

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 385, 390, and 398**

[Docket No. FMCSA-2000-7017]

RIN 2126-AA52

**Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce comply with the safety regulations 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). Motor carriers, drivers, and the vehicles operated by them would be subject to the same safety requirements imposed upon motorcoach operations, with the exception of the commercial driver's license, controlled substances and alcohol testing regulations. The agency is proposing that any requirements implemented be made applicable to these motor carriers 90 days after the effective date of the final rule. This action is in response to section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

**DATES:** Comments must be received on or before April 11, 2001.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366-1790, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001; or Mr. Michael Falk, Office of the Chief Counsel, HCC-20, (202) 366-1384, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access and Filing**

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

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**Background***Congressional Mandate to Regulate Small Passenger-Carrying CMVs*

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748). Section 212 of the MCSIA requires that the FMCSA make its safety regulations applicable to: (1) Commercial vans referred to as "camionetas," and (2) those commercial vans operating in interstate commerce outside of commercial zones that have been determined to pose serious safety risks. The rulemaking to implement section 212 must be completed by December 9, 2000.

Prior to the enactment of the MCSIA, section 4008(a)(2) of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) amended the passenger-vehicle component of the CMV definition in 49 U.S.C. 31132(1). Commercial motor

vehicle is now defined statutorily to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

Under section 4008(b) of the TEA-21, operators of the CMVs defined by section 31132(1)(B) would automatically become subject to the FMCSRs one year after the date of enactment of the TEA-21, if they were not already covered, "except to the extent that the Secretary (of Transportation) determines, through a rulemaking, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations." Section 4008(b) of the TEA-21 is a mandate either to impose the FMCSRs on previously unregulated smaller capacity passenger vehicles, or to exempt through notice and comment rulemaking some or all of the operators of such vehicles.

On September 3, 1999, the Federal Highway Administration (FHWA) published an interim final rule to adopt the new statutory definition of a CMV (64 FR 48510).<sup>1</sup> The agency revised its regulatory definition of CMV to be consistent with the statute, but exempted the operation of these small passenger-carrying vehicles from all of the FMCSRs for six months to allow time for the completion of a separate rulemaking in which the agency proposed requiring operators of such vehicles to file a motor carrier identification report, mark their CMVs with a USDOT identification number and certain other information, and maintain an accident register. This notice of proposed rulemaking was also

<sup>1</sup> The MCSIA established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the former Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA. Rulemaking, enforcement, and other activities of the Office of Motor Carrier Safety while part of the Federal Highway Administration (FHWA), and while operating independently of the FHWA, will be continued by the FMCSA.

published on September 3, 1999, at 64 FR 48518.

Elsewhere in today's **Federal Register**, the FMCSA published a final rule that amends § 390.5 by adopting the statutory definition of "commercial motor vehicle" published in the interim final rule on September 3, 1999. The agency's final rule also revised § 390.3(f)(6) to require that all operators of CMVs designed or used to transport between 9 and 15 passengers for compensation complete a motor carrier identification report (Form MCS-150) (49 CFR 390.19), comply with certain provisions of the CMV marking regulation (49 CFR 390.21), and maintain an accident register (49 CFR 390.15). These actions will enable the agency to monitor the operational safety of all motor carriers operating small passenger vehicles for compensation. In addition, the three requirements will help the agency compile information on the number of motor carriers operating small passenger-carrying vehicles for compensation, the location of their principal place of business, the number of vehicles operated, and the number of drivers employed.

With the enactment of the MCSIA, the agency is now 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" and those operations outside of commercial zones that have been determined to pose serious safety risks.

In this NPRM, the FMCSA is proposing to make the FMCSRs applicable to all motor carriers operating CMVs, designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for "direct compensation" when the transportation covers a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers). This preliminary decision is based on: (1) The FMCSA's understanding of the Congress' and the commercial passenger carrier industry's usage of the term "camioneta," (2) the agency's analysis of comments submitted in response to the FHWA's August 5, 1998 (63 FR 41766) advance notice of proposed rulemaking concerning the definition of CMV, (3) the agency's analysis of comments

submitted in response to the September 3, 1999, interim final rule and notice of proposed rulemaking, and (4) an analysis of accident data concerning large vans. The agency believes that this approach would be more effective than other alternatives for responding to congressional and public safety concerns about what is commonly referred to as "long-haul" for-hire van operations throughout the United States, including vans operated for compensation by foreign-based motor carriers into and out of the United States.

The FMCSA considered several alternatives or options to implement section 212 of the MCSIA. The other alternatives 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); (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. The FMCSA believes the proposed alternative would avoid making the FMCSRs applicable to interstate for-hire van operations that are local in nature and do not appear to pose the same level of safety risks to their customers and the traveling public.

#### **Passenger-Carrying Operations Covered by this Rulemaking**

##### *For-Hire Transportation—Direct versus Indirect Compensation*

Although the Congress did not define "for compensation," the FMCSA believes this rulemaking should focus first and foremost on motor carriers of passengers that offer their services to the general public in exchange for compensation. Generally, the primary business of these companies is providing interstate passenger transportation services. 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 business 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.

In the comments submitted in response to the September 3, 1999, interim final rule and the notice of proposed rulemaking published on the same day, the American Bus Association (ABA), the American Car Rental Association, Greyhound, the National Automobile Dealers Association, and the National Funeral Directors Association expressed concerns about how the agency should interpret the phrase "for compensation." These commenters believe the phrase should, for the purpose of implementing section 4008 of the TEA-21, be interpreted to be applicable to only those entities that are directly compensated (i.e., entities that are primarily engaged in the for-hire transportation of passengers). This issue is also discussed in the preamble of the final rule concerning requirements for operators of small passenger-carrying CMVs, published elsewhere in today's **Federal Register**. Interested parties may view the comments by reading the submissions to FMCSA Docket Nos. FMCSA-97-2858 and FMCSA-99-5710.

The FMCSA agrees with commenters to the previous rulemaking notices in their belief that only small passenger-carrying CMV operators that are directly compensated for their services should be required to comply with safety-related operational rules. These are the small passenger-carrying CMV operations that commenters identified as having significant deficiencies in their safety management controls for their drivers and vehicles. In implementing section 212 of the MCSIA, the FMCSA believes that this group should be considered as posing a serious safety risk to the motoring public.

The FMCSA has considered the accident information presented by the ABA, the Amalgamated Transit Union, Casa de Proyecto Libertad, and Greyhound and believes the information is an indicator that there may be problems with the safety management controls of these CMV operators. This data is discussed in the preamble of the final rule concerning requirements for operators of small passenger-carrying CMVs published elsewhere in today's issue of the **Federal Register**. While the data has limitations, it is alarming and suggests the need for action to improve the operational safety of this group of motor carriers.

Although all of the comments discussed above were submitted prior to the passage of the MCSIA, the implementation of section 4008 of the TEA-21 and section 212 of the MCSIA are so closely related that the comments are relevant to this rulemaking proposal. Section 212 of the MCSIA gives the agency explicit direction on how to implement the statutory change in the CMV definition provided at section 4008 of the TEA-21.

As indicated in the preamble of the final rule concerning requirements for operators of small passenger-carrying CMVs, published elsewhere in today's **Federal Register**, the agency stands by the FHWA's previously stated position that the phrase "for compensation" is synonymous with "for hire" and its April 4, 1997 (62 FR 16370, 16407), interpretation of "for-hire motor carrier." The interpretation states:

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)<sup>2</sup> 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.

