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DEPT. OF TRANSPORTATION
DOCKETS

02 APR 17 AM 10: 00

April 17, 2002

Docket Management Facility
United States Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Dockets No FMCSA-98-3297
FMCSA-983298
FMCSA-98-3299
FMCSA-01-10886
FMCSA-01-11060-10
NHTSA 02-11592
NHTSA 02-11593
NHTSA 02-11594

Dear Sir or Madam:

Attached for filing in the above-entitled proceedings are 8 copies of the comments of Greyhound Lines, Inc.. Please file one copy of these comments in each of the above 8 dockets. Please return the enclosed postcard as evidence of receipt of these comments. Thank you.

Sincerely yours,

Theodore Knappen

DEPARTMENT OF TRANSPORTATION

DEPT. OF TRANSPORTATION
DOCKETS

**Federal Motor Carrier Safety Administration
National Highway Transportation Safety Administration**

02 APR 17 AM 10:40

**Docket No. FMCSA-98-3297
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**Comments of Greyhound Lines, Inc. on NAFTA Implementation Rules of FMCSA
and NHTSA**

April 18, 2001

Greyhound Lines, Inc. (Greyhound) commends the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Transportation Safety Administration (NHTSA) for its comprehensive program to implement the North American Free Trade Agreement (NAFTA) cross-border provisions for Mexican-domiciled operators of commercial motor carriers of passengers and freight. In general, Greyhound believes that FMCSA and NHTSA are establishing an appropriate structure to ensure the safety of Mexican cross-border commercial motor vehicle operations, but we have some serious concerns about several aspects of that structure, which we will address herein.

Greyhound's greatest concern remains the safety of Mexican-manufactured buses. We applaud FMCSA and NHTSA for establishing a process whereby all commercial buses travelling in the **United** States, whether they are manufactured in the U.S., Mexico, or

Canada, will be required to have a sticker or plate indicating that they were manufactured in compliance with the Federal Motor Carrier Vehicle Safety Standards (FMVSS) at the time of manufacture. We have concerns, however, about the enforcement of this provision.

First, the FMCSA and NHTSA notices state that the agencies have information indicating that most Mexican manufactured commercial motor vehicles complied with FMVSS when they were manufactured. Greyhound is not qualified to speak with regard to Mexican truck compliance with FMVSS, but we do have first hand knowledge as to Mexican bus compliance. **We state unequivocally that the vast majority of Mexican-manufactured buses did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now.** Many of these buses do not comply with the FMVSS/FMCSR standards for fundamental safety items such as brakes, fuel systems, windows, and emergency exits.

Second, although requiring the certification plate on the buses should ultimately ensure compliance with FMVSS, Greyhound believes that other enforcement action is needed in the short term. We note that FMCSA proposes to conduct on-site safety audits of Mexican carriers prior to granting provisional authority and that these safety audits will include vehicle inspection. **Those** vehicle inspections should focus on compliance with the FMCSR (which include most of the FMVSS), and if the inspectors find that the vehicles inspected do not comply with FMCSR standards, provisional authority should

automatically be denied. This will not only ensure compliance with FMCSR up front, it will prevent passengers from being inconvenienced by vehicles being placed out of service either at the border or at other inspection points.

Third, Greyhound strongly opposes the proposed two-year grace period for compliance with FMVSS for Mexican-manufactured buses that have previously operated in the United States both for policy and practical reasons. ~~Of~~ course, the basic point is that under no circumstances should DOT adopt a formal policy authorizing a large number of vehicles that are in substantial non-compliance with FMVSS/FMCSR to operate in the U.S. for a significant period of time. Such a policy is particularly inappropriate in this case since Mexican bus manufacturers have been on notice for more than 6 years that their buses ~~must~~ comply with FMVSS if they ~~are~~ to be operated in the United States. DOT provided such notice in its November 1995 Motor Carrier Operating Requirements Handbook.

The grace period policy is particularly inappropriate for buses because of the vast difference between the services that could be performed legally in the U.S. prior to 2002 and what ~~can be~~ performed in the future. Under charter and tour authority, ~~a~~ Mexican-manufactured bus ~~may~~ have made ~~an~~ occasional trip into the U.S., but With new fixed route authority, that bus likely will be operating in the U.S. on a daily basis. The safety threat presented by an unqualified bus will be much greater.

Finally, enforcement of the grace period, ~~at~~ least for bus companies, will be virtually impossible. How will DOT determine whether a bus has been previously operated in the U.S. or not? If DOT does choose to proceed with the inappropriate grace period proposal, FMCSA at least should require that during the pre-authorization audit, applicant companies provide clear written evidence that a bus **has** been in the U.S. pursuant to charter and tour authority. If such evidence is presented, a temporary waiver should be issued for that bus only and that waiver **must** be affixed to, or carried on, that bus at all times. All other buses should be required to have the FMVSS certificate before being allowed into the U.S..

