

**JAMES C. HARDMAN**

ATTORNEY AT LAW

800 LONE OAK ROAD

EAGAN, MINNESOTA 55121

OFFICE (612) 688-2000

QA  
19982

Docket Clerk  
Room 4232  
Office of the Chief Counsel  
Federal Highway Administration  
400 Seventh Street, SW  
Washington, DC 20590

96 MAY 9 11:50  
LEGS./REGS. DIV.

FEDERAL HIGHWAY  
ADMINISTRATION

FHWA-97-2277-6

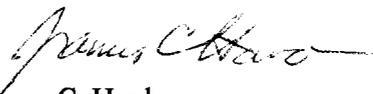
Re: FHA Docket MC-96-6

Dear Docket Clerk:

Enclosed for filing are the Joint Comments of Dart Transit Company and Fleetline, Inc. in the above captioned docket.

A copy of this letter and a self-addressed stamped envelope are for purposes of verifying receipt of the documents.

Very truly yours,



James C. Hardman

MC966DFL.LEG/6

cc: File

Enclosure

DOCKET MC-96-6-5  
PAGE 1 OF 3

**BEFORE THE  
FEDERAL HIGHWAY ADMINISTRATION**

**Safety Performance History )  
of New Drivers )**

**FHA Docket MC-96-6**

**Comments of  
Dart Transit Company  
Fleetline, Inc.**

Dart Transit Company [Dart] and Fleetline, Inc. [Fleetline] respectfully state:

1. Dart and Fleetline are for-hire motor carriers operating in interstate and intrastate commerce. The carriers are subject to the Safety Regulations and each support any effort to increase safety in operations.
2. Safety in operations is influenced by the knowledge a carrier has of a prospective operator at the time the decision is made to either hire the person or qualify him or her as a driver under an independent contractor operating agreement.
3. Considerable time is already being spent by Dart and Fleetline in making inquiries of former employers or of former independent contractor relationships. The carriers have been frustrated because the other party is not willing to respond or, at best, will merely confirm the dates of the prior association. It is, therefore, encouraging to see that the proposal clarifies the responsibility of past carriers to respond. However, it does appear that the proposed Rules do not provide for any penalty for failure to reply unless it is covered by 39 C.F.R. § 390.37. If so, this should be made clear and, if a response is willfully withheld, the requesting carrier should be obligated to report this to the FHWA. Under proposed Rule § 382.413(c), for example, the inquiring carrier is only required to note the effort it made to secure the information and file it in the driver's qualification file. This is not enough to assure the system will work.
4. The exchange of information has been hampered in the past because of the fear on the part of the past employee or engager that the release of such information could lead to libel and/or slander charges. The proposed Rules do not address this issue. It would behoove the Agency to seek to give the replying carrier immunity from such actions unless the replying carrier in bad faith provided false or deliberately misleading information. If the Secretary does not have the authority to grant such immunity, the Department of Transportation should seek legislative authority to do so as this is crucial to the successful interchange of information. As an alternative, legislation could provide that the sole remedy for any violations of the Rules would be under statute similar to ERISA eliminating all state and/or common law actions.
5. Dart and Fleetline have no objection to allowing the driver the opportunity to review and comment on information but do feel that the opportunity should only arise if the receiving carrier does not employ or contract with the driver based in whole or in part on the information furnished and then any comments of the driver to the receiving carrier should be in writing within thirty (30) days of being advised.

**DOCKET** MC-96-6-5  
**PAGE** 2 **OF** 3

This would necessitate the Rules imposing an obligation to advise on the carrier. Reasonable opportunity should be construed as personal inspection of the record at the place where they are maintained during the normal business hours of the department maintaining such records.

6. Rather than requiring "driver authorizations" to be sent between carriers, it is felt that it would be sufficient to subject any requesting carrier to a substantial fine or criminal prosecution if (a) it did not notify the applicant that inquiry would be made to other carriers; (b) have a release on file or as part of the application form; and (c) makes any inquiry not authorized under the Rules. The carrier releasing the information would not be liable for any release pursuant an inquiry from another carrier unless it had actual knowledge that the request was not valid. This would eliminate the creation of multiple releases, verifying the signature, and the need to file such release by the carrier responding to the request.

7. It is felt that the Rules provide that any information secured under the Rules shall only be used for purposes of determining the qualifications of the individual to operate safely and for no other purpose and that any other utilization or the breach of the confidentiality of such information will constitute a violation and be subject to 49 C.F.R. § 390.37.

**THEREFORE**, Dart and Fleetline pray that the Agency consider its views in issuing final Rules.

Respectfully submitted,

DART TRANSIT COMPANY  
FLEETLINE, INC.

By:   
James C. Hardman  
Special Counsel  
P.O. Box 64110  
St. Paul, MN 55164-0110  
(612) 688-2000

MC966DFL.LEG/6  
cc: File

**DOCKET** MC-96-6-5  
**PAGE** 3 **OF** 3