The interpretation noted above simply lays out the agency's view of its statutory authority, and the current applicability of the safety regulations to certain for-hire motor carriers.

Although the FMCSA's interpretation of "for compensation" remains unchanged, the agency is proposing that this rulemaking be applicable only to a subset of the for-hire motor carriers of passengers covered by the final rule concerning requirements for *all* operators of small passenger-carrying CMVs, published elsewhere in this issue of the **Federal Register**. The agency is proposing that this rulemaking be applicable only to entities that assess a fee, monetary or otherwise, directly for

the transportation of passengers. Therefore, the use of small passenger-carrying CMVs for compensation by operators, such as hotel/motel shuttle transporters, rental car shuttle services, whitewater river rafters, etc., would not be subject to the safety-related operational regulations, irrespective of the distance traveled. Since these businesses do not hold themselves out to the public as providers of transportation services, the FMCSA does not intend to impose the safety-related operational regulations on them at this time. The agency requests comments on this issue.

#### *Coverage of Camioneta Operations*

Section 212 of the MCSIA requires the FMCSA to make the safety regulations applicable to camioneta operations. The statute did not include a definition of the term camioneta, but the Congress issued an explanatory statement (see 145 Cong. Rec. H12868, at H12873 (November 18, 1999)) that suggests that camioneta operations are those that involve transporting passengers from Mexico to the United States and vice versa.

The FMCSA does not have information concerning the number of motor carriers with CMV operations that fit the congressional description of camioneta. In its comments to the September 3, 1999, interim final rule and the NPRM published on the same day, the Texas Department of Public Safety described camionetas operations as those transporting passengers "between major cities in Texas and the other southern states to and from our borders with Mexico." The FMCSA has analyzed detailed accident data from the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) and believes the accident data suggests that if there are fatal accidents involving these operators, the vast majority of the vehicles appear to be registered in the United States. While they may travel between points in Mexico and the United States, the vehicles are not necessarily based in Mexico.

Rather than drafting a rule that specifically targets, in part, vehicles that actually cross the border, the FMCSA believes section 212 should be implemented by focusing on the distance traveled. A distance-based approach would capture CMV operators that transport passengers from the U.S.-Mexico border to major cities in Texas and other States. Carriers that actually cross the border would also be covered, but only in those instances where the transportation of any of the passengers exceeds a certain distance. The distance

the passengers were transported would be determined by looking at the point of origin and the destination, irrespective of which side of the U.S.-Mexico border the trip begins or ends. The FMCSA requests comments from State and local enforcement agencies on whether a distance-based approach would ensure coverage of the vast majority of camioneta operations as described by the Congress.

#### *Coverage of Van Operations Determined To Pose Serious Safety Risks*

In addition to requiring the FMCSA to make the safety-related operational regulations applicable to camioneta operations, the Congress required that the safety regulations apply to other types of small passenger-carrying CMV operations beyond commercial zones believed to pose safety concerns. The FMCSA believes that the Congress intended to extend the reach of the FMCSRs to interstate van operations where the distance traveled is comparable to that covered by intercity motor coach operations. Commenters to the previous rulemaking documents discussed above were concerned about trips between major cities in the U.S. Many of these small passenger-carrying operations appear to be the ones the Congress referred to as " \* \* \* vans operating in interstate commerce outside of commercial zones that have been determined to pose serious safety risks." With this in mind, the FMCSA believes section 212 of the MCSIA would be implemented most effectively by making the FMCSRs applicable to interstate for-hire (direct compensation only) van operations where the distance traveled exceeds a certain distance. This would result in a rule that is applicable to small passenger-carrying CMVs used to transport passengers as follows: (1) From Mexico to the U.S. and vice versa, (2) from Canada to the U.S. and vice versa, and (3) between various points in the U.S. If the distance covered meets a certain threshold, then the CMV operation would be covered. Based on the FMCSA's analysis of the accident data currently available, the agency believes the threshold should be 75 air miles (86.3 statute miles or 138.9 kilometers). A discussion of the accident data analysis is presented below.

The FMCSA believes the distance-based approach is an appropriate response to the congressional mandate that the rules be made applicable to: (1) Commercial vans commonly referred to as "camionetas," and (2) small passenger-carrying CMVs operating outside of commercial zones that have been determined to pose serious safety

<sup>2</sup> The reference to six-passenger taxicabs operating on fixed routes was included in the guidance due to a CMV definition set forth in the ICC Termination Act of 1995 (ICCTA) Pub. L. 104-88, 109 Stat. 803, 919). The ICCTA amended the statutory definition of a CMV, by adding the words "designed or used to transport passengers for compensation, but exclude(s) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places." The TEA-21 definition removed this clause from the definition of CMV.

risks. The agency believes the accident data supports this approach in that the proposed rule would cover camionetas, as described by the Congress, and other CMV operations that have been determined to pose serious safety risks.

#### **Analysis of Accident Data Concerning Large Vans**

The FMCSA has reviewed accident data from the NHTSA's FARS and General Estimates System (GES) to determine the prevalence of crashes involving large vans. Generally, these databases do not enable the agency to identify accidents involving passenger-carrying vehicles designed or used to transport between 9 and 15 passengers for compensation in interstate commerce. However, the databases do provide information that could be used to generate estimates of the incidence of accidents involving large vans in general, and more specifically, fatal accidents involving large vans transporting 9 or more passengers (including the driver) at the time of the accident.

#### *GES Data*

In 1998, there were approximately 145,000 accidents involving large vans. These accidents resulted in 1,714 fatalities and approximately 244,000 injuries. This accident data includes all large vans (those designed to transport passengers, as well as those used for other purposes such as parcel delivery) and is not limited to vans being operated for compensation in interstate commerce. Nonetheless, the data are alarming in terms of the number of accidents, injuries, and fatalities associated with the operation of large vans.

#### *FARS Data*

As part of its effort to locate more detailed data concerning accident involvement of vans designed or used to transport between 9 and 15 passengers, the agency reviewed the 1998 FARS data. In 1998, there were 1,464 fatal accidents involving large vans. These accidents resulted in 1,714 fatalities. The fatal accident number includes all large vans and is not limited to vans being operated for compensation in interstate commerce. The reason for this is that the accident information is not coded in a manner that would enable the FMCSA to determine which accidents involved the operation of large vans in commerce, or more specifically, vans being operated for compensation in interstate commerce.

To better estimate the fatal accident involvement of vans most likely to have been used to transport passengers for

compensation, 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. For the purpose of this analysis, the agency assumed that vanpools usually operate in the morning and afternoon rush hours—the agency used 6 a.m. to 9 a.m. as the morning rush hour, and 4 p.m. to 7 p.m. as the evening rush hour. The use of these time frames as the morning and afternoon rush hours is consistent with the FHWA's "Summary of Travel Trends 1995 Nationwide Personal Transportation Survey," FHWA-PL-00-006, December 1999. The FHWA conducts this survey to obtain information on personal travel of U.S. households with respect to why, how, when, where from, where to, how frequently, how long, and with whom.

Looking at the accidents by time of day, there were 537 fatal accidents involving large vans between the hours of 9 a.m. and 4 p.m. and 496 accidents involving these vehicles between the hours of 7 p.m. and 6 a.m. In addition, there were 102 fatal accidents during the weekends, resulting in a total of 1,135 fatal accidents not likely to involve vanpools.

