



Comments Received by the Department of Consumer Affairs
on
Proposed Rules Amending Sightseeing Buses

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**Twin America Testimony on Proposed Sightseeing Bus Rules
October 5, 2020**

Thank you for your consideration of Twin America's testimony regarding the proposed amendments to the sightseeing bus Rules. Twin America provides hop-on/hop-off, open top double-decker sightseeing tours. Before the Covid-19 pandemic, our company served over one million customers annually and employed approximately 1,000 union employees (Transport Workers Union of America, A.F.L.-C.I.O Local 225; International Brotherhood of Teamsters Local 966; United Service Workers Union IUJAT, Local 1212, Jointly with Stationary Engineers, Firemen, Maintenance and Building Service Union Local 670, RWDSU, UFCW) in New York City.

For purposes of this proposed Rule, it should be clarified that the type of hop on/ hop off ("HOHO") sightseeing bus service that is provided by Twin America is considered "buses exclusively hired or engaged under a contract for a special trip or excursion." Therefore, these proposed Rule amendments being considered today do not apply to HOHO service and many of the comments that follow would be remedied by that clarification from the Department of Consumer and Worker Protection or Department of Transportation.

With respect to Section 2-211, (c) and (d), this requires fare posting both outside and inside of the bus. While there is no material amendment to this section, as we have stated previously, the requirements should not be applicable to HOHO service as there are multiple starting points and multiple product offerings with our type of service.

The requirement of "printed receipts" no longer represents customary business practice and is frankly outdated in light of the COVID-19 global pandemic and health guidelines. Additionally, the requirement of ticket refunds for buses not leaving "as scheduled", certainly has no application to HOHO services. This again illustrates the need to clarify and exempt this type of service from other standard operations when drafting these proposed amendments.

Consistent with the comments above, signage regarding intended departure time and the prohibition of picking up additional passengers after the trip starts should not and cannot apply to HOHO service as these requirements conflict with the very nature of their operation.

The provisions that prohibit drivers from operating the vehicles for more than 10 hours and that they must have 8 consecutive hours off-duty is again not necessary or applicable as HOHO driving is not continuous, and there are more breaks for the drivers. We believe the 12 hour limitation should remain in place.

The proposed Rules also require that drivers maintain a NYS license, however, some drivers for Twin America come from New Jersey and neighboring states. A commercial license should be sufficient.

Finally, the exception to when the driver should shut off the engine should be amended to include an allowance to build air pressure to release the breaks. The idling laws in the city do not reflect the best practices in New York State or account for bus technology.

In summary, many of our concerns with respect to the proposed sightseeing bus Rules do not seem to apply to the hop on/hop off service that Twin America provides. We would appreciate if the Department of Consumer and Worker Protection or the Department of Transportation could provide clarification. We are happy to discuss these issues with you further at your request.

Big Bus Tours – Comments

09/30/20 – Charles Nolen

On behalf of Taxi Tours, Inc. d/b/a Big Bus Tours, I'd like to submit the following comments on DCA's proposed amendment to the NYC sightseeing bus industry rules. Although not all of the comments I raise relate to substantive changes in the proposed amendments, I'd like to bring attention to issues in the industry that DCA could improve for consumers' benefit.

I. NYS Commercial Drivers' License

- a. Proposed Change: Sections 2-211(k), (q) and (b)(b) will require SSB drivers to hold New York State driver's licenses:
 - i. (5) The name and New York State commercial driver's license number of the driver.
 - ii. (q) Any person employed by the owner to operate a sightseeing bus [shall]must possess a New York State commercial driver's [chauffeur's] license which permits the person to operate a sightseeing bus[and a sightseeing bus driver's license].
 - iii. (bb) A sightseeing bus driver [shall]must carry his or her New York State commercial driver's license [chauffeur's license and his license as a sightseeing bus driver]at all times while engaged in his or her employment.
- b. *Comment: This change is made pursuant to LL 179 of 2018. However, while the legislation requires drivers to have a CDL, it does not state that this CDL must be from NYS. In fact, half of BBT 13 drivers hold CDL from New Jersey. We believe that New Jersey's regulation of CDLs is more than adequate to address any concerns. As it is not authorized by the legislation, we submit that this proposed change is unfair to drivers and against current employment laws.*

II. Physical Condition of Drivers

- a. Proposed Change: Delete provisions requiring sightseeing bus drivers to, among other things, possess English language skills, be of "sound physique", and have his or her "physical condition" examined by the Department. These provisions are outdated, do not increase safety, and are an unnecessary burden on drivers. (§§ 2-211(r) and (s)).
- b. *Comment: As reflected in federal and state regulation, BBT strongly believes that the physical condition of drivers does significantly affect passenger safety insofar as underlying health issues can pose risks to the safe operation of SSBs. While BBT does not oppose the DCA's proposal to eliminate §§ 2-211(r) and (s) (as they are duplicate of federal and state regulation), BBT believes that these required medical evaluations*

(under USDOT & FMCSA and the NYS “19-A program”) should be made available to DCA inspectors upon request.

