ATTACHMENT E

(Retyped 8/29/06 to be made ADA compliant. Original content and format were retained.)

Charlie Gauthier
Executive Director
National Association of State Directors of Pupil
Transportation Services
6928 Rock Hill Road
The Plains, Virginia 20198-1916

Dear Mr. Gauthier:

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), Pub. Law 109-59. I am writing to convey to you some important information concerning provisions in the Act related to the purchase and use of 15-passenger vans.

The National Traffic and Motor Vehicle Safety Act, as amended, has long prohibited motor vehicle dealers and others from selling or leasing school buses that do not comply with all applicable federal motor vehicle safety standards. Under NHTSA's regulations, a bus is defined as a motor vehicle "designed for carrying more than 10 persons," including 15-passenger vans. A school bus is defined as "a bus that is sold, or introduced into interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation." The vehicle type is stated on the certification label that is typically affixed to the driver's door or door jam.

A section of the Standards and Compliance chapter of the Motor Vehicle Safety Act prohibits the sale or lease of a non-complying school bus and persons violating this prohibition are subject to substantial civil penalties. SAFETEA-LU (Section 10309) amends this section of the Safety Act to prohibit schools or school systems from purchasing or leasing a new 15-passenger van "if it will be used significantly by or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15-passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses..." NHTSA's definition of multifunction school activity bus**,** an additional vehicle type (see paragraph above)**,** states that the term "means a school bus whose purposes do not include transporting students to and from home or school bus stops." The term 15-passenger van is defined in Section 10309 as "a vehicle that seats 10 to 14 passengers, not including the driver." This provision does not apply to purchases or leases under contracts executed prior to August 10, 2005.

You also should be aware that Section 10309 of SAFETEA-LU amends the Safety Act's civil penalty provisions for violations by dealers and others related to school buses and adds civil penalties for violations of the new prohibition on 15-passenger vans. Under the new law, a single violation carries a civil penalty of up to $10,000, and the maximum civil penalty for a related series of violations is $15,000,000.

You can find the full text of these provisions under House Bills, H.R. 3 [PL 109-59, Title X, Section 10309 (pp. 800-801)] at http://thomas.loc.gov/bss/d109/d109laws.html. If you have any questions concerning these provisions, please contact James Jones, Office of Vehicle Safety Compliance (NVS-224), National Highway Traffic Safety Administration, 400 7th Street SW, Washington, DC. Phone: (202) 366-5294 and FAX: (202) 366-3081.

Sincerely yours,

Ronald L. Medford
Senior Associate Administrator
for Vehicle Safety

Safe, Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU)
Public Law 109-59

Signed into law by the President of the United States on August 10, 2005

SEC. 7259. 15-PASSENGER VAN SAFETY.

(a) Testing-

(1) IN GENERAL – The Secretary of Transportation shall require the testing of 15-passenger vans as part of the rollover resistance program of the National Highway Traffic Safety Administration's new car assessment program.

(2) 15-passenger van defined- In this subsection, the term '15-passenger van' means a vehicle that seats 10 to 14 passengers, not including the driver.

(b)Prohibition of Purchase, Rental, or Lease of Noncomplying 15-passenger Vans for School Use-Section 30112(a) is amended—

(1) by inserting '(1)' before 'Except as provided'; and

(2) by adding at the end the following:

'(2) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter; a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15-passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase or lease of a 15-passenger van under a contract executed before the date of enactment of the Surface Transportation Safety Improvement Act of 2005.'

(c) PENALTY- Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

'(2) School buses-

'(A) IN GENERAL- Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be $10,000 in the case of—

'(i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or

'(ii) a violation of section 30112(a)(2) of this title.

'(B) RELATED SERIES OF VIOLATIONS- A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is $15,000,000.'.

ATTACHMENT F

(Retyped 1/4/06 to be made ADA compliant. Original content and format were retained.)

AUG 3 1998

Terry L. Voy, Consultant
School Transportation
Iowa Department of Education
Grimes State Office Building
Des Moines, Iowa 50319

Dear Mr. Voy:

This responds to your request for an interpretation regarding the use of 12 to 15-passenger vans by child day care providers to drop off and pick up school children from school. You asked three questions, which are addressed below:

> **Question 1. Do the federal motor vehicle safety regulations relating to the sale and lease of school buses apply to vehicles [new buses] sold or leased to publicly or privately owned day care facilities who use these vehicles to transport school-aged children to and from school as a part of their day care services?**

As explained below, the answer depends on whether the new buses will be "significantly" used to transport school children "to or from" school or related events. If the bus will be used for such purpose, a school bus must be sold, regardless of whether such transportation is provided by a school or a day care facility.