When the data is examined with a focus on large vans actually transporting 9 or more people at the time of the accident, there were 58 fatal accidents in which the large van was transporting 9 or more people at the time of the accident resulting in 101 fatalities. Thirty-six of these accidents occurred during non-rush hours (20 fatal accidents between 9 a.m. and 4 p.m. and 16 fatal accidents between 7 p.m. and 6 a.m.).

Given the current coding of accident data, the FMCSA believes the only crashes for which there is certainty that the large van was designed or used to transport between 9 and 15 passengers would be those cases in which the number of occupants in the van at the time of the crash was equal to 9 or more. The agency acknowledges that there may have been a number of fatal accidents in which large vans were transporting less than 9 passengers. However, the agency does not currently have data about the number of crashes involving vehicles that were designed to transport between 9 and 15 passengers, but were being used to transport less than 9 passengers at the time of the crash. Therefore, the agency believes that in 1998 there may have been as few as 36 fatal accidents involving the

operation of large van for compensation based on the number of crashes in which the vehicle was transporting 9 or more passengers at the time of the crash. The agency estimates that there may have been as many as 1,099<sup>3</sup> other crashes with vehicles designed to transport between 9 and 15 passengers, but transporting less than 9 passengers for compensation at the time of the crash.

#### **Additional FARS Analysis Using Accident Location Codes, Driver and Vehicle Information**

The FMCSA reviewed the data fields in FARS to determine whether it would be possible to estimate the distance a large van may have traveled prior to being involved in the fatal accident, and if there was any way to identify those accidents most likely to have involved interstate transportation. The agency determined that FARS could provide potentially useful information to help identify the accidents most likely to have involved interstate transportation based on a comparison of data fields for the State in which the vehicle crashed, the State in which the vehicle was registered, and the State of the driver's license.

The agency estimated the approximate distance between the geographic area of the driver's residential zip code and the county and State in which the crash took place. The distances were computed for almost all fatal accidents involving a large van transporting 9 or more people at the time of the accident for calendar years 1996, 1997, and 1998. The agency operated under the assumption that the most likely trips to be considered interstate in nature are ones in which the State of registration of the vehicle and State of issuance for the driver's license differ from the State where the vehicle crashed.

There were 161 fatal accidents between 1996 and 1998 (49 crashes in 1996, 54 crashes in 1997, and 58 crashes in 1998) in which the vehicle was transporting 9 or more passengers at the time of the crash. The FARS information for seven of the accidents lacked one or more of the data items needed for the analysis. Two of the accidents involved U.S. Government vehicles and were excluded from the analysis since they would not be covered by the proposed rulemaking—the FMCSRs include an exception for transportation performed by the Federal government, a State, or

<sup>3</sup> This number is the result of taking the 1,135 non-rush hour fatal crashes involving large vans and subtracting the 36 non-rush hour fatal crashes in which there were 9 or more passengers onboard at the time of the crash.

any political subdivision of a State (49 CFR 390.3(f)). Five of the accidents involved Mexico-licensed drivers operating vehicles registered in the U.S. and one involved a Mexico-licensed driver operating a vehicle for which the database did not include registration information. It was not possible to complete the distance analysis for those accidents.

Of the remaining 146 fatal accidents in which the large van was transporting 9 or more people at the time of the crash, 45 of them (approximately 31 percent) appear to have been interstate trips with the crash taking place in a State other than the State where the driver was licensed, and at a distance greater than 100 statute miles from the driver's residence. The shortest distance among the likely interstate trips was just over 100 statute miles, while the longest was more than 2,100 statute miles (a trip involving a driver licensed in California, a large van registered in Oregon, and a fatal crash in Louisiana).

Forty-seven of the 146 fatal accidents (approximately 32 percent) appear to have been intrastate trips with the fatal accident taking place in the State where the driver was licensed and where the vehicle was registered, and at a distance greater than 100 statute miles from the driver's residence. The shortest distance among the likely intrastate trips was just over 100 statute miles, while the longest was more than 550 statute miles (a trip involving a driver licensed in California, a large van registered in California, and a fatal crash in California).

Fifty-four of the accidents (37 percent) occurred within 100 statute miles of the driver's residence with only a small percentage (seven out of 54 crashes, approximately 13 percent) involving what appears to be an interstate trip.

Overall, approximately 63 percent of the fatal accidents involving large vans occurred between 100 and 2,200 statute miles from the driver's residence with the longest distances linked typically to the trips that were most likely interstate in nature.

It is not possible to determine the distance the driver may have traveled to get to the work-reporting location, or to determine whether the van was operated by an individual working from home. However, the FMCSA has factored into the analysis a maximum distance of 25 statute miles between the driver's residence and a possible work-reporting location. The FHWA's "Summary of Travel Trends 1995 Nationwide Personal Transportation Survey," cited above, indicates that the average commute to work among the individuals participating in the survey was 11.63 miles. To decrease the

likelihood of underestimating the average of commuting distances of drivers of small passenger-carrying CMVs, the FMCSA is using an estimate of 25 miles, a little more than twice the average in the nationwide survey. When the estimated 25 statute miles for commuting to work is deducted from the estimates of the distance between the driver's residence and the crash location, the result is an estimate of 75 statute miles as the distance that the driver may have traveled from the work reporting location to the crash site.

For simplicity, the agency would use 75 air miles which is equivalent to 86.3 statute miles because the motor carrier industry and enforcement community have experience using air miles, inasmuch as the current hours-of-service rules include an exemption from the records of duty status requirement for drivers operating within a 100 air-mile radius of their work-reporting location.

Based on the preceding analysis, the FMCSA believes a mileage threshold of 75 air miles (86.3 statute miles or 138.9 kilometers) should be used for determining the applicability of the safety regulations to for-hire operations of small passenger-carrying vehicles operating in interstate commerce. The analysis indicates that approximately 63 percent of 146 fatal accidents in which a large van was actually transporting 9 or more occupants at the time of the crash involved drivers that may have traveled more than 75 statute miles from their work-reporting location. Although the agency does not have data to determine which vans were being used in commerce (either interstate or intrastate), or the actual distances from drivers' work reporting locations to the site of the fatal crash, the agency believes the data are compelling and suggest the need for action to improve the safety of operation of these vehicles. The agency requests comments on the methodology used to determine the distance and/or mileage threshold and whether air miles or statute miles should be used.

#### **Discussion of the Estimated Population of For-Hire Van Operations**

The FMCSA is proposing that the FMCSRs be made applicable to small passenger-carrying CMV operations that are directly compensated for long-haul interstate transportation. Generally, these same operations are already subject to the agency's licensing (i.e., operating authority) and insurance requirements. To get an estimate of the number of motor carriers of passengers that are likely to be affected by this rulemaking the FMCSA reviewed its

database of for-hire motor carriers of passengers that have interstate operating authority. As of February 2000, there were 1,648 for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. Each of these motor carriers has on file with the FMCSA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number does not include motor carriers that may have pending applications for operating authority, passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility, or private motor carriers of passengers. This number may also overstate the affected population since some of the licensed carriers may be exclusively operating equipment carrying less than 9 passengers (e.g., luxury sedans or limousines designed to transport less than 9 passengers). Therefore, using the information from the FMCSA's database of motor carriers of passengers, the agency believes a reasonable estimate of the population of motor carriers that could be subject to this rulemaking is approximately 1,648. The agency requests comments on this issue.

