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BEFORE THE

FEDERAL HIGHWAY ADMINISTRATION

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49 CFR PART 361, et al.

RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS, INVESTIGATIONS, DISQUALIFICATIONS, AND PENALTIES; PROPOSED RULE

FEDERAL HIGHWAY ADMINISTRATION
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LEGS./REGS. DIV.

COMMENTS

OF

AMERICAN BUS ASSOCIATION

These comments are submitted on behalf of the American Bus Association ("ABA") in response to the Notice of Proposed Rulemaking published in Part III of the Federal Register on April 29, 1996 (61 Fed. Reg. 18866). ABA's comments are limited to Part 362: Safety Ratings setting forth the standards and procedures proposed for the determination of a motor carrier's safety fitness and the issuance of a safety rating by the Federal Highway Administration.

A. IDENTITY OF RESPONDENT

ABA is a national trade association for the intercity bus industry. The Association has more than 600 bus operators all of whom are subject to the safety jurisdiction of the Department of Transportation. For 70 years the Association and its members have worked to improve bus and highway traffic safety.

ABA supported the enactment of the Motor Carrier Safety Act of 1984, section 215 of which required the Secretary to establish a procedure to determine the safety

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fitness of operators of commercial motor vehicles, including intercity buses, in interstate commerce. 49 U.S.C. § 31144. Later, ABA supported legislation which prohibits the transportation of more than 15 passengers by carriers which hold an "unsatisfactory" safety rating.

At various times over the past 16 years, ABA has expressed concern about whether the safety rating process of FHWA satisfies basic requirements of due process of law. The changes proposed in new Part 362 on Safety Ratings satisfy our concerns.

B. ADVANCE NOTICE OF AN "UNSATISFACTORY" RATING

We strongly favor FHWA's proposal to give motor carriers advance notice of "unsatisfactory" safety ratings so that challenges to such ratings can be resolved before the rating takes effect. This is especially important for motor carriers of passengers who could be driven out of business by the impact of an "unsatisfactory" safety rating. We also agree with paragraph (d) of proposed section 362.106 which provides that proposed safety ratings will not be made available to the public.

In view of the proposal to give advance notice of an "unsatisfactory" safety rating and an opportunity to change it, it is unnecessary to consider whether, or to what extent, FHWA's current safety procedures satisfy due process requirements. The proposed rules clearly provide for some type of hearing or review before an "unsatisfactory" rating results in a mandatory cessation of operations. As pointed out by Judge Friendly in Some Kind of Hearing, 123 U. of Pa. L. Rev. 1267, 1280-1 (1975):

> It is fundamental that notice be given and that it be timely and clearly inform the individual of the proposed action and the grounds for it.
>
> It is also fundamental that the person affected must be afforded an opportunity to present reasons why the action proposed should not be taken.

C. TEMPORARY RELIEF FROM AN "UNSATISFACTORY" RATING

ABA favors the provision of proposed section 362.109 which provides for temporary relief from an "unsatisfactory" rating for a period of up to 60 days. Such discretionary relief would enable a motor carrier of passengers to demonstrate that it has mended its ways. No such demonstration could be made under an "unsatisfactory" rating which bars all transportation of passengers in interstate commerce.

D. THE PROPOSED SINGLE RATING CATEGORY

Under the proposed rules, there would be only one safety rating category: "Unsatisfactory". Recognition of only that safety rating category would mark a return to candor and reality in the rating process. Under the present rating system, ratings of "satisfactory" and "conditional" are highly misleading. Most "satisfactory" ratings fail to reflect any assessment by FHWA of the carrier's recent performance. Establishment of "unsatisfactory" as the only safety rating category would tend to focus the attention of safety officials, shippers and passengers on carriers so classified or about to be so classified. That is where the emphasis should be.

CONCLUSION

For the reasons set forth above, ABA recommends approval of proposed part 362 on Safety Ratings.

Respectfully submitted,

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