

DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

**DOCKET NO. FMCSA-2001-11061, NEW ENTRANT SAFETY ASSURANCE
PROCESS: IMPLEMENTATION OF SECTION 210(B) OF THE MOTOR
CARRIER SAFETY IMPROVEMENT ACT OF 1999**

**Comments of American Bus Association in Response to Advance Notice of Proposed
Rulemaking**

October 26, 2009

The American Bus Association (ABA) appreciates this opportunity to respond to the FMCSA's (Agency) advance notice of proposed rulemaking (ANPRM) asking for comments on whether, and in what manner, FMCSA should require motor carrier applicants to pass a safety proficiency examination prior to their FMCSA registration. ABA supports the implementation of such a requirement for motor carriers of passengers.

The American Bus Association is the trade association for the private over-the-road bus and motorcoach industry. ABA is comprised of over 3500 member companies and organizations, including over 850 bus and motorcoach operator members. Each motorcoach operated by an ABA member is capable of carrying up to fifty-five passengers. The ABA's bus operator members provide all manner of transportation services to the public including scheduled, fixed route service, commuter service, charter and tour and airport shuttle service. In all the private motorcoach industry provides 750 million passenger trips each year, a number which surpasses the annual number of passenger trips provided by the United States domestic airline industry.

With these facts as a predicate there is no doubt that the ABA and its members are very concerned with the safety of the motorcoach industry. We applaud the decision of Secretary LaHood to make bus safety a personal initiative and we share his goal to make this safe industry even safer. Thus we are in full support of this ANPRM.

Over the last several years many hundreds of new entrants have entered the private bus industry often without understanding how to safely operate motorcoaches or the necessary financial resources to maintain them. Many are offering so called "curbside" service in major cities around the nation and many are new charter and tour companies both within the United States and in Mexico. The ABA believes that all these new entrants should be required to demonstrate their safety proficiency and financial viability before obtaining authority to operate in the U.S.

ABA also agrees that the examination should test the ability of an entrant to comply with the regulations as well as testing the applicant's knowledge of those

regulations. There is support for this view in the statute (49 U.S.C. Section 13902(a) (1)) as it requires the agency to register motor carriers that it finds “willing and able” to carry out the applicable regulations.

ABA further believes that an applicant should be required to demonstrate both that it knows with the FMCSA safety rules are and that it has systems in place that will enable it to comply with those rules. In sum, knowing the rules is vital to all carriers, but just as vital is the carrier’s ability to meet the requirements of the rules and to correct any violation of the rules.

In addition, ABA believes that an applicant’s ability to comply with the FMCSA safety rules (FMCSRs) is heavily influenced by the applicant’s financial abilities. ABA notes that a carrier without sufficient financial resources is likely to be an unsafe operator. That applicant’s safety systems will be jettisoned in favor of continued operations. The carrier’s lack of safety practices is not visible to the customers until it is too late. In order to prevent this result, FMCSA’s proficiency examination should include a requirement for a demonstration that the applicant has sufficient financial resources to comply with the FMCSRs.

Moreover, ABA contends that the Agency should include questions in the proposed examination to test the proficiency of passenger carrier applicants, particularly those providing scheduled service, with regard to compliance with the Secretary’s Americans with Disabilities Act regulations (49 CFR Part 37). Public Law 110-291, dated July 30, 2008, requires FMCSA to find that a passenger motor carrier applicant is “willing and able” to comply with DOT’s accessibility requirements for over-the-road buses prior to registering that applicant. The best method for determining a carrier’s ability to comply is through a proficiency examination. The examination should test an applicant’s understanding of the ADA, the act’s service and equipment regulations and that the applicant has a system in place that will enable it to comply with those regulations.

ABA notes that the agency’s federally chartered Motor Carrier Safety Advisory Committee (MCSAC) recently communicated to the FMCSA’s Acting Administrator endorsing a testing procedure for new carrier entrants. In a September 2, 2009 letter to Acting Administrator McMurray, the MCSAC chairman, David Parker, detailed the Committee’s recommendation that applicants for motor carrier operating authority be tested prior to the grant of any authority. The letter also states that new applicants should be required to show knowledge of the FMCSRs and basic safety management controls. ABA agrees with the MCSAC recommendations.

Furthermore, the letter sets forth additional testing elements, including knowledge of the penalties for failure to comply with the FMCSRs, the Comprehensive Safety Analysis (CSA) 2010 and the sixteen “automatic failure” violations of the Safety Audit. ABA agrees with these additional recommendations of the MCSAC and asks the Agency to give them serious considerations.

Also, ABA agrees with MCSAC that the FMCSA must ensure the integrity of the testing process. As an aid to the ensuring the integrity of the examination, ABA recommends that FMCSA periodically review the new applicant testing process to evaluate whether the process continues to serve educational and safety purposes. Finally, ABA suggests, again in concert with MCSAC, that the FMCSA determine the actual cost of the new entrant process, including any test, and that the cost be paid in full by the applicant at the time of the applicant's registration for a U.S. DOT number or for operating authority.

Thank you again for this opportunity.

Respectfully submitted,

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