

## **Requirements for Operators of Small Passenger-Carrying CMVs**

### **What are the rulemaking notices about?**

The FMCSA published two rulemaking notices concerning small passenger-carrying commercial motor vehicles (CMVs), a final rule which takes effect on February 12, 2001, and a notice of proposed rulemaking requesting public comment on additional requirements for operators of these CMVs.

The final rule amends the FMCSA's definition of "commercial motor vehicle" (CMV) to include vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation, and requires operators of these vehicles to file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register.

The NPRM proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating small passenger-carrying CMVs in interstate commerce comply with the safety regulations (e.g., driver qualifications; vehicle equipment; hours of service; inspection, repair and maintenance) when they are directly compensated for such services, and the transportation of any of the passengers covers a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers).

### **Why did the FMCSA take these actions?**

The FMCSA has taken these actions in response to provisions of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The FMCSA believes these actions must be taken to learn more about the operational safety of all motor carriers operating small passenger-carrying vehicles for compensation. The three requirements in the final rule will help the agency compile information on the number of motor carriers operating small passenger-carrying vehicles for compensation, the locations of their principal places of businesses, the number of vehicles operated, and the number of drivers employed.

With the enactment of the MCSIA, the agency is required to make the safety-related operational FMCSRs (e.g., driver qualifications, hours of service, inspection, repair and maintenance, etc.) applicable to certain operations of small passenger-carrying vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation in interstate commerce. Namely, the small passenger-carrying CMV operations that must be regulated under section 212 of the MCSIA include what the Congress referred to as "camionetas" (i.e., vans that transport passengers across the U.S.-Mexico border) and those operations outside of commercial zones that have been determined to pose serious safety risks.

**How many motor carriers could be affected by these rulemakings?**

The FMCSA believes the final rule could affect up to 14,000 interstate motor carriers of passengers based on information submitted to the rulemaking docket. The agency estimates that the NPRM would affect approximately 1,650 for-hire motor carriers of passengers currently covered by Federal rules concerning operating authority and financial responsibility.

**What is the difference between the group of motor carriers that are covered by the final rule, and the group of motor carriers that would be covered by the NPRM?**

The final rule is applicable to all motor carriers of passengers operating CMVs designed or used to transport 9 to 15 passengers (including the driver), for compensation, in interstate commerce. No distinction is made between businesses that are primarily engaged in the for-hire transportation of passengers and those that are primarily engaged in a non-transportation related enterprise. The agency estimates that there are approximately 14,000 motor carriers in this category.

The NPRM would be applicable to motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver), 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 estimates that there are approximately 1,650 motor carriers in this category. Therefore, the NPRM would be applicable to a small segment of the carriers covered by the final rule.

**Why was a distinction made between the applicability of the final rule and the NPRM?**

The distinction was made between motor carriers primarily engaged in the for-hire transportation of passengers (i.e., directly compensated) and those that are not because the agency believes proposed rulemaking should focus first and foremost on motor carriers of passengers that offer their services to the general public in exchange for compensation. Although the FMCSA has applied identification marking and accident recording requirements on all interstate motor carriers transporting passengers for compensation, the agency does not believe the Congress intended to impose safety-related operational regulations on entities providing interstate passenger transportation services that are incidental to their primary, non-transportation related business. While both types of operations are conducted for compensation, the FMCSA believes that it is important to distinguish between businesses with a primary objective of providing transportation, and others. The former group is directly compensated for their transportation services, while the latter is compensated indirectly in a total package charge or some other assessment or concession is given for the transportation performed.

### What are the anticipated costs?

It is estimated that the costs of complying with the final rule will be less than \$3.4 million. The FMCSA estimates that the cost of marking CMVs will be between \$11 and \$27 per vehicle depending on the number of vehicles the motor carrier operates. If there are 125,000 vehicles designed or used to transport 9 to 15 passengers for compensation in interstate commerce (based on information submitted to the docket), the costs to the industry for marking CMVs could be between \$1,375,000 and \$3,375,000. The costs are one-time expenses and would not be recurring. Generally, the marking would last the normal life of the vehicle.

With regard to the NPRM, the costs are estimated at approximately \$10 million per year. The sum of all estimated costs of requiring operators of small passenger-carrying CMVs to comply with parts 391, 395, and 396 is approximately \$10,221,000 for the first year and \$10,073,000 per year thereafter. A summary of the first-year costs is presented below.

<b>Summary of First-year Costs to Comply with the FMCSRs</b>
\$2,831,467 for medical exams
\$148,793 for driver qualifications files (\$59,245 subsequent years)
\$4,184,174 for hours of service recordkeeping
\$3,057,000 for inspection, repair, and maintenance
<b>Total: \$10,221,000</b>

### What are the safety benefits?

The FMCSA is not able to quantify the benefits at this time because the agency does not have detailed accident causation data. However, the agency believes that operational safety could be improved through compliance with the FMCSRs. The benefit of preventing as few as one-half percent (about six accidents) of the 1,135 non-rush hour fatal accidents involving large vans during 1998 would outweigh the estimated costs. Using DOT guidelines of a threshold value per fatality prevented of \$2.7 million, we estimate that preventing as few as six single-fatality accidents per year would result in at least \$16.2 million in benefits per year which would outweigh the estimated costs. Therefore, we believe the benefits achieved would outweigh the estimated costs of the rule.

**Would the operators of small passenger-carrying CMVs be covered by the safety fitness procedures?**

Yes. If the proposed requirements are adopted, motor carriers operating small passenger-carrying CMVs would be covered by the same safety fitness procedures and standards used to evaluate other interstate motor carriers. This means that motor carriers affected by this rulemaking would be subject to compliance reviews and receive safety ratings. For those that receive an “unsatisfactory” safety rating, they would be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers would be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce.

**Would the operators of small passenger-carrying CMVs be subject to the FMCSA’s financial responsibility and operating authority requirements?**

The financial responsibility (49 CFR 387) and operating authority (49 CFR 365) requirements are already applicable to for-hire motor carriers of passengers operating vehicles designed to transport less than 16 passengers, with certain exceptions. The exceptions are statutory (see 49 U.S.C. 31138(e)(1) and (3)), and the FMCSA cannot rescind them. Subpart B of part 387 requires a minimum of \$1.5 million in public liability for the operation of vehicles with a seating capacity of 15 passengers or less, unless the vehicles fall into one of the exempt categories. Part 365 requires for-hire motor carriers to obtain operating authority and subpart C of part 387 requires them to file proof of financial responsibility.

**Would the drivers be subject to the commercial driver’s license, controlled substances and alcohol testing rules?**

The FMCSA did **not** propose to make the commercial driver’s license and controlled substances and alcohol testing requirements applicable to operators of small passenger-carrying CMVs, because neither section 4008 of the TEA-21 nor section 212 of the MCSIA amend the statutory definition of CMV used for those programs (49 U.S.C. 31301). Consequently, the passenger-carrying threshold for CDL and controlled substances and alcohol testing requirements remains at 16 (including the driver).