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Federal Highway Administration
U.S. Department of Transportation
Office of Chief Counsel
Room 4232
400 Seventh Street S.W.
Washington, D.C. 20590

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LEGS./REGS. DIV.

FEDERAL HIGHWAY
ADMINISTRATION

SUBJECT: Rules of Practice for Motor Carrier Proceedings;
Investigations; Disqualifications and Penalties
FHWA Docket No. MC-96-18

Dear Sir/Madam:

The American Movers Conference hereby submits the enclosed comments in response to the above-referenced docket.

Yours Truly,

Jane Lind Downey
Vice President, General Counsel

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**BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF
AMERICAN MOVERS CONFERENCE**

**FHWA DOCKET NO. MC- 96-18
Rules of Practice for Motor Carrier Proceedings; Investigations;
Disqualifications and Penalties
61 Fed. Reg. 83
April 29, 1996**

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BEFORE THE FEDERAL HIGHWAY ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION

COMMENTS OF
AMERICAN MOVERS CONFERENCE

FHWA DOCKET NO. MC-96-18
Rules of Practice for Motor Carrier Proceedings;
Investigations; Disqualifications and Penalties
49 CFR Parts 361, 362, 363, 364, 385, 386 and 391
Notice of Proposed Rulemaking,
Federal Register, Volume 61, No. 83, Apr. 29, 1996

INTERESTED PARTIES

The American Movers Conference (AMC or Conference) and the AMC Safety Management Council submit these comments in response to the Notice of Proposed Rulemaking (NPRM) of the Federal Highway Administration (FHWA), Docket MC-96-18, Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties. AMC is the principal national trade association of the household goods moving industry, representing national van lines, independent interstate carriers and local agent movers before Federal and State regulatory and legislative bodies. The AMC Safety Management Council is made up of carrier safety directors who advise AMC staff on safety operational matters.

INTRODUCTION

FHWA proposes to accomplish a comprehensive rewrite of the rules of practice for motor carrier administrative proceedings. These comments will deal with those proposals that relate to the safety rating procedures in proposed new

Part 362. In general, AMC supports and joins in the comments of American Trucking Associations and will limit our response to those areas of specific interest to the household goods moving industry and the AMC Safety Management Council.

COMMENTS

AMC supports FHWA's efforts to address the long-standing problems with the current safety rating system and we welcome the opportunity to join the regulatory dialogue. The most significant aspect of the proposal, to eliminate the "Satisfactory" and "Conditional" safety rating labels with only the "Unsatisfactory" category remaining, is also the most difficult to evaluate since FHWA does not provide any details about the safety rating methodology. Consequently, in addition to responding to the safety rating changes, these comments will also discuss some aspects of the rating methodology since whatever changes FHWA makes to the rating categories will necessitate revisions to that process as well.

SAFETY RATING CATEGORIES

The rulemaking proposes to do away with the Satisfactory and Conditional safety rating categories and retain only the Unsatisfactory rating. An AMC Safety Management Council survey was conducted to solicit member views on the safety rating proposals. Although it is undisputed that the Conditional label has caused many problems because of the overly negative significance that category has received and therefore its proposed removal is generally supported, carriers report concern over the elimination of the Satisfactory category and combining Conditional and Satisfactory carriers into a large pool of Unrated carriers.

Movers agree with FHWA's continued focus on extremely poor performers, but in light of the serious adverse consequences of an Unsatisfactory finding, they find it difficult to support a new system until more information is forthcoming about the relative weight that will be given to factors used to make the rating determination. According to the proposal, an Unsatisfactory will not be applied unless there is demonstrably poor compliance or performance indicated. However, we are not sure whether in the new system a Unsatisfactory rating will equate to the present category or whether the factors will be applied so that some more marginally Conditional carriers will be affected.

AMC carriers think that categorizing a carrier as either Unsatisfactory or Unrated leaves too much room for question. In general, they believe it is important to not only identify carriers operating unsafely but to give safe carriers a seal of approval. Carriers that have invested heavily in safety programs and presently hold a Satisfactory rating as the result of an FHWA audit are concerned that there would be no distinction between them and a carrier that had previously been rated Conditional, and perhaps even recently upgraded to Conditional from Unsatisfactory. For carriers who have made an investment in safety, losing their Satisfactory rating and becoming Unrated is not a positive step. In fact, several respondents to the survey felt that rather than eliminating the three-tier system, FHWA should add a fourth "Above Average" rating.

