

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
DOCKET NO. FMCSA – 2001-11061, RIN 2126-AA59:
New Entrant Safety Assurance Process
Comments of the Bus Industry Safety Council (BISC)
and the American Bus Association (ABA)
On the Notice of Proposed Rulemaking
February 20, 2006

The Bus Industry Safety Council (BISC) and the American Bus Association (ABA) appreciate the opportunity to comment on the Federal Motor Carrier Safety Administration’s (“FMCSA”) Notice of Proposed Rulemaking (“NPRM”) in the above titled proceeding. The ABA is the premier private bus industry trade association. The ABA is home to some 3500-member companies and organizations and approximately 800 bus operator companies. The bus operator members provide all manner of transportation services to the public including: fixed route scheduled service, charter and tour, airport shuttle and commuter services. The Bus Industry Safety Council (BISC) is an ABA supported organization composed of the safety, security and operations chiefs of private bus carriers and

organizations in the United States. ABA and BISC support the FMCSA’s proposed changes to the New Entrant Safety Assurance Process insofar as the recommended changes go. ABA and BISC believe that a preliminary review of any new entrant motor carrier should consider not only a company’s compliance with the Federal Motor Carrier Safety Regulations (“FMCSRs”) as well as their safety management practices, but also their overall adherence to all regulations governed by the Department of Transportation.

Over the past several years ABA and BISC have urged the FMCSA to enforce the provisions of 49 CFR Parts 37 and 38, the Americans with Disabilities accessibility regulations for “Over-the Road Buses”, on passenger carriers who flaunt compliance of their duties under rules. To this date FMCSA has claimed it has no role in enforcing the ADA regulations even though the rules specifically apply to private motor carriers, which the agency regulates. The FMCSA claims that only the United States Department of Justice has ADA enforcement power. On this point ABA and BISC disagree. The FMCSA enforces the annual ADA reporting requirement by over-the-road bus operators. It only makes sense that during a new entrant review the carrier’s ability to comply with the ADA provisions be considered as a part of its ability and willingness to abide by the Department of Transportation’s regulations. If the carrier is found to be unable or unwilling to meet

its legal duty that fact should be noted and scored against the carrier in any FMCSA evaluation. Furthermore, if it is found that the statements in a carrier's annual report concerning ADA compliance are not in accordance with the review data, an enforcement action for making a false statement should be pursued. The legitimate private bus industry stepped up to the plate after the ADA regulations were promulgated in 1998 and has been in compliance with the ADA. It is not reasonable that passenger carriers that knowingly are in non-compliance are allowed to continue operations by the agency responsible for motor carrier compliance with DOT rules.

The FMCSA's sister agency the Federal Highway Administration (FHWA) recently officially stated its official policy with respect to ADA accessibility standard enforcement role in a September 6, 2006 memorandum. [1] The memorandum makes it very clear that the agency has a distinct oversight role in ADA accessibility compliance. All grantees of FHWA funded highway projects must meet ADA accessibility requirements. Any failure to do so can mean withholding of funding and possible court action. ABA and BISC believe that the FHWA memorandum should stand as a model to the FMCSA vis-à-vis the agency's ability to enforce ADA rules.

The recent U.S. Court of Appeals for the DC Circuit decision in Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Administration, (No. 05-1436, December 19, 2006), disagrees with the FMCSA position that the agency is statutorily prevented from considering ADA compliance in any determination as to whether a motor carrier is fit, willing and able to operate in interstate commerce. The Court remanded the case back to the FMCSA further consideration vis-à-vis its compliance/enforcement role and its rationale for not enforcing the ADA.

In light of the Court's decision, and particularly the concurring opinion of Circuit Judge Tatel, ABA and BISC believe that the FMCSA should begin denying registration to and revoking the registration of passenger motor carriers that have shown that they are not willing and/or able to comply with the Secretary's accessibility regulations.

In conclusion, ABA and BISC believe that the above captioned NPRM presents a perfect opportunity for the FMCSA to articulate ADA compliance duties to new entrant passenger carriers. ABA and BISC

Note 1 - The FHWA memorandum can be review at the following website:

www.fhwa.dot.gov/civilrights/ada_memo_clarificationa.htm

further believes the FMCSA should make a carrier's willingness and ability to comply with the Part 37 and 38 provisions a part of the new entrant passenger carrier review process.

The ABA and BISC appreciates the opportunity to submit these comments in this very important rulemaking proceeding.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Clyde J. Hart, Jr.", written in a cursive style.

**Clyde J. Hart, Jr., Esq.
Senior Vice President, American Bus Association
Counsel, Bus Industry Safety Council
700 13th Street, N.W.
Suite 575
Washington, D.C. 20004
Phone: 202. 218-7228
Email. chart@buses.org**