

comply with the requirements in §§ 2.1091 and 2.1093 of this chapter for Satellite Communications Services devices. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) Applicants for an ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the provisions of §§ 1.924 and 25.203(e) through 25.203(g) and with §§ 25.252, 25.253, or 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Except as provided for in paragraph (f) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of paragraph (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.252, 25.253, or 25.254, as appropriate.

(f) Special provision for operational MSS systems. Applicants for MSS ATC authority with operational MSS systems that are in actual compliance with the requirements prescribed in paragraphs (b)(1), (b)(2), and (b)(3) of this section at the time of application may elect to satisfy the requirements of paragraphs (b)(4) and (b)(5) of this section prospectively by providing a substantial showing in its certification regarding how the applicant will comply with the requirements of paragraphs (b)(4) and (b)(5) of this section. Notwithstanding § 25.117(f) and paragraph (e) of this section, the Commission may grant an application for ATC authority based on such a prospective substantial showing if the Commission finds that operations consistent with the substantial showing will result in actual compliance with the requirements prescribed in paragraphs (b)(4) and (b)(5) of this section. An MSS ATC applicant that receives a grant of ATC authority pursuant to this paragraph (f) shall notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a

certification that the MSS ATC service is consistent with its ATC authority.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 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:** Final rule.

**SUMMARY:** FMCSA amends 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, must comply with the applicable safety regulations when they are directly compensated for such services and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. The agency has revised its proposed distance threshold to focus on the distance that the driver operates the vehicle, as opposed to the distance that the passengers are transported. These motor carriers, drivers, and vehicles are now, through this rule, subject to the same safety requirements as motor coach operators, except for the commercial driver's license, and controlled substances and alcohol testing regulations. This rule implements section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

**DATES:** This final rule is effective on September 11, 2003. *Compliance Date.* Affected motor carriers must be in compliance with this rule no later than November 10, 2003.

**ADDRESSES:**

*Assistance for Small Entities:* The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) requires the FMCSA to comply with small entity requests for information or advice about compliance with statutes and regulations within FMCSA's jurisdiction. Thus, if any small entity, organization, or governmental

jurisdiction has a question regarding this document, please contact an FMCSA Division office in your State or an FMCSA Service Center for a given geographic area. For phone numbers and addresses, go to <http://www.fmcsa.dot.gov/aboutus/fieldoffs>, or call 1-800-832-5660, or Fax (202) 366-8842, FMCSA, Attn: Commercial Passenger Carrier Safety Division (MC-PSB), Washington, DC 20590.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, (202) 366-4009, Chief, Vehicle and Roadside Operations Division (MC-PSV); or Mr. Philip J. Hanley, (202) 366-9131, Commercial Passenger Carrier Safety Division (MC-PSB), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Congressional Mandate to Regulate Small Passenger-Carrying Commercial Motor Vehicles (CMVs)*

Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), (Pub. L. 106-159, 113 Stat. 1748, December 9, 1999), 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.

Prior to enactment of the MCSIA, section 4008(a)(2) of the Transportation Equity Act for the 21st Century (TEA-21) Public Law 105-178, 112 Stat. 107, June 9, 1998) amended the passenger-vehicle component of the commercial motor vehicle (CMV) definition in 49 U.S.C. 31132(1). CMV 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 pending 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. The notice of proposed rulemaking (NPRM) for that rule was also published on September 3, 1999, at 64 FR 48518.

On January 11, 2001 (66 FR 2756), the FMCSA published a final rule that amended 49 CFR 390.5 to adopt the statutory definition of "commercial motor vehicle" published in the interim final rule on September 3, 1999. The 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 (1) complete a motor carrier identification

report (Form MCS-150) (49 CFR 390.19); (2) comply with certain provisions of the CMV marking regulation (49 CFR 390.21); and (3) maintain an accident register (49 CFR 390.15). These actions were intended to enable the agency to monitor the operational safety of all motor carriers operating small passenger-carrying vehicles for compensation. In addition, the three requirements were intended to help the agency compile information on the number of motor carriers operating small passenger-carrying vehicles for compensation, the location of their principal places of business, the number of vehicles operated, and the number of drivers employed.

On January 11, 2001 (66 FR 2767), FMCSA also published an NPRM for this proceeding. Section 212 of MCSIA required FMCSA to complete a rulemaking to determine whether motor carriers operating motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation should be covered by the FMCSRs. Congress directed that, as a minimum, the regulations shall apply 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.