#### **Discussion of Proposal**

The FMCSA is proposing to revise the FMCSRs to require that motor carriers operating CMVs that are designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation in interstate commerce (including transportation between points in Canada and Mexico, and points in the U.S.) comply with the regulations contained in 49 CFR parts 390, 391, 392, 393, 395 and 396, when the transportation of any passenger covers a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers). This means that these motor carriers would be required to ensure that each of their drivers meet all of the minimum qualifications for interstate CMV drivers, including physical qualifications, prescribed in part 391, and maintain records to document compliance. In addition, the driver disqualification provisions of 49 CFR 391.15 would also be applicable. The driving rules of part 392 would be applicable and the vehicles would be required to meet all applicable rules concerning parts and accessories necessary for safe operation covered under part 393.

Each motor carrier would be required to have a systematic inspection, repair,

and maintenance program for the CMVs it operates, and to ensure that vehicles are in safe and proper operating condition at all times. They would also be required to maintain records to document compliance with these rules.

Motor carriers would be required to ensure that each vehicle is inspected at least once every 12 months by a qualified inspector/mechanic and that any motor carrier employee that is responsible for the adequacy of any brake-related inspection, repair, or maintenance work meets certain minimum qualifications. They would also be required to maintain records to document compliance with these rules.

In addition to the above, motor carriers must ensure that their drivers comply with the hours-of-service requirements. Drivers would not be allowed to drive more than 10 hours after eight consecutive hours off duty or operate CMVs after being on duty more than 15 hours, following eight consecutive hours off duty. Furthermore, drivers would not be allowed to drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). For drivers that operate beyond a 100 air-mile radius of the normal work-reporting location, a record of duty status (log book) would be required to document the number of hours on duty and the number of hours driving.

The FMCSA is **not** (emphasis added) proposing 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).

The FMCSA acknowledges that most of the rules that would be made applicable to operators of small passenger-carrying CMVs were developed to ensure safety in the motor coach and trucking industries. However, given the type of passenger-carrying operation that the agency proposes to regulate, the FMCSA believes these requirements are appropriate. The van operations that would be regulated have similar operational characteristics as intercity motor coach businesses and

should be required to meet similar standards of safety. The agency requests comments on this issue.

#### **Implementation Schedule**

The FMCSA is proposing that motor carriers be required to comply with the safety requirements 90 days after the effective date of the final rule. This means that motor carriers would have approximately 120 days after the date of publication of the final rule to comply with the rules. The agency believes this is sufficient time for the motor carriers that would be affected to establish and implement safety management controls to achieve compliance with the FMCSRs. Furthermore, the agency believes that the FARS and GES data suggest that it is in the public interest to require compliance with the FMCSRs as soon as practicable. The FMCSA requests comments on this issue.

#### **Relationship Between Proposed Rules and 49 CFR Part 398, Transportation of Migrant Workers**

The FMCSA has reviewed the proposed requirements and determined that some of the motor carriers that would be covered by this rulemaking may currently be subject to the agency's rules for transporters of migrant workers. Currently, in 49 CFR part 398 of the FMCSRs, the agency prescribes certain requirements for motor carriers transporting migrant workers for a total distance of more than 75 miles in interstate or foreign commerce. Section 398.1 defines a migrant worker as any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). The term "carrier of migrant workers by motor vehicle" means any person, with certain limited exceptions, who transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

Carriers of migrant workers that are directly compensated for their transportation services and that use vehicles designed or used to transport between 9 and 15 passengers would be covered by the proposed rules which are generally more stringent than the requirements of part 398. One example where this is not the case is § 398.6, which prohibits motor carriers from permitting or requiring drivers to operate vehicles for more than 10 hours in any 24-hour period, unless the driver is given eight hours rest immediately

following the 10 hours driving time. This daily limit is more restrictive than the comparable provision for drivers of larger CMVs (§ 395.3(a)(1)), which currently allows a driver to drive up to 16 hours out of 24 in certain circumstances.

Although compliance with part 395 would result in a less restrictive requirement in this instance, the FMCSA does not believe this deviation is significant in terms of highway safety. The restriction in part 398 is based only on the amount of time the driver operates the vehicle for the transporter of migrant workers and does not take into account other activities that may affect the driver's fitness for duty and level of alertness. Part 395 includes rules to prohibit driving after being on-duty (both driving time and time spent performing other tasks) for more than 15 hours following at least eight consecutive hours off-duty. Part 395 also takes into account any compensated work, irrespective of whether the work was performed for the motor carrier. For example, if the driver has a part-time job, the time spent on the part-time job must be factored into the calculations to determine the available driving time. The FMCSA believes that overall, part 395 is more stringent than part 398 and that compliance with all of the requirements of part 395 would improve safety.

The FMCSA believes that it is appropriate to impose tougher standards on carriers of migrant workers if their operations are conducted in a manner similar to intercity motorcoach businesses. The agency would amend § 398.2, Applicability, of the transporters of migrant worker rules to make it clear to the affected motor carriers when they must comply with the same FMCSRs as intercity motor coach operations. The agency requests comments on this issue.

#### **Applicability of Safety Fitness Procedures to Operators of Small Passenger-Carrying CMVs**

Part 385 of the FMCSRs establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a CMV. 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. The agency would amend § 385.1, Purpose and scope, to reflect the new passenger-carrying threshold for the applicability of the FMCSRs and the safety fitness procedures. The agency believes the current safety fitness procedures should be used and requests comments on this issue.

#### **Effect of Proposed Rule on the Motor Carrier Safety Assistance Program (MCSAP)**

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving CMVs. The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations (HMRs) for both interstate and intrastate motor carriers and drivers. The MCSAP rules are codified in 49 CFR parts 350 and 355.

On March 21, 2000 (65 FR 15092), the FMCSA published a final rule revising the MCSAP to comply with the provisions of the TEA-21. This action broadened the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. These rules now require States to develop performance-based plans reflecting national priorities and performance goals, revise the MCSAP funding distribution formula, and create a new incentive funding program.

Section 350.201 establishes the conditions States must meet to qualify for basic program funds. Those conditions include assuming responsibility for improving motor carrier safety and adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs (49 CFR parts 390-397) and the HMRs, except as may be determined by the Federal Motor Carrier Safety Administrator to be inapplicable to a State enforcement program.

Section 350.341 establishes the variances from the FMCSRs allowed in State laws and regulations. These variances apply only to motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction. Under the current variances, a State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the gross vehicle weight, gross vehicle weight rating, gross combination weight, nor gross combination weight rating of the vehicle equals or exceeds 11,801 kilograms (26,001 pounds). However, a State may not exempt a CMV from such laws or regulations if the vehicle: (1) transports hazardous materials requiring a placard; or (2) is designed or used to transport 16 or more people, including the driver.

As a condition of participation in the MCSAP, States would be required to adopt and enforce compatible regulations concerning the interstate operation of small passenger-carrying CMVs if the FMCSA adopts the proposed rules. The agency does not intend to amend the variances under § 350.341, which means that the States would not be required to adopt and enforce regulations concerning the intrastate operation of small passenger-carrying CMVs. The FMCSA would encourage the States to adopt and enforce intrastate laws and regulations concerning the operation of these CMVs if the accident data warrants such action.

Based on the agency's analysis of the FARS data for 1996, 1997, and 1998 approximately 32 percent (51 out of 161) of all fatal crashes involving large vans transporting 9 or more passengers at the time of the accident during the past three years occurred in just three States (California (24 fatal accidents), Texas (15 fatal accidents), and Florida (12 fatal accidents)). This suggests that it is not necessary for each State to adopt and enforce intrastate regulations concerning small passenger-carrying CMVs. However, States such as California, Texas, and Florida should give strong consideration to adopting and enforcing intrastate regulations given the FARS data.

