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Docket Clerk,
U.S. DOT
Dockets Management Facility,
Room PL-401,
400 Seventh Street, SW.,
Washington, DC 20590-0001.

Docket No FMCSA-2000-7017 - 7

April 4, 2001

Dear Mr. Minor:

The Association of Commuter Transportation (ACT) is writing to express its views concerning the FMCSA request for comments on Safety Requirements For Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce. (Docket No FMCSA-2000-7017)

Specifically, ACT is requesting language that would clearly define a commuter vanpool and secure an exemption from registration and safety reporting requirements.

The ACT membership is comprised of representatives from government, private corporations, universities, transit operators and vanpool management companies all of whom share a common goal of reducing congestion and improving environmental quality by reducing vehicle emissions while promoting alternative modes of commuter transportation.

A clear definition of a commuter vanpool and a clear exemption for "not for hire" commuter vanpools from registration and safety reporting requirements is important for our members to carry out ACT's mission statement of reducing congestion and improving environmental quality by reducing vehicle emissions while promoting alternative modes of commuter transportation.

In the past, our membership has encountered difficulties recruiting participants for commuter vanpool programs because many potential participants fear that the lack of clarity defining "for hire" will subject them to arduous

registration and safety reporting requirements. Commuter Vanpool programs are predominately voluntary and any excess requirements severely handicaps these programs ability to recruit new participants and succeed.

It is ACT's belief that there is a clear regulatory history that would enable the FMCSA to grant commuter vanpools a clearly defined exemption from registration and safety reporting requirements.

In the Final Regulation Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements For Operators of Small Passenger-Carrying CMVs (Docket FMSCA-97-2858 and 99—5710 (formerly FHWA 97-2858 and 99-5710)), released on the same day, January 11, 2001, as the NPRM (Docket No FMCSA-2000-7017) the FMCSA states that it will continue to use the broader interpretation of for-hire transportation. The Final Regulation states that “the agency stands by its previously stated position that the phrase “for compensation” is synonymous with “for hire,” as it is stated in the April 4, 1997 (62 FR 16370, 16407 interpretation of “for hire motor carrier”.

The Regulatory Guidance states:

The term “for-hire motor carrier” as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

Throughout the rulemaking process, the FMCSA has maintained that it is not the intent to regulate commuter vanpools. The purpose of the rulemakings and subsequent Final Regulations has been to make safety regulations applicable to: “(1) Commercial vans referred to as “camionetas” and (2) those commercial vans operating in interstate commerce outside of the commercial zones that have been determined to pose serious safety risks.”

It is ACT's belief that Commuter vanpools do not fall in the above criteria. ACT requests a clearer definition from the above groups to avoid confusion and potential misrepresentation of future commuter vanpool programs.

In the NPRM (Docket No FMCSA-2000-7017), the proposed rule explicitly states, in the FARS Data section, which addresses accident involvement of vans designed or used to transport between 9 and 15 passengers that “*the agency attempted to separate fatal*

accidents involving commuter vanpools transporting individuals to and from work from accidents likely to involve motor carriers. This was done because the agency does not consider most vanpools to be for hire passenger carrier operations.....”

In addition, the FMCSA defines, in the NPRM (Docket No FMCSA-2000-7017), Direct Compensation as payment made to the motor carrier by the passengers or individual acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.”

Also, the NPRM (Docket No FMCSA-2000-7017) defines “for compensation” or “for hire” as it pertains to commuter vanpools. Specifically, the NPRM states in the For-Hire Transportation-Direct versus Indirect Compensation that:

“the agency does not believe the Congress intended to impose safety-related operational regulations on business entities providing interstate passenger transportation services that are incidental to their primary, non transportation business.”

It is the interpretation of ACT that the FMCSA views that a distinction be made between businesses with a primary objective of providing transportation verse a provider of transportation where the service is incidental.

ACT agrees with the FMCSA interpretation that a commuter vanpool would be transportation service that is incidental to businesses. The proposed language ACT would like the FMCSA to strongly consider adopting is as follows:

“Vanpooling is a generic name for commuter transportation that has as its aim higher vehicle occupancy. Typically, vans used for vanpooling are six to fifteen passenger vehicles that transport people either from their homes to work or from one work site to another. The drivers most often are volunteers who are the peers of the other passengers. Vanpooling differs from livery in that in livery 1) There is no on-going continuous relationship between the passengers (in vanpooling the same people ride each day); 2) The principal motive is to make a substantial profit from the operation (in vanpooling it is either a “break-even” operation or there is a small profit (certainly not enough to constitute a livelihood)); 3. Operations are continuous while the vehicle is in service (in vanpooling there is substantial “down time”). Therefore, since vanpooling differs substantially from livery, it should not be regulated through the normal statues governing public transportation.”

In addition, ACT would like to take this opportunity to request that the FMSCA embrace the language that the Treasury Department (IRS) adopted when dcfining Commuter Vanpool trips:

The IRS took into consideration ACT’s comments regarding the definition of a Commuter Highway Vehicle. The final IRS regulation was released on January 11, 2001 in the Federal Register (Reg-113572-99) (65 FR 4388)

Specifically, ACT argued:

ACT has taken into consideration the definition concerning vanpool eligibility. Specifically, ACT is troubled by the language in the proposed Rulemaking that states “on trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).” Are “trips” defined as individual trips or multiple trips? And over what period of time?

ACT recommends that the number of occupants in a vanpool should be verified on an annual basis. We believe that this is important because of the varying work schedules of vanpool occupants. For example, a vanpool program could contain a mix of federal and private sector employees. In any given month, federal holidays could prevent a vanpool from sustaining the required occupancy. If verified on annual basis, it is ACT’s belief that occupancy numbers, taking into consideration, holidays, sick days, weather conditions or any unexpected occurrence will even out over the course of a full year.

The Final IRS Regulations now state (A-2) Transportation in a commuter highway vehicle is:

transportation provided by an employer to an employee in connection with travel between the employee’s residence and place of employment. A commuter highway vehicle is a highway vehicle with a seating capacity of at least 6 adults (excluding the driver) and with respect to which at least 80 percent of the vehicle’s mileage for a year is reasonably expected to be:

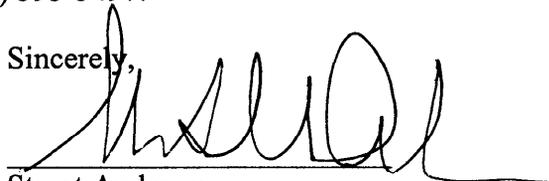
- (a) For transporting employees in connection with travel between their residences and their place of employment; and
- (b) On trips during which the number of employees transported for commuting is at least one half of the adult seating capacity of the vehicle (excluding the driver).

ACT requests that the FMCSA adopt the aforementioned Internal Revenue Code definition language in the forthcoming final regulations.

In conclusion, the Association for Commuter Transportation strongly urges the FMCSA to adopt the definition of a commuter vanpool (or language similar) that ACT as submitted as part of the final regulation.

If I can be of any further assistance or answer any additional questions, please do not hesitate to contact me at (202) 393-3497.

Sincerely,



Stuart Anderson,
Executive Director
Association for Commuter Transportation (ACT)