Therefore, for all the foregoing reasons, AMC recommends that FHWA eliminate the Conditional category, but retain both the Satisfactory and Unsatisfactory categories. Since it is felt the Unrated category should be reserved

for carriers who have not yet been audited, carriers previously receiving a Conditional should be placed in the Unrated category only temporarily and given a designated period of time to undergo a compliance review.

In conjunction with the new rating system, FHWA also proposes a "due process" provision which would allow a 45-day advance notice of an Unsatisfactory rating to afford time to resolve any challenges. This provision should be adopted, although some AMC carrier respondents recommend that FHWA extend it to a 90-day period.

Essentially, AMC carriers do not have a problem with the rating labels so much as with the rating methodology and philosophy currently applied by FHWA to determine a safety rating.

SAFETY RATING METHODOLOGY

In revising the safety rating system, FHWA is urged to move as quickly as possible from a compliance review approach based on paperwork to a performance-based system that incorporates an evaluation of carrier and driver performance data involving serious violations. According to a study conducted for ATA by the Northwestern University Traffic Institute which reviewed the results and circumstances surrounding a number of recent FHWA compliance reviews, a carrier's accident rate is not a significant factor in FHWA's determination of a carrier's overall safety rating.¹ Rather FHWA appears to place greater focus on

¹ Evolution of the U.S. Department of Transportation, Federal Highway Administration Safety Rating System. Northwestern University Traffic Institute. July 1996.

compliance with hours of service regulations and alleged log falsification issues during reviews.

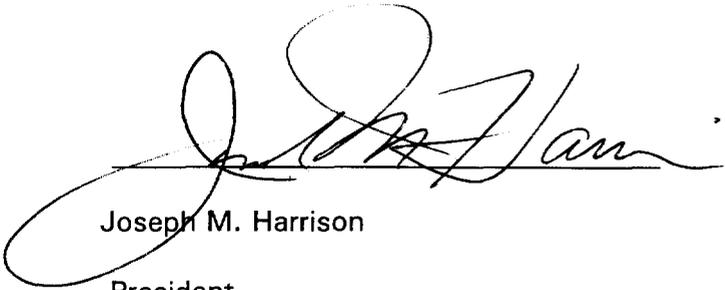
It is interesting that although the Northwestern study found driver log violations had the greatest impact on the rating FHWA gave to a carrier, the researchers did not find a statistical relationship between the percentage of a carrier's hours of service violations and the carrier's accident rate. It is not disputed that a major overhaul of the old hours of service regulations is long overdue. However, in the meantime carriers are being held to an unreasonable standard based on these outdated rules. Therefore it is only fair that until that goal is accomplished and there is some real data linking hours of service with fatigue, FHWA should focus on issues more directly connected with a carrier's actual safety performance, such as accident rates and out of service orders.

In addition, household goods carriers like other segments of the trucking industry, are greatly concerned about the lack of uniformity of FHWA regional office compliance reviews. Although some variations between offices and individual investigators are to be expected, the safety rating distribution figures reflect a regional system that needs some immediate attention from Washington.

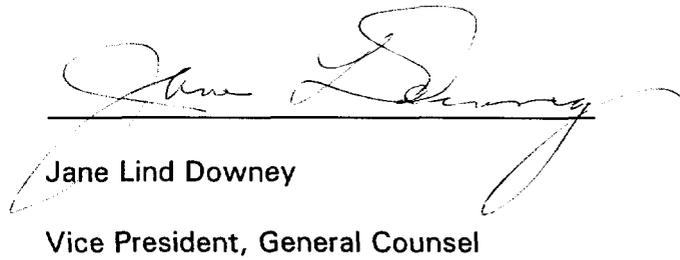
CONCLUSION

Although AMC welcomes FHWA's efforts to improve the safety rating system, it is impossible to give unqualified support for a new safety rating system until more information is known about the methodology that will be used to make the rating determinations. In general, AMC carriers favor elimination of Conditional

and retention of both Satisfactory and Unsatisfactory categories. The Unrated category should be reserved for those carriers that have not had a compliance review, with Conditional rated carriers placed in an Unrated category only temporarily. As for future changes to the rating methodology, FHWA is urged to convert its compliance-paperwork approach to one based on a carrier's actual safety performance.



Joseph M. Harrison
President



Jane Lind Downey
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