The FMCSA requests public comment on the feasibility of making the adoption and enforcement of compatible safety regulations applicable to small passenger-carrying CMVs operated in interstate commerce a condition of receiving MCSAP funds. The agency also requests comments on whether the variances should be amended to require the adoption and enforcement of intrastate regulations applicable to the

intrastate operation of these types of vehicles.

#### **Itemization of the Estimated Costs of Imposing Safety-Related Requirements**

The FMCSA has attempted to evaluate the potential costs of the proposed rule. The agency has considered currently available data concerning the number of affected motor carriers, CMVs, and drivers. As indicated earlier, the agency estimates that this rulemaking could affect up to 1,648 for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. Each of these motor carriers has on file with the FMCSA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number does not include the following: (1) Motor carriers that may have pending applications for operating authority; (2) passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility; (3) private motor carriers of passengers; or (4) carriers which also operate larger vehicles, as well as smaller vehicles. This number may also overstate the population of affected carriers since some of the licensed carriers may be exclusively operating equipment carrying less than 9 passengers.

With regard to the number of drivers and vehicles that would be covered by the safety regulations, the FMCSA does not have a definitive source for this information at this time because for-hire small passenger motor carriers are not required to complete the Form MCS-150, Motor Carrier Identification Report, which is used to gather information about motor carriers subject to the FMCSRs. As a result of the final rule concerning requirements for operators of small passenger-carrying CMVs published elsewhere in today's **Federal Register**, the agency will begin to gather data to better estimate the number of affected carriers, drivers, and vehicles.

In the absence of other sources of information, the agency believes certain estimates provided by the International Taxicab and Livery Association (ITLA) may be useful in helping to estimate the number of drivers and vehicles that would be covered by this proposal. In comments submitted in response to the FHWA's August 5, 1998, advance notice of proposed rulemaking (63 FR 41766) on the subject of safety requirements for the operators of small passenger-carrying CMVs, the ITLA estimated that there are 74,000 vans nationwide being operated for compensation. The ITLA



estimated that van fleets average less than 10 vans. In addition, the ITLA estimated that if the agency made the FMCSRs applicable to the operation of small passenger-carrying vehicles, approximately 14,000 companies, 125,000 vehicles, and 165,000 drivers would be covered.

The FMCSA believes most of the estimates provided by the ITLA appear to be representative of businesses that would not be covered by this proposal in that this rulemaking would be applicable to long-haul van operations and not for-hire operations that are local in nature. However, the agency will use the ITLA's estimate of the number of vehicles per fleet (10 vans) as a baseline estimate for the number of vehicles that would be covered. This means that approximately 16,500 small passenger-carrying vehicles (10 vans per fleet  $\times$  1,648 for-hire operations) would be covered under the FMCSRs.

The agency estimates that the number of drivers would be a fraction of the 165,000 drivers in the ITLA's estimate since the proposal is targeted at drivers in the long-haul segment of the small passenger carrier industry. The agency believes the total number of drivers would be approximately 18,300 (165,000 divided by nine) since the number of motor carriers currently operating as for-hire motor carriers of passengers with small passenger-carrying vehicles is approximately one-ninth of the ITLA's estimate of all for-hire motor carriers.

#### *Earnings of Commercial Van Drivers, Mechanics, and Supervisors*

In order to evaluate accurately the cost implications of the proposed rule, the FMCSA reviewed earnings information from the U.S. Department of Labor. The FMCSA used information from the "Occupational Outlook Handbook," 2000-01 Edition, Bulletin 2520. The earnings information is being used to determine the costs of requiring motor carrier employees and individuals who perform services for motor carriers to complete certain records that would not be completed in the normal course of business and to perform certain tasks associated with complying with the proposed requirements.

The agency has decided preliminarily to use the earnings figures for chauffeurs because the drivers in question generally do not meet the qualifications requirements for intercity bus drivers. The median hourly earnings of taxi drivers and chauffeurs, excluding tips, were \$7.48 in 1998. The middle 50 percent earned between \$6.02 and \$9.79 an hour. The lowest 10 percent earned

less than \$5.55 and the highest 10 percent earned more than \$12.44 an hour. For the purpose of preparing cost estimates for imposing safety-related operational rules, the agency will use \$12.44 an hour to decrease the likelihood of underestimating the impact of this rulemaking.

The "Occupational Outlook Handbook" shows the estimated median hourly earnings for automotive mechanics and service technicians, including commission, were \$13.16 in 1998. The middle 50 percent earned between \$10.02 and \$17.14 an hour. The lowest 10 percent earned less than \$7.44 and the highest 10 percent earned more than \$21.25 an hour. For the purpose of preparing cost estimates for this rulemaking the agency is using \$21.25 an hour.

The FMCSA is using \$22 an hour as the estimated earnings for supervisors and managers of transportation. The "Occupational Outlook Handbook" did not include a specific category for transportation supervisors so the agency is operating under the assumption that these supervisors are paid more than the individuals they supervise. The agency made an estimate that the supervisors are paid \$ 0.75 an hour more than the service technicians, or \$22. The agency requests comments on this estimate.

#### *Medical Examination and Certification*

Drivers subject to the proposed rule would be required to obtain a medical examiner's certificate. The FMCSA estimates that the average cost of a comprehensive medical examination is approximately \$300. This cost includes an estimate of the driver's out-of-pocket expenses or co-payment and an estimate of the amount the driver's health insurance company would pay the medical examiner. Since a medical examiner's certificate is usually valid for 24 months, the FMCSA estimates the prorated annual cost of CMV driver medical certifications to be approximately \$2,745,000 ( $(\$300 \text{ per exam per driver}) \times (18,300 \text{ drivers}) = \$5,490,000$  every two years) based on an estimated 18,300 drivers who would be subject to the proposed rule.

Generally, it takes a medical examiner (*i.e.*, a physician, doctor of osteopathy, physician assistant, advance practice nurse, or doctor of chiropractic) about eight minutes to complete a medical examination form and one minute to fill out the medical certificate. Based on the \$132,000 median annual earnings of a general/family practice physician listed in the Department of Labor's "Occupational Outlook Handbook" and an estimated 2,080 hours of work per year, the earnings are equal to

approximately \$63 an hour. The estimated costs to the industry for having medical examiners complete the required paperwork would be \$172,935 ( $(\$63 \text{ an hour} \times (9 \text{ minutes} \times 1 \text{ hour per } 60 \text{ minutes}) \times 18,300 \text{ medical exams performed for drivers})$ ). This is the cost every two years. The cost each year would be \$86,467.50.

Therefore, the total annual costs for the physical exam would be approximately \$2,831,467. Comments on this estimate are welcomed.

#### *Driver Qualification Files*

The FMCSA estimates that the operators of small passenger-carrying CMVs would have to create 18,300 driver qualifications files during the first year and create approximately 2,379 new files (13 percent of 18,300) each year thereafter as a result of driver turnover, retirement, etc. The estimate of driver turnover is the same used for previous information collection burden estimates for driver qualifications files. This means that motor carriers would be responsible for maintaining approximately 15,921 existing files every year after the first year this rule is in effect and creating 2,379 new files.

