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**BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION**

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[FHWA Docket No. MC - 93 - 34]

**SLEEPER BERTHS ON MOTORCOACHES --
ADVANCE NOTICE OF PROPOSED RULEMAKING**

**COMMENTS OF
AMERICAN BUS ASSOCIATION**

FHWA-97-2213-8

These comments are submitted by the American Bus Association (ABA) in response to the Advance Notice of Proposed Rulemaking published in the Federal Register on January 12, 1994. (59 Fed. Reg. 1706). At the request of ABA, the time for filing comments was extended by the Administrator from March 14, 1994 to May 14, 1994.

ABA is the international trade association for the inter-city bus industry. The Association has approximately 700 bus operator members, almost all of whom are subject to the Federal Motor Carrier Safety Regulations.

I

**ABA HAS NOT ADVOCATED
REVISION OF EXISTING
SLEEPER BERTH REGULATIONS**

Contrary to the Advance Notice of Proposed Rulemaking, ABA has not indicated to FHWA any concern about “the suitability of existing sleeper berth regulations for motorcoaches.” As pointed out in Part II of this response, there are no sleeper berth regulations which apply to motorcoaches. ABA has not heretofore urged the adoption of new regulations nor have we urged that the sleeper berth regulations applicable to trucks be amended and extended to buses.

FHWA’s impression that ABA favors amending the existing sleeper berth regulations apparently stems from the opinions expressed by several individual bus operators at a hearing in Miami, Florida on January 20, 1993. Although the views expressed by these bus operators merit consideration, they were not authorized to speak for ABA. The position of ABA is set forth, for the first time, in these comments.

II

THE EXISTING SLEEPER BERTH REGULATIONS

The current sleeper berth regulations (49 CFR 393.76) do not apply to over-the-road buses engaged in interstate commerce.* As pointed out in the Advance Notice,

* An over-the-road bus is defined in section 301 (5) of the Americans with Disabilities Act as “a bus characterized by an elevated passenger deck located over a baggage compartment.”

the present regulations “were written specifically for trucks and truck tractors without considering the unique design characteristics of motorcoaches.”

In the Summary of the Advance Notice, FHWA invited comments on “the possibility of amending them [the existing regulations] to account for design differences between trucks and motorcoaches.” There are other possibilities that ought to be considered. First, if new regulations are necessary or desirable, should they be written exclusively for motorcoaches? Second, should the use of sleeper berths on motorcoaches for the purpose of complying with the hours-of-service regulations be approved or disapproved on a case-by-case basis rather than by a general rule? Finally, what can be done to insure that time spent in a sleeper berth on a motorcoach provides the type of rest which justifies placing the driver in an off-duty status?

ABA does not favor according off-duty status to time spent in a sleeper berth located in the baggage compartment of a bus. There are strong differences of opinion within the bus industry as to whether the occupancy of sleeper berths in the passenger compartment of buses should be credited as off-duty time. Accordingly, ABA takes no position on that issue. Whether a sleeper berth in the passenger compartment of a bus would provide rest equivalent to that provided by a motel room would depend on the willingness and ability of carriers to isolate relief drivers from certain groups (e.g., students traveling to Florida on Spring-break or football fans returning from a distant game).

Section 395.2 of the Federal Motor Carrier Safety Regulations includes as on-duty time all time spent “in or upon any motor vehicle except time spent resting in a

sleeper berth as defined in [section 393.761.“” Since section 393.76 applies only to trucks, the practical effect of section 395.2 is to preclude the installation of sleeper berths in motorcoaches.

If existing hours-of-service regulations were amended so that rest in sleeper berths would qualify as off-duty time, more passenger carriers might consider the installation of sleeper berths to reduce the cost of trips that cannot be completed in ten hours' driving time. Suppose, for example, that a ski club in Dallas, Texas desires to go to Colorado for a three-day weekend with no stops en route. The trips to and from Colorado cannot be made in ten hours. To operate legally, the carriers must pre-position a relief driver at some point on the route.

To reduce the cost of trips that cannot be completed within ten hours, it might be cost-effective to install sleeper berths in buses.*** Experience with sleeper berths in the bus industry may be too limited, however, to permit regulations to be written with confidence at this time. If sleeper berth installations and occupancy could be considered on a case-by-case basis for the purpose of determining compliance with the hours-of-service regulations, FHWA might gain enough experience to draft a set of regulations.

** By an interpretation, FHWA has ruled that a driver may be in or on the bus and be considered off-duty if certain conditions are met. (FHWA Regulatory Guidance page 69, question 2).

*** The current military bus agreement with the Military Management Traffic Command prohibits the use of sleeper berths. If a military charter requires the use of more than one driver, the second driver must be pre-positioned.