This final rule makes 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 vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. This decision is based on: (1) The FMCSA's understanding of Congress's and the commercial passenger carrier industry's usage of the term "camionetas"; (2) analysis of comments submitted in response to the agency's August 5, 1998 (63 FR 41766) advance notice of proposed rulemaking (ANPRM) concerning the definition of CMV; (3) analysis of comments submitted in response to the September 3, 1999 interim final rule and NPRM; (4) analysis of comments submitted in response to the January 11, 2001 NPRM; and (5) an analysis of accident data concerning commercial van transportation of passengers. The agency believes that this approach will be more effective than other alternatives for responding to congressional and public safety concerns about the use of small passenger-carrying CMVs in long-haul for-hire operations throughout the United States, including such

operations for compensation by foreign-based motor carriers to and from the United States.

#### *Covered Camioneta Operations*

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

FMCSA does not have information concerning the number of motor carriers with CMV operations that fit the description of camioneta. The Texas Department of Public Safety, in comments to the September 3, 1999 interim final rule and NPRM published on the same day, described camioneta operations as those transporting passengers "between major cities in Texas and the other southern States to and from our borders with Mexico." Based on analysis of the National Highway Traffic Safety Administration (NHTSA) Fatality Analysis Reporting System (FARS), the agency believes the accident data suggest that, if there are fatal accidents involving these operators, the vast majority of 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 adopting a rule that specifically targets, in part, vehicles that actually cross the border, FMCSA continues to believe section 212 should be implemented by focusing on the distance traveled. The distance-based approach used in this final rule will 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 will also be covered, but only in those instances where the driver operates the vehicle beyond a 75 air-mile radius from his or her normal work-reporting location. The distance the driver operates could be determined by enforcement personnel, by questioning the drivers about their employers, and by reviewing any available paperwork concerning the origin and the destination, regardless of which side of the U.S.-Mexico border the trip begins or ends.

#### *Alternatives Considered*

Several alternatives or options to implement section 212 of MCSIA were

<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) within FHWA (65 FR 220). This authority is now delegated to the FMCSA. Rulemaking, enforcement, and other activities of the former OMCS while part of the FHWA are now administered by the FMCSA.

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

#### Summary of Proposed Rulemaking

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

#### Commenters

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

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

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

#### Discussion of Comments and FMCSA Responses

##### Direct Compensation Criterion

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

##### Greyhound Stated

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

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

##### ATU Stated:

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

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

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

By contrast, the approach FMCSA proposed and adopts makes the FMCSRs applicable for each interstate trip beyond a 75 air mile radius of the driver's normal work-reporting location, regardless of the percentage of the motor carrier's business involving the for-hire transportation of passengers. Motor carriers and enforcement officials need only determine the distance that the vehicle would be operated (in the case of the motor carrier planning a trip) or was operated (in the case of the enforcement official), and whether the vehicle was being operated for direct compensation. This could be accomplished by interviewing the driver and passengers to determine the nature of the trip. The inspector need not know about, and the motor carrier need not estimate, the percentages of the company's business operations involving for-hire passenger transportation in order to determine whether the FMCSRs are applicable to the trip in question.

We believe that our approach establishes a higher standard of safety for the operators of small passenger carrying vehicles than the approach recommended by the commenters. FMCSA's approach makes the rules applicable to every trip that meets the criterion, regardless of whether the entity is primarily engaged in transportation. Conversely, commenters would permit potentially unsafe operators to legally continue their long-haul van operations, provided they were not primarily engaged in the for-hire transportation of passengers. FMCSA believes that the approach adopted by this rule achieves a higher standard of safety.

Generally, only entities that assess a fee, monetary or otherwise, directly for the transportation of passengers would be subject to the safety regulations. The use of small passenger-carrying CMVs for compensation, by such operators as hotel/motel shuttle, rental car shuttle, and whitewater river rafter transporter services, using small passenger-carrying CMVs, 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 and generally operate over short distances, FMCSA continues to believe that it is not necessary to impose safety-related operational regulations on them.