The National Highway Traffic Safety Administration (NHTSA) has the authority to regulate the first sale or lease of a new vehicle by a dealer. Our statute at 49 U.S.C. §30112 requires any person selling or leasing a new vehicle to sell or lease a vehicle that meets all applicable standards. Under our regulations, a "bus" is any vehicle, including a van, that has a seating capacity of 11 persons or more. Our statute defines a "school bus" as any bus which is likely to be "used significantly" to transport "preprimary, primary and secondary" students to or from school or related events (emphasis added). 49 U.S.C. §30125. A 12 to 15-passenger van that is likely to be used significantly to transport students is a "school bus."

If the new bus is sold or leased to transport students (e.g., leased on a regular or long-term basis), it is a "school bus" and must meet NHTSA's school bus standards. Conventional 12 to 15-passenger vans are not certified as doing so, and thus cannot be sold or leased, as new vehicles, to carry students on a regular basis.

Whether the buses are "used significantly" to transport the students is an issue that the agency finds appropriate to resolve case-by-case, focusing on the intended use of the vehicle. In a June 1, 1998, letter to Cox Chevrolet, we addressed the situation where students were being picked up from school "five days a week." In that letter, we stated: "In our view, such regular use of the vehicle to pick up students 'from school' (even if the same students are not transported each day), would constitute a 'significant' use of the vehicle." We also informed the dealer that when it leases new buses to the dance studio for use in transporting students "from school," it must lease buses that meet the Federal school bus standards.[1] We also believe that regular use on alternate days would be "significant."

The requirements for the use of a motor vehicle are determined by State law, so requirements of each State should be consulted to determine how students must be transported to and from school or school-related activities. In addition, NHTSA believes that school buses are one of the safest forms of transportation in this country, and therefore strongly recommends that all buses that are used to transport school children be certified as meeting NHTSA's school bus safety standards. Further, using 12 to 15-passenger vans that do not meet the school bus standards to transport students could result in increased liability in the event of a crash.

Question 2. If your response to question #1 above is in the affirmative, does the use of a vehicle owned or leased and operated by a day care provided for to and from transportation constitute "significant use" as the phrase is used in the statutory definition of a school bus?

I believe we answered this in response to Question 1. We may consider use of the bus for pupil transportation "significant" under our school bus regulations, even if the provider is a day care facility.

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[1] As you may be aware, in interpretation letters of May 29, 1991 and September 6, 1991 to Ms. Vel McCaslin, Director of Grace After School, an after school care program, NHTSA stated that buses used to transport children to Ms. McCaslin's program would be "school buses" only if the program is a "school or school-related event." The September 1991 letter indicated that the program picks up children from three area schools and brings them to the church on a "daily" basis. These letters concluded that Grace After School did not appear to be a "school," that the program was not a "school-related event" and that NHTSA's school bus requirements thus did not apply. NHTSA has recently reexamined the two letters to Ms. McCaslin. Upon reconsideration, we have decided that the letters did not focus enough on the fact that the buses were being used to transport students "from school," as specified in 49 U.S.C. §30125. Therefore, to the extent that the May 29, 1991 and September 6, 1991 letters to Ms. McCaslin are inconsistent with this letter, they are hereby superceded.

Question 3. If questions #1 and #2 above are answered in the affirmative, do the same federal sanctions apply to dealers who sell or lease vehicles of [more than 10] capacity to day care providers for to and from school transportation purposes?

The answer is yes, a dealer that sells or leases a noncomplying vehicle to a day care facility in violation of 49 U.S.C. Section 30112, would be subject to the same penalties that a dealer would face when selling noncomplying vehicles to a school. NHTSA's regulations at 49 CFR §576.6, Civil penalties for violations of specified provisions of Title 49 of the United States Code, subsection (a) states:

> *(a) Motor Vehicle Safety.* A person that violates any of sections 30112 ... is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is $880,000.

I hope this information is helpful. If you have any further questions, please feel free to contact Dorothy Nakama at this address or by telephone at (202) 366.2992.

Sincerely,

John Womack

Frank Searles, Jr.
Chief Counsel