The creation of a single, complete driver qualification file involves an annual expenditure of approximately 24 minutes, which is the sum of 20 minutes of paperwork by a safety director, driver supervisor, or equivalent position, and 4 minutes of paperwork by a driver. For the first year, the cost would be \$148,793 ( $(0.33 \text{ hours per driver employed} \times 18,300 \text{ drivers} \times \$22 \text{ an hour per supervisor})$  plus  $(0.07 \text{ hours per driver employed} \times 18,300 \text{ driver} \times \$12.44 \text{ an hour per driver})$ ), or \$132,858 for the time supervisors spend on this task and \$15,935 for drivers' time. For subsequent years the cost for creating new driver qualification files would be \$19,342 ( $(0.33 \text{ hours per driver employed} \times 2,379 \text{ drivers} \times \$22 \text{ an hour per supervisor})$  plus  $(0.07 \text{ hours per driver employed} \times 2,379 \text{ driver} \times \$12.44 \text{ an hour per driver})$ ), or \$17,271 for the time supervisors spend on this task and \$2,071 for drivers' time.

Each driver is required to furnish his/her employing motor carrier with a list of traffic violations. The FMCSA estimates that it takes a driver approximately two minutes to complete the list. Motor carriers are required to conduct an annual review of their drivers' records. The agency estimates that it takes approximately five minutes per driver to complete this task. The cost of complying with the list of traffic violations is \$5,941 ( $(15,921 \text{ drivers} \times (0.03 \text{ hours per driver}) \times (\$12.44 \text{ an hour}$



for a driver)). The cost of complying with the annual review is \$28,021 ((15,921 drivers) × (0.08 hours per driver) × (\$22 an hour for a supervisor)). The total cost per year for the annual list of violations and the review of the driving record is \$33,962.

Therefore, the estimated cost for driver qualification files is \$148,793 for the first year carriers would be required to comply with the safety-related operational provisions of the FMCSRs, and \$59,245 for each subsequent year (\$19,342 for creating new qualification files, \$5,941 for the list of traffic violations, and \$33,962 for the driving record review). The agency requests comments on these estimates.

#### *Records of Duty Status*

As indicated above the FMCSA believes the proposed rule would be applicable to 18,300 drivers. It is estimated that each driver would spend approximately 2.5 minutes per workday to complete a record of duty status and work an average of five workdays per week and 50 weeks per year. The information collection burden for completing the record of duty status would be approximately 190,624 hours (18,300 drivers × (2.5 minutes per day × 1 hours per 60 minutes) × (5 days per week × 50 weeks per year)). The estimated total cost burden related to the record of duty status is approximately \$2,371,374 based on an estimated time burden of 190,624 hours at \$12.44 an hour for drivers. This time and cost burden estimate takes into consideration two weeks of sick/vacation leave for these drivers.

The FMCSA estimates that each motor carrier that is affected by this rule would have a supervisor responsible for reviewing its drivers' records of duty status and that the supervisor would spend approximately one hour per week reviewing these records to ensure compliance with the hours-of-service rules. Based on an estimate of 1,648 motor carriers operating small passenger-carrying CMVs, and one supervisor per motor carrier, the agency estimates a time burden of 1,648 hours per week for 50 weeks, for a total of 82,400 hours. Using the earnings estimate presented above, the annual cost would be \$1,812,800.

Therefore, the total costs for requiring motor carriers to comply with part 395 would be \$4,184,174. We invite comments on this issue.

#### *Vehicle Inspection, Repair, and Maintenance*

The FMCSA estimates the various recordkeeping requirements related to vehicle inspection, repair, and

maintenance would involve an estimated total annual expenditure of 12 hours and 57 minutes per CMV (48 minutes for systematic inspection, repair, and maintenance; 724 minutes for driver vehicle inspection reports; and 5 minutes for periodic inspection). Evidence of an individual's qualifications to perform periodic vehicle inspections must be retained by the motor carrier. Evidence of an individual's qualifications to be a brake inspector must be retained also. The creation of these two types of qualification evidence involves an estimated one-time, non-recurring expenditure of 5 minutes by a safety director, driver supervisor, or equivalent position for each type of qualification.

The systematic inspection, repair, and maintenance records would be completed by a mechanic. The periodic inspection records would also be prepared by a mechanic. The estimated hourly earnings for a mechanic is \$21.25 as indicated above. If the mechanic must spend approximately 53 minutes per year per vehicle, the cost per year per vehicle for recordkeeping would be approximately \$18.77. If there are 16,500 vehicles that would be covered by the proposed rule, the total cost for systematic inspection, repair, and maintenance, and periodic inspection records would be \$309,718.

Drivers would prepare vehicle inspection reports at the end of each workday. It is estimated that each driver would spend 724 minutes per year, or 12.06 hours per year completing the paperwork. Using the earnings estimate of \$12.44 an hour, the cost for having drivers prepare vehicle inspection reports would be \$150 per driver per year. Based on an estimate of 18,300 drivers, the cost per year for the industry would be \$2,747,000.

Finally, looking at the cost for inspector qualifications, the FMCSA believes the paperwork would be completed by a supervisor. Using the earnings estimate of \$22 an hour, and an information collection burden of 10 minutes (five minutes for each certification of qualifications), the cost per carrier would be \$3.66. The total non-recurring cost would be approximately \$6,050.

Therefore, the estimated total cost burden related to the vehicle inspection, repair, and maintenance recordkeeping is approximately \$3,057,000 per year.

#### **Total Costs and Qualitative Estimate of Benefits**

##### *Costs*

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.

#### **Summary of First-year Costs To Comply With the FMCSRs**

\$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>	

##### *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 agency believes the benefits of this rulemaking would outweigh the estimated costs. The benefit of preventing as little 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. This is especially the case when consideration is given to the injury and property-damage only accidents that occur annually.

The FMCSA has considered the accident information presented by the American Bus Association, the Amalgamated Transit Union, Casa de Proyecto Libertad, and Greyhound Lines, Inc. to FMCSA Docket Nos. FMCSA-97-2858 and 99-5710 (formerly FHWA Docket Nos. FHWA-97-2858 and 99-5710), the rulemaking regarding operators of small passenger-carrying CMVs within the U.S. The agency has also considered data from the GES and the FARS. The data suggests that there may be serious safety management control problems with some commercial van operations that transport passengers for compensation in interstate commerce. The application of the FMCSRs to these operations should help to reduce the incidence of crashes involving large vans thereby reducing to some extent the number of fatalities and injuries.

#### **FMCSA Safety-Performance Study of Camionetas**

The FMCSA is nearing completion of a safety-performance and industry characteristics study of motor carriers operating small passenger-carrying CMVs for compensation across the U.S.-Mexico border. This action was taken to

learn more about a segment of the motor carrier industry that has never been subject to safety regulatory oversight by the FMCSA. The study will enable the agency to: Better understand the operational characteristics of camionetas; estimate the number of carriers engaged in these operations; assess the condition of some of the vehicles typically used by these carriers; assess the nature and extent of their operational safety problems; and learn more about the reasons customers select camioneta operations for their transportation needs as opposed to motorcoach operations. The information and data generated by the study will be used to help the agency make adjustments, if necessary, to the regulatory program that would be imposed through this rulemaking. The information and data may also help to validate the economic impact analysis of the regulations on camionetas, develop an outreach campaign to make them aware of the new regulatory responsibilities, and develop enforcement strategies by Federal and State authorities.

#### Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file relevant information in the docket after it becomes available after the comment period closing date. Interested persons should continue to examine the docket for new material.

#### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest concerning the possible extension of the applicability of the FMCSRs to a larger population of for-hire motor carriers of passengers. This proposed rule would require that operators of vehicles designed or used to carry between 9 and 15 passengers (including the driver) for direct compensation, in interstate commerce comply with the following rules when the transportation of any passenger covers a distance greater than 75 air

miles (86.3 statute miles or 138.9 kilometers): 49 CFR part 391, Qualifications of drivers; 49 CFR part 392, Driving of commercial motor vehicles; 49 CFR part 393, Parts and accessories necessary for safe operation; 49 CFR part 395, Hours of service of drivers; and 49 CFR part 396, Inspection, repair, and maintenance.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations and proposed regulations on the basis that the benefits justify the costs. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action would be \$10,221,000 for the first year, and \$10,073,000 for each subsequent year. 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. The agency estimates that each fatality prevented would be equivalent to a benefit of \$2.7 million. Preventing six single-fatality accidents per year would result in at least \$16.2 million in benefits per year. Additional benefits would be achieved through reductions in injuries and property-damage only accidents involving small passenger-carrying CMVs.

For purposes of Executive Order 12866, this rulemaking does not impose an economic burden greater than \$100 million on these motor carriers. Therefore, a full regulatory evaluation is not necessary.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that this proposed rule would not affect a substantial number of small entities, but would have a significant impact on them.

The FMCSA is proposing that motor carriers operating CMVs, designed or used to transport between 9 and 15 passengers, in interstate commerce be made subject to the safety-related operational FMCSRs 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). These motor carriers would be required to comply with 49 CFR parts 390, 391, 392, 393, 395, and 396. If most or all of these businesses are classified as small businesses by the Small Business Administration (SBA), the rule could affect approximately 1,648 small entities. However, some of these small entities may be foreign-

based motor carriers that the agency is not required to include in the Regulatory Flexibility Act analysis. To avoid underestimating the potential impact on small entities, the FMCSA is using an estimate of 1,648.

This estimate is based on the current number of for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. Each of these motor carriers has on file with the FMCSA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number does not include the following: (1) Motor carriers that may have pending applications for operating authority; (2) passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility; (3) private motor carriers of passengers; or (4) carriers which also operate larger vehicles, as well as smaller vehicles. This number may also overstate the population of affected carriers since some of the licensed carriers may be exclusively operating equipment carrying less than 9 passengers. Therefore, using the information from the FMCSA's database of motor carriers of passengers, the agency believes a reasonable estimate of the population of motor carriers that could be subject to this rulemaking is approximately 1,648.

As indicated earlier, the FMCSA estimates that the sum of all estimated costs of requiring operators of small passenger-carrying CMVs to comply with 49 CFR parts 391, 395, and 396 is approximately \$10,221,000 for the first year and \$10,073,000 per year thereafter. If the costs of the rulemaking are distributed evenly among these 1,648 motor carriers, the costs per carrier would be approximately \$6,200 for the first year the requirements are in effect, and a little more than \$6,100 per year thereafter. A summary of the estimated first-year costs per motor carrier is presented below.

#### Summary of First-year Costs Per Motor Carrier To Comply With the FMCSRs

\$1,718 for medical exams  
 \$90 for driver qualifications files (\$36 subsequent years)  
 \$2,539 for hours-of-service recordkeeping  
 \$1,855 for inspection, repair, and maintenance  
 Total: \$6,202

The actual costs that each individual fleet would experience depends on the number of drivers employed and the number of small passenger-carrying

CMVs operated. The above estimates are intended to serve as a baseline of 10 CMVs per fleet and about 11 drivers per business. Driver-related costs (i.e., driver qualifications, hours-of-service) for each business would decrease or increase as the number of drivers employed decreases below the baseline or increases above the baseline. The same holds true for vehicle-related costs.

The FMCSA has reviewed data from the SBA to determine the typical revenues for a motor carrier in the intercity and rural bus transportation segment of the industry. This category description appeared to be similar to the types of motor carrier operations that would be covered by this rulemaking. The SBA's 1997 "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" tables separated the firms into three groups: those with less than 20 employees, those with less than 500 employees, and those with 500 or more employees. The FMCSA focused on the group with less than 20 employees to be consistent with the agency's estimate of the number of drivers employed by each of the 1,648 motor carriers likely to be affected by this rule. The SBA data indicated there are 145 firms in this category with combined revenues of \$41,793,000. For the purpose of this analysis, the revenues for the businesses in this group were divided by the number of firms resulting in an estimate of \$288,227 in revenues per year for each carrier  $[(\$41,793,000/145 \text{ firms}) = \$288,227]$ . The agency requests comments on the annual revenues of operators of small passenger-carrying CMVs.

The agency notes that if the revenue estimate is considered accurate, then a comparison of that estimate with the employee earnings figures presented earlier, and the estimate of 11 drivers per business, suggests that the drivers are more likely to receive \$9.79 an hour, rather than \$12.44 an hour.

The costs per carrier associated with this rule would, on average, be approximately 2.2 percent of their revenues  $[(\$6,200 \text{ costs per carrier}) / (\$288,227 \text{ revenues per carrier}) \times 100 = 2.2 \text{ percent}]$ . For motor carriers with a profit margin greater than 2.2 percent, the rule would decrease their profits but the businesses would maintain some level of profit. For motor carriers with profit margins of 2.2 percent or less, the rule could result in the failure of the business.

The FMCSA does not have data on the profit margins of the 1,648 motor carriers likely to be impacted by the rule or more precise information about their

revenues. Also, the agency does not have sufficient data about these motor carriers to determine the distribution of drivers and vehicles (e.g., the number of carriers with 1 to 5 vehicles, the number of carriers with 6 to 10 vehicles, the number of carriers with 11 to 20 vehicles, etc., and similar data for the number of drivers) to make more precise its estimates concerning revenues. However, the agency believes it is appropriate to consider all 1,648 motor carriers of passengers likely to be affected by this rulemaking to be small entities to avoid underestimating the impact this rule will have on them. The agency believes the estimates presented above are reasonable given the limited information available about this segment of the motor carrier industry. Therefore, the agency has made a preliminary determination that this rule would not affect a substantial number of small entities. However, it would have a significant impact on some of these 1,648 small entities, especially in those cases where the profit margins are approximately 2.2 percent or less.

The FMCSA has considered the comments to the previous rulemaking documents concerning the regulation of small passenger-carrying CMVs and believes this group of motor carriers appears to provide an important service to its clients. These motor carriers provide services to individuals for whom motor coach services are not available, those who may not be able to afford to use motor coach operators, or individuals who choose, for whatever reason, not to use motor coach operators for their intercity travel. The agency believes the industry is very important to those who rely on them. There is a possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.2 percent or less. However, the number of failures among the estimated 1,648 motor carriers operating small passenger-carrying CMVs is expected to be small. Therefore, the agency believes there could be a small degree of disruption in the services provided by small passenger-carrying CMV operations that are not capable of putting into place the safety management controls necessary to achieve compliance with 49 CFR parts 390, 391, 392, 393, 395, and 396.

The FMCSA has considered other regulatory alternatives as described earlier and made a preliminary determination that this action is necessary to fulfill section 212 of the MCSIA and respond to the safety problem indicated by the GES and the FARS data. It is unlikely that a proposal for less stringent requirements would

have the same potential for improving the safety of operations of these CMVs.

Accordingly, the FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal contains collection of information requirements for the purposes of the PRA. These requirements, when made final, could impact four currently-approved information collections. The FMCSA is proposing that motor carriers operating CMVs designed or used to transport 9 to 15 passengers be required to meet the recordkeeping requirements of 49 CFR parts 391, 395, and 396.