III. Driver Hours

- a. Proposed Change: Change the number of hours a driver may operate a sightseeing bus to better align with federal regulations. Currently, the rules prohibit a driver from operating a vehicle for more than 12 hours in any 24-hour period. Federal regulations found in 49 C.F.R. § 395.5 prohibit operating commercial passenger vehicles for more than 10 hours following 8 consecutive hours off-duty. These proposed amendments would make the Department’s rules mirror the federal standard.
- b. *Comment: BBT applauds the DCA for this alignment with Federal Transportation regulations - DOT/FMCSA. Hours of service is a key item during any DOT audits (which our companies are subject to at any time) and something DCA should inspect as well under the “Worker Protection” program. There is no additional burden as companies are already required to keep payroll record for DOL/DOT.*

IV. No Refund Policies/Bus “Schedules”

- a. Rule 2-211(e): Unless the bus leaves as scheduled, the fare paid by the passenger must be refunded immediately upon request. This provision [shall]does not apply to buses exclusively hired or engaged under a contract for a special trip or excursion.
- b. *Comment: As currently written, this provision does little to protect consumers and almost never enables riders to obtain a refund. “Hop on, Hop off” buses, the most common type of SSB tour rides, do not operate by “departing times” or “as scheduled.” The only reference point customers have when a bus is late is the “frequency” that SSB business post – eg “our hop-on hop-off buses run every 10 mins”. In order to effect its purpose, the regulation should be changed to reflect this reality, as it is of very little use to consumers as written.*

Additionally, BBT believes that DCA should simply make it illegal for SSB companies to have a “zero refund policy” (which many operators use). With companies adopting “zero refund policies” it is very difficult for consumers to obtain refunds, in any circumstance, let alone when the buses are late. “Zero refund policies” must be banned entirely in order to operate sightseeing NYC under DCA license and “customers protection” program /311.

- c. Rule 2-211(h), 2-211(j): Each bus, except buses exclusively hired or engaged under a contract for a special trip or excursion, [shall]must have two conspicuously displayed signs, showing the time the bus is scheduled to leave; one such sign [shall]must be hung

on the windshield in the interior and the other on the outside at a conspicuous point near the door where the passengers enter, which signs [shall] must be removed upon the departure of the bus. These signs [shall] must read as follows: "This bus leaves (specifying time) sharp or money refunded upon request." The figures on the signs must be at least 3 inches high and the signs must be at least 13 inches long and 9 inches wide.

...

(j) A sightseeing bus, except buses exclusively hired or engaged under a contract for a special trip or excursion, after leaving its starting point, [shall] must not receive additional passengers between such place of starting and its ultimate destination

d. Comment: These two provisions are ineffective and problematic for the same reason as above (IV(b)). Since "hop-on hop-off" SSBs do not run on schedules, but frequency, these provisions do not help consumers as they should.

V. Non-Solicitation Zones

a. Rule 2-221: (f) The owner, his or her agent, operator, sightseeing bus driver, sightseeing bus guide or lecturer, [shall] must not charge or attempt to charge, any passengers a sum greater than set forth in the rate schedule. No additional charges [shall] must be made, solicited, collected or permitted to be made, for entering any building or premises or for any purposes whatsoever, during the trip or tour or the termination thereof.

b. Comment: BBT would like to draw attention to the persistent violations of this rule that occur every day in NYC. Operators consistently impose additional charges not allowed by law, such a "local transportation fee", a "credit card fee", a "cash fee", "reservation fees", "handling and processing fees". However, these violations are rarely, if ever, prosecuted. BBT would like to see this provision more regularly enforced and that a penalty schedule be established (including potentially license revocation) to punish operators (not just their ticket sellers) for consistent violations.

Additionally, there are constant issues caused by ticket sellers selling in non-solicitation zones like Duffy Square / Times Square Bow Tie (outside any "green zones" from 47th street south to 42nd street north - between Broadway and 7th avenue – pedestrian plaza program from DOT and Times Square Alliance).

