator's license remains in effect and the policy premium is paid. Since the residual market risk is not subject to ordinary insurance cancellation provisions, the primary incentive to comply with a safety program—loss of coverage—is nonexistent."

The PIA's comments address additional concerns. It states "Increasing the limits so dramatically in such a short period of time would cause economic concern to many small carriers. As many small businesses, they are operated on a tight budget, facing much competition. The cost of going from current limits to the required maximum would be a substantial financial burden, not easily passed on in increased bus fares."

The PIA also asserts that motor carriers of passengers have a better safety record than motor carriers of property. It says "This is in the self-interest of the passenger carrier. Bodily injury and death claims from passenger accidents are far more costly than most property damage claims. Hence, the owner/operator is keenly aware of his responsibility and sizeable exposure. Also, the type of vehicle used to carry passengers is easier to handle in emergency situations. It is less subject to uncontrollable weight shifts and severe fishtailing or jack-knifing as are trailer/platform trucks."

In light of the foregoing, it is evident that there are very diverse views concerning what can reasonably be considered "protection of the public." For those who oppose implementation of reduced levels, it appears that the public can be adequately protected only if motor carriers are insured to levels adequate to cover "worst case" accidents. This, of course, would be an ideal situation for a number of reasons, such as providing adequate awards to injured parties as well as protecting the assets of the motor carrier involved in such an event.

On the other hand, those commenters who favor implementation of reduced levels appear to consider the minimum levels reasonable protection since those limits cover liability claims in the vast majority of cases.

The FHWA agrees with those in opposition that "worst cast" accidents can and do occur. It is also understood, as pointed out in their comments, that these catastrophic accidents result in liability claims which can be above even the highest minimum levels mentioned in Section 18.

The FHWA feels confident that the Congress was fully aware of the catastrophic accidents which have occurred over the past decade or so when it passed the Bus Regulatory Reform Act. The Congress, in passing the Act, called for minimum levels of financial responsibility to enhance safety and adequately protect the public. It can, therefore, be reasonably deduced that the Congress' intent for reasonable protection did not include those damages incurred as a result of an extremely limited number of "worst cast" accidents.

Analysis of the FHWA's accident statistics as found in the final regulatory evaluation/regulatory flexibility analysis reveals that, on a per accident average, the societal costs appear to be very low in this industry. The data show that the annual fatality rate per accident ranged from .08–.11 for ICC regulated passenger carriers over the six year period 1976–81. The average number of injuries per accident ranged from 2–8 in accidents involving property damage under $20,000, and from 7–17 in more serious property damage accidents. In 4,473 accidents over the six year period, the average value of reported property damage amounted to $5,580 per accident. These accident data produced an average total societal cost of $115,000 for each interstate bus accident. The average societal cost moved upward from $110,700 in 1977 to $120,000 in 1981.

Data provided by the insurance industry which show that in 99.7 percent of accidents the average bodily injury claim did not exceed $9,000 and property damage claim did not exceed $14,000, tend to lead to the conclusion that the lowest limits allowed in Section 18 are adequate.

With all things considered (i.e., protection of the public, the stability of the bus industry, the ability of the insurance industry to provide the coverage and the particular needs of small and minority motor carriers), the question which begs to be answered is what *minimum* levels of financial responsibility are sufficient? We stress the word "minimum" as it has appeared since the inception of the Bus Regulatory Reform Act.

The FHWA firmly believes, based on its accident data and the data provided by the insurance industry, that with less than one one-hundredth of one percent of all commercial vehicle accidents resulting in claim settlements of more than $500,000, the lowest levels allowed in the Act are sufficient. This is not to say that the FHWA does not encourage motor carriers of passengers to maintain levels of liability coverage sufficient to cover their assets and fully protect their concerns. What is at issue here is the absolute minimum which must be maintained before a motor carrier of passengers subject to these rules may operate its vehicles on the public highway system.

The minimum levels of financial responsibility may be met through aggregation of policies. The FHWA did not discuss the use of aggregation in the NPRM and several commenters took notice of the omission. All of the comments received concerning the use of aggregation supported it as an option. The FHWA agrees with these comments since aggregation is currently permitted under Part 387 as it relates to motor carriers of property and is viewed as a valuable option.

State Authority and Designation of Agent (§ 387.35)

No comments were received in response to the language proposed for this Section in the NPRM. The language proposed will, therefore, be adopted in this rulemaking.

Fiduciaries (§ 387.37)

No comments were received in response to the proposed language for coverage of fiduciaries. FHWA is, therefore, adopting that language in this final rule.

Forms (§ 387.39)

No comments were received in response to the proposal to require an endorsement for policies of insurance and surety bonds. This requirement is, therefore, adopted in this final rule.

It should be noted however, both forms are currently under review by the Office of Management and Budget according to the Paperwork Reduction Act of 1980. Final action on these forms by OMB is expected within 90 days.

The BMCS recognizes the problem that the insurance industry will have in trying to get the required endorsements into the hands of its passenger carrier clients. Time is needed to satisfy the endorsement requirement. In view of this, the BMCS does not intend to enforce the requirement that passenger carriers have the endorsement(s) attached to their policies of insurance for 90 days from either the effective date of November 19, 1983 or the date OMB approves the forms, whichever is later.

It should be understood that this is in no way a relaxation of the minimum levels of financial responsibility. All passenger carriers must have the required minimum levels of financial responsibility as of November 19, 1983

Violation and Penalty (§ 387.41)

Congress included a civil penalty of up to $10,000 per violation to be assessed against any motor carrier proven to be in violation of the final regulations implementing Section 18.