In response to Greyhound, the ATU, and other commenter assertions that the proposed rule would enable some motor carriers to avoid safety oversight by structuring their fees or fares as a total package charge, FMCSA does not

believe the nature of most of these carrier operations is such that their identity as for-hire motor carriers of passengers can be effectively concealed. In such instances, carriers would have to devise a scheme wherein they would provide some other substantive service so that the transportation by motor vehicle of the passenger is incidental to some other function. Given that most passengers of these motor carriers expect to depart specific locations at specific times, and arrive at their destinations in a timely manner, it is unlikely the motor carriers this rule is intended to cover could maintain effective customer relationships by engaging in activities that would increase significantly the time required to complete a trip, or the fares customers must pay for the transportation service. In addition to differences in the nature of the transportation service, FMCSA believes the market forces of supply and demand and competitive pricing would discourage a commercial operator of a small passenger-carrying vehicle from employing this strategy to avoid regulation. Motor carriers that employ this strategy would place themselves at an economic disadvantage with other for-hire carriers that provide transportation services between the same locations.

#### 75 Air-Mile Criterion

FMCSA proposed making the safety regulations applicable when the transportation of any passenger covers a distance greater than 75 air miles. Greyhound and the ABA supported the 75 air-mile standard. However, fifteen commenters opposed the standard.

The CVSA argued that commercial motor vehicles should be subject to the FMCSRs regardless of how far they travel. The State Directors stated a distance-based approach to applying the FMCSRs to commercial vans is neither reasonable nor feasible. The State Directors opined that the 37 percent of fatal van crashes at distances less than 75 miles is a substantial number and should not be ignored.

*Response:* FMCSA carefully analyzed accident data from the NHTSA Fatality Analysis Reporting System (FARS). Based on this analysis, FMCSA determined, to the greatest extent practicable, that vans most likely to pose a safety risk were those operating at a distance approximately 75 air miles or more from the driver's work-reporting location. The methodology for estimating this distance is explained below.

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.

FMCSA 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 rulemaking—the FMCSRs include an exception for transportation performed by the Federal government, a State, or any political subdivision of a State (49 CFR 390.3(f)). Five of the accidents involved Mexico-licensed drivers operating vehicles registered in the United States 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, 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 Federal Highway Administration (FHWA) "Summary of Travel Trends 1995 Nationwide Personal Transportation Survey," FHWA-PL-00-006, December 1999, discussed in the NPRM, 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 commuting distances of drivers of small passenger-carrying CMVs, the agency used 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 the driver may have traveled from the work reporting location to the crash site.

For simplicity, the agency used 75 air miles, which is equivalent to 86.3 statute miles, because the motor carrier industry and enforcement community have experience using air-miles, and the 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.

As discussed in the above analysis that was the basis for the NPRM, the agency continues to believe 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 apparently traveled more than 75 statute miles from their work-reporting location. While the agency certainly agrees with commenters' concerns that the remaining 37 percent of the fatal accidents should not be ignored, this rule would not affect most of those accidents, given that they appear to be primarily intrastate in nature. Section 212 of the MCSIA does not extend FMCSA's jurisdiction to regulate *intrastate* passenger-carrier operations. Accordingly, the final rule adopts a 75 air-mile threshold.

However, in this final rule, the agency is revising its proposed distance threshold to focus on the distance that the driver operates the vehicle, as opposed to the distance that the passengers are transported. The agency is aware of the potential complexities involved with the 75 air-mile standard proposed in the NPRM. In many cases, it would be difficult to determine the distance the passengers were transported in order to determine whether the safety-related operational regulations apply to the motor carrier. This is especially true when passengers are picked up or dropped off at multiple locations. To simplify compliance and enforcement, FMCSA will apply its safety regulations whenever a vehicle that is designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation is operated beyond a 75 air mile radius from the driver's normal work-reporting location. The agency believes that use of the driver's normal work reporting location provides an easier means for motor carriers and enforcement personnel to determine the applicability of the safety regulations, and will help to promote greater levels of compliance and ensure consistency in the enforcement of the rules.

#### State Adoption of Compatible Safety Regulations

FMCSA requested 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 Motor Carrier Safety Assistance Program (MCSAP) funds. The agency also requested comments on whether the variances from the FMCSRs allowed in State laws and regulations should be amended to require the adoption and enforcement of intrastate regulations applicable to the intrastate operation of these types of vehicles. Six commenters believed FMCSA should require the States to adopt compatible safety regulations concerning the operation of small passenger carrying commercial vehicles.

*Response:* Although FMCSA agrees with the commenters that States should have compatible regulations, the agency does not believe it is necessary to require that all States adopt intrastate requirements that are compatible with this final rule. The agency continues to believe that State agencies should be given flexibility in responding to unique safety issues or concerns involving the intrastate operation of small passenger-carrying vehicles.