Greyhound also remains concerned about enforcement of the Immigration and Naturalization Service (**INS**) requirement that domestic passenger transportation services in the U.S. be provided by drivers that are either U.S. citizens or resident aliens. We are pleased that FMCSA has removed the Form OP-1(MX) language that suggested that non-compliance with U.S. labor laws was not a ~~bar~~ to the grant **of authority** and **has** now made it clear that compliance with U.S. **labor** laws is mandatory. But we do not understand why the certification that the applicant is willing and able to comply with U.S. labor laws ~~also~~ **has** been removed. We strongly believe that such certification should be required and that violation of that certification should be grounds for refusal to grant permanent authority **and/or** revocation of existing authority.

The INS has been vigilant over the years in preventing domestic U.S. companies **from** using drivers that are neither citizens or resident aliens for domestic **bus** service, but the

fact of the matter is that it is going to be a real challenge for INS to be equally effective in enforcing this prohibition on Mexican bus companies providing cross-border service. We urge FMCSA to take every possible action to assist INS **in** carrying out its statutory responsibility.

Another issue that needs to be addressed is the issuance of the final camioneta rules. Greyhound again urges FMCSA to immediately issue its final rules with regard to application of FMCSR to commercial passenger vans carrying 9 or more people, including the driver. Since commercial vans known as “camionetas” are likely to be a significant **part** of the influx of passenger-carrying commercial vehicles into the U.S., FMCSA should **finalize** its camioneta rules now so that the education and enforcement process can proceed efficiently with regard to all passenger-carrying commercial motor vehicles.

FMCSA issued its proposed camioneta rules **15** months ago. Since the subject of regulation of small passenger-carrying commercial vehicles had been discussed for many **years**, FMCSA was able to propose a well-balanced rule, which created very little controversy **in** terms of docket comments. DOT officials have made public statements since **last** Summer indicating that the **final** rule was about to be released. We urge FMCSA to issue the final camioneta rule immediately **so** that it can be **implemented** effectively along with the other NAFTA-related rules.

We also note that the FMCSA notices contain no indication that enforcement of the rules with regard to passenger carriers will receive special focus. We hope that there will be such focus. Greyhound is concerned that with all of the controversy surrounding Mexican trucks, FMCSA will **use** its new resources exclusively for truck enforcement activities. We believe that those resources also need to be applied to passenger carrier enforcement. As we have previously described, there are unique bus issues involving both the vehicle **and** the driver. We urge FMCSA to devote the resources necessary to deal effectively with the unique passenger carrier issues.

Greyhound is disappointed that FMCSA **has** rejected our **proposals** that the cross-border audit and application procedures be applied to Mexican-owned bus companies applying for U.S. domestic authority and that the rules should make it clear that cross-border authority will be issued to Mexican bus companies only to the extent that Mexico **has** agreed to grant such authority to U.S. companies.

On the first point, we continue to believe that Mexican-owned companies providing domestic service in the U.S. should be subject to at least the same initial requirements and **monitoring** procedures **as** Mexican-owned companies providing cross-border service into the U.S.. FMCSA indicates **that** it will be publishing a final rule for all new domestic applicants in the “near future”. Hopefully, that rule will be published and implemented before any domestic applications of Mexican-owned U.S. companies are processed.

On the issue of reciprocity, we acknowledge the point made by **FMCSA** that these rules do not “open the border” or lift the moratorium on the grant of cross-border operating authority. They merely set the procedures for ensuring safe operations. We appreciate the fact that DOT and **FMCSA** have worked diligently to ensure that U.S. carriers **are** given the **same** treatment in Mexico that Mexican carriers are given in the U.S. with regard to key issues such **as** terminal ownership and operation, multiple service points, and carriage of incidental package express. We urge that cross-border applications not be processed by DOT until the negotiations on the reciprocity issues are satisfactorily completed.

Finally, we urge **FMCSA** to coordinate with FTA and the **Office** of the Secretary to ensure that Mexican passenger carriers providing cross-border service comply with DOT’s rules implementing the Americans with Disabilities Act. DOT now requires that all buses acquired for fixed-route service must be equipped with a wheelchair **lift** and that on **an** interim basis, companies must provide wheelchair **lift** service on **48** hours notice.

We are confident that DOT intends that Mexican carriers providing cross-border service in the U.S. will be required to adhere to those same standards. The **first** step toward ensuring **ADA** compliance should be to utilize all available methods of advising Mexican carriers of these requirements. This would include the application materials **as well as** the various **seminars** and conferences **FMCSA** is holding. Second, cross-border carriers should be required to make the **same** ADA reports to DOT that U.S. carriers **are** required to make. We understand that **FMCSA** **has** now been given the responsibility for collecting these reports **so** **FMCSA** should also be responsible for ensuring that the cross-

border carriers are complying with the reporting requirements. Third, an appropriate enforcement mechanism should be in place, including ensuring that cross-border carriers are covered by the existing Department of Justice enforcement regime and making failure to comply with ADA during the provisional authority period grounds for denying a carrier permanent authority.

Greyhound appreciates the opportunity to comment on the **NAFTA** rules, and we look forward to continuing to work with FMCSA and NHTSA on implementation issues.

Respectfully submitted,

Greyhound Lines, Inc. by

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