DCA FULLY controls and licenses street selling activity by licensing each seller, but no penalty is set for abusing non-solicitation zones. DCA should enforce these non-solicitation zones by holding operators (as well as ticket sellers) liable for violations, including potential license revocation. In addition, BBT strongly recommends that DCA license holders be limited to selling and soliciting within the direct vicinity of an authorized stop of their operator. BBT would like to see a full penalty schedule for all items listed in "inspection checklist: ticket seller – individuals" (requirement #11)

VI. Printed Receipts

- a. Rule: (e) The owner, or his or her agent, [shall] must deliver to all passengers upon payment of fare, a printed receipt indicating the amount of fare paid, the description or designated number of the trip and the time scheduled for the bus to leave the starting point. This receipt [shall] becomes the property of the passenger and [shall] must not be collected or taken from him or her.
- b. *Comment: BBT would like the DCA to clarify that the delivery of digital receipts (not just “printed receipts” as the rule states) satisfies this regulation as circa. 70% of our ridership is buying online or digitally and receive dematerialized receipts. BBT has been for year working toward reducing the amount of papers printed and now with COVID, the amount of direct interactions with customers (paper exchange, pen, signature etc. This new burden is unjustifiable by the DCA in today worlds of contactless credit cards, API integrations, touchless experience customers are purposely looking for.*

VII. Operation & Maintenance Records

BBT would like to take this opportunity to ask DCA to consider their rules regarding operators maintaining records of operation and maintenance of SSBs. These regulations impose a significant burden and cost on operators and are duplicate of (or more burdensome than) regulation by NYS DOT. Below are some provisions that BBT would like DCA to review:

- a. Rule 2-211.1(a)(1)(i): ...each major component of the drive train, and all pollution control equipment required to be installed on such vehicle; (ii) The current status of "life-limited" parts of the drive train and pollution control equipment installed in a vehicle.
 - i. *It is not entirely clear which parts are within the “drive train and pollution control” documentation that must be created or duplicated. Additionally - NYSDOT already perform physical inspections, road tests and smoke tests on all vehicles in operation every 6 months (with mandatory min. success rate) – inspectors then issue a default list (if any) graded by gravity to include immediate revocation of roadworthiness medallion. The smoke test validates our emission standards every 6 month – and our adherence to DEP Local law 41 already mandates significant reporting on mileage emissions to DEP EPA. All relevant documentation related to repairs and main parts replacement are already inspected and signed off by DOT during same mandatory inspections.*
 - ii. *It feels more appropriate to rely on these two agencies (DOT and DEP) expertise and demand the operators to produce evidence of compliance to their existing laws already regulating our industry. It is not safe to rely only on manufacturer recommended lifetime as parts deterioration depends on the speed, the mileage, the overall driving conditions vehicles are exposed. As an example, the*

transmission system of a bus averaging 5mph in Manhattan is more exposed than a system mounted on a vehicle build for interstate – longer – faster routes ie. Megabus.

- iii. *The record keeping and financial burdens as described in this intro are in excess of all Federal Transportation regulations.*

- b. Rule 2-211.1(a)(1)(ii): ...All parts on the vehicle that are not "life-limited" by the original equipment manufacturer [shall] must be deemed "on-condition" replacement;
 - i. *This is already certified by NYSDOT every 6 months through a complete under-carriage inspection (DOT inspector visit on site) producing certification documents available at all times "MC-300" authorizing the vehicles to operate for the next 6 months and only 6 months until next mandatory DOT inspection*
 - ii. *We encourage the DCA to use the certifications already in place and ask operators to demonstrate compliance by producing MC300 certificates for all buses with SSB DCA license.*
 - iii. *Items inspected during NYSDOT bi-annual vehicle certification include everything from safety to performance of the vehicle on and off road, the interior compliance in markings, safety exits, medical kits extinguisher etc. the internal records of preventive maintenance performed by date and signed, the daily inspection books produced by the drivers, any work orders produced since the last DOT inspection are all reviewed and signed off by DOT semi-annually*

- c. Rule 2-211.1(a)(1)(iv): The current inspection status of the vehicle, drive train and pollution control equipment, including the time since the last inspection required by the inspection program under which the vehicle and its components are maintained.
 - i. *See above – NYSDOT semi-annual inspection certificates including smoke/emission test – semi- annual mandatory inspections.*

