

considered. They included making the safety-related operational FMCSRs applicable to: (1) All motor carriers operating small passenger-carrying CMVs in interstate commerce for compensation (direct and indirect), irrespective of the distance traveled; (2) all motor carriers operating small passenger-carrying CMVs in interstate commerce that are *directly compensated*, irrespective of the distance traveled; and (3) only those motor carriers operating small passenger-carrying CMVs across the U.S.-Mexico border for compensation. FMCSA believes the alternative being implemented through this final rule will improve the safety performance of for-hire motor carriers that pose a serious safety risk to their customers and the traveling public, while avoiding to the greatest extent practicable, the imposition of Federal safety regulations on van operations that are local in nature and appear to pose a significantly lower level of safety risk.

Summary of Proposed Rulemaking

In the NPRM (66 FR 2767, January 11, 2001), the FMCSA requested public comment on making the safety regulations in parts 390, 391, 392, 393, 395 and 396, and the safety fitness rules in part 385, applicable to motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, when they are directly compensated for such services and the transportation of any passenger covers a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers). The agency made clear that the operators of these small passenger-carrying vehicles would be subject to the same safety requirements as motorcoach operations, with the exception of the commercial driver's license, and controlled substances and alcohol testing regulations.

Commenters

FMCSA received 29 comments in response to the NPRM. The commenters were: Academy Bus Co. (Academy); Advocates for Highway and Auto Safety (Advocates); AFL-CIO Transportation Trades Department (AFL-CIO); Amalgamated Transit Union (ATU); American Bus Association (ABA); the Association for Commuter Transportation (ACT); California Highway Patrol (CHP); Colorado Department of Public Safety (CDPS); the Commercial Vehicle Safety Alliance (CVSA); Farmworkers Justice Fund (FJF); Greyhound Lines, Inc. (Greyhound); League of United Latin American Citizens (LULAC);

Pennsylvania Bus Association (PBA); Mr. Alan Jay Pomerance, a concerned citizen; National Association of State Directors of Pupil Transportation Services (State Directors); National Automobile Dealers Association (NADA); National Council of La Raza (NCLR); National Limousine Association (NLA); National School Transportation Association (NSTA); New Jersey Department of Transportation (NJDOT); Taxicab, Limousine & Paratransit Association (TLPA); Texas Bus Association (TBA); Texas Department of Public Safety (TXDPS); United Motorcoach Association (UMA); and four college students.

TXDPS, PBA, LULAC, NCLR and FJF fully supported the proposal as published. ABA, TBA, Greyhound, Academy, CHP, CDPS, CVSA, Advocates, ATU, NJDOT, AFL-CIO, NSTA, State Directors, Mr. Pomerance, and the four students were in favor of the FMCSA's rulemaking, although they generally believed that more remains to be done to protect public safety and help level the playing field. Advocates and UMA opposed the exclusion of small passenger-carrying vehicle operations within the proposed 75 air mile range. NLA, TLPA, NADA, and ACT, on the other hand, opposed making the safety regulations applicable to their members.

Discussion of Comments and FMCSA Responses

Direct Compensation Criterion

Eight commenters opposed the direct compensation criterion for determining the applicability of the safety requirements. Five commenters supported making safety-related operational regulations applicable to vehicles designed or used to transport between 9 and 15 passengers when the company holds itself out to the public as providers of transportation services, or when a company is primarily engaged in providing surface transportation. ABA suggested that the agency use the phrase "primarily engaged in for-hire transportation." ABA points out that in applying requirements of the Americans with Disabilities Act for over-the-road buses, DOT used the terminology "primarily engaged in transportation" in 1998 regulations (63 FR 51670, 51692; September 1998).

Greyhound Stated

Greyhound's major concern is that by limiting applicability of the FMCSRs to smaller passenger-carrying commercial motor vehicles, the operators of which are "directly compensated" for their transportation

services, FMCSA may be creating unnecessary confusion and an inappropriate loophole. We agree that only carriers that are "compensated" for transportation be regulated, it is the modifier, "directly" that causes the potential problem.

ATU Stated:

[W]e urge the agency to then adopt one of the alternative definitions provided by Greyhound Lines, Inc. in its comments to the proposed rule. Specifically, Greyhound suggests that the regulations be applied to transportation for compensation in smaller vehicles provided by entities that either "hold themselves out to the public as providers of transportation services" or "are primarily engaged in providing surface transportation." We prefer the latter formulation, but either one would provide a clearer and more precise definition of the regulated class than the "directly" compensated test, which would allow organizations to avoid regulation by masking the transportation fee within a "total package charge" that includes other incidental services.

NJDOT, CHP, and CDPS generally contend that the proposed definition will lead to additional regulatory and enforcement problems.

Response: FMCSA agrees with commenters that the rule should focus first and foremost on motor carriers of passengers that offer their services to the general public. However, the agency disagrees with commenters' assertions that the term "primarily engaged in providing surface transportation" is a better criterion for determining the applicability of the FMCSRs to these motor carriers. The term "primarily engaged in providing surface transportation" requires that both the motor carrier and enforcement officials consider all of the motor carrier's business activities before determining whether the safety regulations apply. Each entity that operates small passenger-carrying vehicles for compensation in interstate commerce, regardless of the distance traveled, is considered a motor carrier, as defined in 49 CFR 390.5. Motor carriers and enforcement officials would have to determine whether the percentage of business that concerns the for-hire transportation of passengers is sufficient for the motor carrier to be primarily engaged in providing surface transportation. This may vary from season to season, or year to year. Generally, enforcement opportunities would be limited to carrier visits, unless enforcement officials conducting destination inspections or similar activities knew, or had reason to believe, that the entity responsible for the operation of the vehicle was primarily engaged in providing surface transportation of passengers.