Drivers of such CMVs would be required to meet the medical examination and certification requirements at 49 CFR part 391, subpart E. The information collection requirements related to that subpart have been approved by the OMB under provisions of the PRA and assigned the control number of 2126-0006 which is currently due to expire on October 31, 2003. The FMCSA estimates it takes a medical examiner approximately eight minutes to complete the physical examination form and one minute to complete the medical examiner's certificate. The FMCSA estimates that approximately 18,300 drivers would be subject to the proposed rule. Since a medical examiner's certificate is usually made valid for 24 months, the prorated annual time burden would be approximately 1,375 hours per year  $[(0.15 \text{ hours per driver}) \times 18,300 \text{ drivers} = 2,750 \text{ hours every two years} \times \frac{1}{2}]$ . The FMCSA will submit the amended, proposed medical qualification information collection to the OMB for review and approval. Accordingly, the FMCSA seeks public comment on this

proposed information collection requirement.

Motor carriers that employ such CMV drivers would be required to maintain a complete driver qualification file for each driver in accordance with 49 CFR 391.51. The information collection requirements related to driver qualification files have been approved by the OMB under the provisions of the PRA and assigned the control number of 2126-0004 which is currently due to expire on January 31, 2001. The FMCSA estimates the creation of a single, complete driver qualification file involves an annual expenditure of approximately 24 minutes per year per driver employed (or 0.4 hours per year per driver employed) which is the sum of 20 minutes of paperwork by a safety director, driver supervisor, or equivalent position, and 4 minutes of paperwork by a driver. The 24 minutes does not include the time necessary to complete routine and customary tasks that are involved in hiring an employee. Based on the estimate of 18,300 drivers who would be subject to the proposed rule, the FMCSA estimates the total time burden to be 7,320 hours [(0.4 hours per year per driver employed) × (18,300 driver employed) = 7,320 hours per year]. The FMCSA will submit the amended, proposed medical qualification information collection to the OMB for review and approval. Accordingly, the FMCSA seeks public comment on this proposed information collection requirement.

Drivers of such CMVs would be required to record their duty status in accordance with 49 CFR 395.8. The information collection requirements related to records of duty status have been approved by the OMB under the provisions of the PRA and assigned the control number of 2126-0001 which expires October 31, 2001. The FMCSA estimates that it takes a CMV driver approximately two minutes for each workday to complete a record of duty status. Based on the estimate of 18,300 drivers who would be subject to the proposed rule and an average of five workdays per week for these drivers, the FMCSA estimates the total time burden to be 137,250 hours ((2 minutes per driver/day) × (1 hour/60 minutes) = 0.03 hours per day per driver; (0.03 hours per day per driver) × (5 days per week per driver) × (50 workweeks per year per driver) = 7.5 hours per driver; (7.5 hours per driver) × 18,300 drivers = 137,250 hours per year). The FMCSA will submit the amended, proposed driver qualification file information collection to the OMB for review and approval. Accordingly, the FMCSA seeks public

comment on this proposed information collection requirement.

Motor carriers operating CMVs designed or used to transport between 9 and 15 passengers for direct compensation would be required to maintain records of inspection, repair, and maintenance for their CMVs in accordance with 49 CFR part 396. The information collection requirements related to inspection, repair, and maintenance have been approved by the OMB under the provisions of the PRA and assigned the control number of 2126-0003 which expired on January 31, 2001, and is in the process of being renewed. The FMCSA estimates that it would take a total annual expenditure of 12 hours and 57 minutes per year per CMV to complete the required recordkeeping related to vehicular inspection, repair, and maintenance (48 minutes per year per vehicle for systematic inspection, repair, and maintenance; 12 hours and 4 minutes per year per vehicle for driver vehicle inspection reports; and 5 minutes per year per vehicle for periodic inspection).

Evidence of an individual's qualifications to perform periodic vehicle inspections must be retained by the motor carrier. Evidence of an individual's qualifications to be a brake inspector must be retained also. The creation of these two types of qualification evidence involves an estimated one-time, non-recurring expenditure of 5 minutes by a safety director, driver supervisor, or equivalent position for each type of inspector. Based on an estimate of 1,650 motor carriers that would be subject to the proposed rule and on the assumption that each motor carrier has at least one employee who is a qualified periodic vehicle inspector and one employee who is a qualified brake inspector, the estimated total time burden related to the inspector qualifications rules is approximately 275 hours ((5 minutes for each periodic vehicle inspector certification × 1,650 motor carriers) + (5 minutes for each brake inspector certification × 1,650 motor carriers) = 16,500 minutes = 275 hours).

The FMCSA estimates that the total inspection, repair, and maintenance recordkeeping burden is approximately 213,675 hours per year ((16,500 CMVs) × (12.95 hours per year per CMV)) with an additional 275 hours in the first year for inspector qualifications. The FMCSA will submit the amended, proposed inspection, repair, and maintenance information collection to the OMB for review and approval.

The FMCSA seeks public comment on these proposed information collection

requirements. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

#### **National Environmental Policy Act**

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13132 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This proposed rule does not impose additional costs or burdens on the States.

**Regulation Identification Number**

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects***49 CFR Part 385*

Highway safety, Motor carriers.

*49 CFR Part 390*

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

*49 CFR Part 398*

Highway safety, Migrant labor, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: January 4, 2001.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator.*

For the reasons set forth in the preamble, the FMCSA proposes to amend title 49, Code of Federal Regulations, parts 385, 390, and 398 as follows:

**PART 385—[AMENDED]**

1. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b)(5)(A) and (b)(8), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

**§ 385.1 [Amended]**

2. Amend § 385.1 by revising paragraph (b) to read as follows:

\* \* \* \* \*

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

**PART 390—[AMENDED]**

3. Revise the authority citation for part 390 to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106–159, 113 Stat. 1748, 1766; and 49 CFR 1.73.

4. Amend § 390.3 by revising paragraph (f)(6) to read as follows:

**§ 390.3 General applicability.**

\* \* \* \* \*

(f)(6)(i) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) not for direct compensation, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

(ii) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation provided none of the passengers is being transported a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers), except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

\* \* \* \* \*

5. Amend § 390.5 by adding a definition for “direct compensation” in alphabetical order to read as follows:

**§ 390.5 Definitions.**

\* \* \* \* \*

*Direct compensation* means 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.

\* \* \* \* \*

**PART 398—[AMENDED]**

6. The authority citation for part 398 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106–159, 113 Stat. 1748, 1766; and 49 CFR 1.73.

7. Revise § 398.2 to read as follows:

**§ 398.2 Applicability.**

(a) *General.* The regulations prescribed in this part are applicable to carriers of migrant workers by motor vehicle, as defined in § 398.1(b), but only in the case of transportation of any migrant worker for a total distance of more than 75 miles (120.7 kilometers) in interstate commerce, as defined in 49 CFR 390.5.

(b) *Exception.* (1) The regulations prescribed in this part are not applicable to carriers of migrant workers by motor vehicle, as defined in § 398.1(b), when:

(i) The motor vehicle is designed or used to transport between 9 and 15 passengers (including the driver);

(ii) The motor carrier is directly compensated for the transportation service; and

(iii) Any migrant worker is transported a total distance of more than 75 air miles (86.3 statute miles or 138.9 kilometers).

(2) Carriers of migrant workers by motor vehicle operating vehicles, designed or used to transport between 9 and 15 passengers (including the driver), for direct compensation in interstate commerce must comply with the applicable requirements of 49 CFR parts 390, 391, 392, 393, 395, and 396 when a migrant worker is transported a total distance of more than 75 air miles (86.3 statute miles or 138.9 kilometers).

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