- d. Rule 2-211.1(a)(2) Records of the maintenance, preventative maintenance, and alterations, and records of the scheduled inspections to be performed pursuant to the manufacturer's recommended inspection and maintenance schedule for the vehicle, drive train and pollution control equipment. Such records [shall] must include: (i) A description of the work performed. (ii) The date of completion of the work performed. (iii) The signature and printed name and employee identification number of the person approving the satisfactory completion of the required maintenance and/or inspection.
 - i. *This is already certified by NYSDOT every 6 months through full under carriage inspection (DOT inspector visit on site) producing certification documents available at all times "MC-300" authorizing the vehicles to operate for the next 6 months and only 6 months until next mandatory DOT inspection*
 - ii. *We encourage the DCA to use the certifications already in place and ask operators to demonstrate compliance by producing MC300 certificates for all buses with SSB DCA license.*
 - iii. *Items inspected during NYSDOT bi-annual vehicle certification include everything from safety to performance of the vehicle on and off road, the interior*

compliance in markings, safety exits, medical kits extinguisher etc. the internal records of preventive maintenance performed by date and signed, the daily inspection books produced by the drivers, any work orders produced since the last DOT inspection are all reviewed and signed off by DOT semi-annually

Vehicles files are available at all time to DCA' inspectors - BBT stresses the fact that documentations requests as extensive as this one are not guaranteeing safety anywhere to the extent not provided by NYSDOT semi-annual on & off road inspections resulting in the MC300 medallion and defect report deliverance. We believe in DOT expertise to regulate our vehicles and is eager to share those vehicles inspections reports with the DCA every 6 months.

- e. Rule 2-211.1(a)(3) A copy of the manufacturer's written recommendations prescribing the schedule for the maintenance to be performed, and for conducting periodic inspections and performing periodic maintenance and repair to keep the vehicle, drive train and pollution control equipment operating at normal operating efficiency.
 - i. *It is not always considered as safe to rely on manufacturer recommended lifetime as parts deterioration depends on the speed, the mileage, the overall driving conditions vehicles are exposed. As an example, the transmission system of a double decker bus averaging 5mph in Manhattan with 40 stops along the route is more exposed than a system mounted on a vehicle build for interstate – longer – faster routes ie. Megabus.*

- f. Rule 2-211.1(b), (c): (b) The records for each licensed sightseeing bus [shall]must be kept in a paginated volume, with the vehicle identification number and the license number included on the first page. All entries [shall]must be dated and included in chronological order.
 - (c) The required records [shall]must be retained for at least three years after earliest entry in the record on each bus. The records [shall]must be kept at the office of business which holds the license to the bus, and [shall]must be made available on demand to personnel of the Department at such office, or [shall]must be produced at the office of the Department within five days after demand therefore is received by such owner.
 - i. *For all reasons explained above we recommend the DCA to rely on the DOT to keep on certifying each vehicle and its maintenance records semi-annually*
 - ii. *The penalty DCA imposes for not complying with any of the recordkeeping stipulations "in paginated volume" is not reflecting the significant effort and financial impact this regulation has on sightseeing companies*

Respectfully submitted,

Charles Nolen

General Manager – Big Bus Tours NY

TopView Sightseeing
Comments on DCA Proposed Amendments to Rules Governing Operations of
Sightseeing Buses
October 5, 2020

Good morning and thank you for the opportunity to submit comments regarding the Department of Consumer Affairs (DCA) proposed rules to update and modernize regulations regarding sightseeing buses. On behalf of TopView Sightseeing, which has operated hop on/hop off sightseeing buses in New York City since 2006, I welcome these proposed rule changes and thank the Department for eliminating onerous or out-dated provisions.

As the sightseeing industry attempts to recover from the devastating impact of the COVID-19 pandemic and resulting economic shutdown, we appreciate the City's assistance in making our operations more efficient. In that spirit, I would like to propose additional amendments that will allow us to provide a better service while keeping customers and our employees safe.

First, the current rules specify that customers must be provided with a printed receipt upon payment of the fare. Beginning before the pandemic, but especially in the last few months as we've restarted tours, customers increasingly have expressed a preference for an electronic receipt. Not only does that reduce contact and potential spread of the coronavirus, an electronic receipt is less likely to be lost or thrown away. We urge DCA to allow sightseeing bus companies to provide an electronic receipt upon request by the customer in lieu of a paper receipt.

Second, the provisions in the existing rules requiring buses to display an exact time of departure are not practical for hop on/hop off buses. The time it takes to complete a hop on/hop off route is highly variable depending on the time of day and amount of traffic the bus encounters. Unlike a set tour, with a set start time and estimated duration, hop on/hop off tickets are purchased for a period of time (i.e. 24 hours or a 3-day pass) that allows the customer flexibility to see the city. Clarifying that these rules apply to tour buses only, not hop on/hop off routes, will eliminate confusion and the potential for customers to request refunds if a single bus is stuck in traffic.

Finally, the current rules prohibit TopView and other sightseeing companies from installing passive ads on screens or stickers that inform customers of opportunities to extend or upgrade their tickets. Our employees are often asked these exact questions, which can become burdensome at peak times. Allowing passive ads, without sound, would allow customers to receive answers to their inquiries quickly and efficiently.