III

RESPONSE TO SPECIFIC QUESTIONS

ABA's responses to the nine specific questions posed in the ANPRM are set forth below.

1. Should existing sleeper berth regulations be amended to account for design differences between motorcoaches and trucks? If so, what changes should be made and why?

ABA Response: No. The design and operational characteristics of buses and trucks are so dissimilar that separate sleeper berth regulations should be adopted for each of the two modes, assuming that occupants of sleeper berths on buses should be credited with off-duty time.

2. What is the current extent of sleeper berth usage within the motorcoach industry?

ABA Response: Sleeper berth usage within the motorcoach industry is extremely limited because time spent in a sleeper berth is counted as on-duty time. The installation of sleeper berths on motorcoaches would not become attractive unless sleeper berth usage proves to be more economical than pre-positioning relief drivers along the route. That is not likely to happen unless the hours-of-service regulations are amended.

3. How many motorcoaches have been manufactured with sleeper berths as part of their original equipment? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

ABA Response: Information on sleeper berths as part of original motorcoach equipment is set forth in the comments of Motor Coach Industries, Inc. None of the sleeper berths presently installed in intercity motorcoaches is in noncompliance with 49 CFR 393.76 because that section of the regulations does not apply to buses.

4. How many motorcoaches have been retrofitted with sleeper berths? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

ABA Response: ABA does not know how many motorcoaches have been retrofitted with sleeper berths or where and how such sleeper berths may have been installed. To repeat, however, the matter of compliance with 49 CFR 393.76 is irrelevant because that section of the safety regulations does not apply to motorcoaches.

5. Do after-market changes, such as cutting holes in the floor or modifying the cargo compartment, affect the structural integrity of the motorcoach?

ABA Response: Possibly. See the comments of Motor Coach Industries, Inc.

6. The FHWA notes that if a driver sleeper berth is located within the baggage area and occupied while the motorcoach is in operation, the occupant could be vulnerable to a side impact collision. Are special requirements needed to ensure the occupants' safety?

ABA Response: Regardless of the measures taken, it is not possible "to ensure the occupants' safety" as suggested by the question. Side impact

collisions in the baggage door area are infrequent, however, and thus exposure is low. Occupancy of sleeper berths in the passenger compartment of buses would be considerably safer.

7. If a driver sleeper berth is located in the baggage area of a motorcoach, should its location be restricted (e.g., only the forward-most portion of the baggage area)? If the sleeper berth is used while the vehicle is in operation, would having the sleeper berth near the rear of the motorcoach subject persons occupying the berth to excessive heat, noise, or exhaust?

ABA Response: The best location for a baggage compartment sleeper berth would be the forward baggage compartment. In this location, the berth would be farther from the engine compartment and between the axles, and thus subject to less road noise. Proper sealing of the compartment doors and adequate ventilation should take care of problems of heat and exhaust. It is not clear how the occupant of the berth would be protected from extremely cold weather.

8. The current requirements of § 393.76 for a direct and ready means of exit from the sleeper berth into the driver's seat or compartment may be design-restrictive for motorcoaches. Should the exit requirements allow a ready means of exit into the passenger compartment of the motorcoach instead of the driver's seat or compartment?

ABA Response: Yes, if sleeper berths in the baggage compartment of buses are encouraged which, in ABA's opinion, would be unwise.

9. Would separate motorcoach sleeper berth regulations enhance motorcoach safety or benefit the motorcoach industry? If yes, how?

ABA Response: Motorcoach safety would not be enhanced. However, if separate sleeper berth regulations should eventually be adopted, such regulations should be cross-referenced in 49 CFR 395.2 along with the current regulations applicable to trucks (49 CFR 393.76). The adoption of sleeper berth regulations and amendment of the hours-of-service regulations would make the installation of sleeper berths a legal and realistic alternative to the pre-positioning of relief drivers.

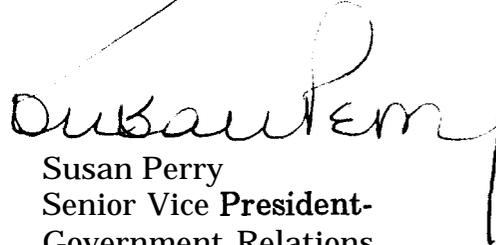
If FHWA does not believe it has sufficient information at this time on which to base a sleeper berth regulation for buses, it should establish a procedure under which the installation of sleeper berths in the passenger compartment of buses could be approved or disapproved on an ad hoc basis.

Potential economic benefits for the motorcoach industry are alluded to in Part II of our response.

CONCLUSION

For the reasons set forth above, ABA recommends against the institution of a rulemaking proceeding looking toward the adoption of regulations respecting the installation and use of sleeper berths in the baggage compartment of motorcoaches.

Respectfully submitted,



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