List of Subjects in 49 CFR Part 387

Highways and roads, Motor carriers, Motor vehicles, Financial responsibility, Insurance, Penalties.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: November 17, 1983.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

In consideration of the foregoing and under the authority of Section 18 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261, 96 Stat. 1120 (September 20, 1982); 23 U.S.C. 315; and 49 CFR 1.48 and 301.60, the Federal Highway Administration is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by revising Part 387 as set forth below.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. Sections 387.1 through 389.17 are designated as Subpart A "Motor Carriers of Property."

2. In Part 387, Subpart A, §§ 387.1; 387.3 (a), (b), and (c) (1) and (2); 387.5; 387.7(a); 387.9; 387.11; 387.15; and 387.17 are amended by removing the words "this part" and inserting in their place the words "this subpart".

3. Subpart B is added to Part 387 to read as follows:

Subpart B—Motor Carriers of Passengers

Sec.

Authority: Sec. 18, Pub. L. 97-261, 96 Stat. 1120 (September 20, 1982); 49 U.S.C. 10927 Note; 49 CFR 1.48 and 301.60.

Subpart B—Motor Carriers of Passengers

§ 387.25 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§ 387.27 Applicability.

(a) This subpart applies to for-hire motor carriers transporting passengers in interstate or foreign commerce.

(b) *Exception.* The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points; and

(3) A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work.

§ 387.29 Definitions.

As used in this subpart—

Accident—includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury—means injury to the body, sickness, or disease including death resulting from any of these.

Endorsement—an amendment to an insurance policy.

Financial responsibility—the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For hire carriage—transportation performed by a motor carrier.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium—the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier—means a motor common carrier and a motor contract carrier.

Motor common carrier—Means a person holding itself out to the general public to provide motor vehicle transportation of passengers for compensation over regular or irregular routes.

Motor contract carrier—means a person, other than a motor common carrier, providing motor vehicle, transportation of passengers for compensation under continuing agreement with a person or limited number of persons.

Property damage—means damage to or loss of use of tangible property.

Public liability—liability for bodily injury or property damage.

Seating capacity—any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multi-purpose passenger vehicle with a gross vehicle weight rating less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SEA Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

§ 387.31 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. (1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice. (2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end or the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS–90B) issued by an insurer(s); or

(2) A "Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS–82B) issued by a surety.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

§ 387.33 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.31 of this subpart are hereby prescribed as follows:

Schedule of Limits

Public Liability

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less [1]	750,000	1,500,000

[1] Except as provided in § 387.27(b).

§ 387.35 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§ 387.37 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated as required in § 387.31 of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

§ 387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Director, Bureau of Motor Carrier Safety, by written notice. In determining the amount of such penalty, the Director shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of capability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

BILLING CODE 4910-22-M

U.S. Department of Transportation
Federal Highway Administration

Expiration Date
Form Approved
OMB No.

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

Issued to ______________________ of ______________________

Dated at ______________________ this ______ day of ______________________, 19____

Amending Policy No. ______________________ Effective Date ______________________

Name of Insurance Company ______________________

Countersigned by ______________________
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "☒", for the limits shown:

☐ This insurance is primary and the company shall not be liable for amounts in excess of $ __________ for each accident.

☐ This insurance is excess and the company shall not be liable for amounts in excess of $ __________ for each accident in excess of the underlying limit of $ __________ for each accident.

Whenever required by the Bureau or the ICC, the company agrees to furnish the Bureau or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the Bureau or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: ______________________

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which results in Public Liability which the insured neither expected not intended.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

MOTOR CARRIER means a for-hire carrier of passengers by motor vehicle.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury or property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.
THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE.
The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS
Public Liability
For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	$ 750,000	$1,500,000

U.S. Department of Transportation
Federal Highway Administration

Form Approved
OMB No.

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

PARTIES

Surety Company and Principal Place of Business Address	Motor Carrier Principal, I.C.C. Docket No., and Principal Place of Business Address
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________ .

PURPOSE

This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability and property damage claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS

(1) Section 18 of the Bus Regulatory Reform Act of 1982
(2) Rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau)
(3) Rules and regulations of the Interstate Commerce Commission (ICC)

CONDITIONS

The Principal is or intends to become a motor carrier of passengers subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability or property damage claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each motor vehicle subject to the applicable governing provisions for each accident shall not exceed $__________, and shall be a continuing one notwithstanding any recovery thereunder.

The surety agrees, upon telephone request by an authorized representative of the Bureau or ICC, to verify that the surety bond is in force as of a particular date. The telephone number to call is: __________

This bond is effective from __________ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at any time terminate this bond by giving (1) thrity five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date notice is received by the ICC at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability or property damage claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety from the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

____
Date

(AFFIX CORPORATE SEAL)

____
Surety

__________, __________
City *State*

By ______________________

ACKNOWLEDGMENT OF SURETY

STATE OF ______________________ COUNTY OF ______________________

On this ________ day of ______________, 19____, before me personally came ______________________.
who, being by me duly sworn, did depose and say that he resides in ______________________; that he is the ______________________ of the ______________________,
the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for an on behalf of said corporation.

____

____
Title of offical administering oath

(OFFICIAL SEAL)

Surety Company File No. ______________________

Form MCS-82B
(11-83)

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