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.

As a condition of participation in the MCSAP, States are required to adopt and enforce compatible regulations concerning the interstate operation of small passenger-carrying CMVs since FMCSA is adopting regulations applicable to these operations. The agency is not amending the variances under § 350.341, which means that the States are not required to adopt and enforce regulations concerning the intrastate operation of small passenger-carrying CMVs. However, FMCSA encourages the States to adopt and

enforce intrastate laws and regulations concerning the operation of these CMVs if their 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 those three years occurred in just three States (California (24 fatal accidents), Texas (15 fatal accidents), and Florida (12 fatal accidents)). This suggests that it may not be 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.

#### Commercial Driver's License, and Controlled Substances and Alcohol Testing Regulations

Seven commenters supported making the commercial driver's license (CDL), and controlled substances and alcohol testing regulations applicable to commercial van operations.

*Response:* While FMCSA understands commenter concerns, section 212 of the MCSIA did not expand the agency's statutory authority concerning the establishment and enforcement of the CDL and controlled substances and alcohol testing rules. Congress did not amend the statutory definition of "commercial motor vehicle" in chapter 313 of title 49, United States Code, which governs the applicability of the CDL and controlled substances and alcohol testing requirements. Therefore, FMCSA does not have the statutory authority to apply these requirements to commercial van operations. The passenger-carrying threshold that Congress provided under that statutory definition remains at 16 or more passengers, including the driver.

#### Applicability of Safety Fitness Procedures

The proposed rule requested comments on making the safety fitness procedures under part 385 applicable to motor carriers operating small passenger-carrying CMVs. The safety fitness procedures in 49 CFR part 385 provide guidance in assessing the safety management controls that motor carriers use to ensure compliance with the FMCSRs. Five commenters supported applicability of safety fitness procedures to such carriers. No commenter expressed specific opposition in relation to this proposal.

*Response:* FMCSA continues to believe that it is appropriate to make the safety fitness procedures applicable to motor carriers that operate vehicles designed or used to transport between 9 and 15 passengers, when the carrier is directly compensated for its transportation services, and the commercial vehicle is operated beyond a 75 air mile radius from the driver's normal work-reporting location. Motor carriers operating small passenger-carrying CMVs are now subject to compliance reviews and the same safety fitness procedures and standards used to evaluate other interstate motor carriers. Therefore, section 385.1, as amended on May 13, 2002 (67 FR 31978), by the interim final rule concerning new entrant motor carriers, made part 385 applicable to all motor carriers subject to the FMCSRs, except non-business private motor carriers of passengers. Carriers that operate small passenger-carrying vehicles, and that receive an "Unsatisfactory" safety rating will be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers will be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce.

#### Discussion of the Final Rule

The FMCSA is revising 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 or Mexico, and points in the United States) comply with the regulations contained in 49 CFR parts 390, 391, 392, 393, 395 and 396, and the safety fitness procedures in part 385, when the driver of the vehicle operates it beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from his/her normal work-reporting location. This means the motor carriers are 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. The driver disqualification provisions of 49 CFR 391.15 are also applicable. Motor carriers and their drivers must also comply with the driving rules of part 392, and vehicles must meet all applicable requirements in part 393 concerning parts and accessories necessary for safe operation.

To avoid potential confusion, the exception under § 390.3(f)(6) has been revised to exempt the operation of

CMVs designed or used to transport between 9 and 15 passengers, not for direct compensation, *provided the vehicle does not otherwise meet the definition of a commercial motor vehicle* (emphasis added). The agency believes that the proposed regulatory language could have been misunderstood to imply that vehicles designed or used to transport between 9 and 15 passengers, not for direct compensation, are exempt from the FMCSRs, even if the CMV meets the 10,001-pound weight threshold for applicability of the safety regulations, or is used to transport hazardous materials in a quantity requiring the use of placards.

Part 396 requires that each motor carrier must have a systematic inspection, repair, and maintenance program for the CMVs it operates, and must ensure that vehicles are in safe and proper operating condition at all times. They must also maintain records to document compliance with these rules.

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

Motor carriers must ensure that their drivers comply with the hours-of-service requirements of part 395, including reporting, recordkeeping, verifying, and responding to law enforcement requests. No driver of a passenger-carrying CMV may drive more than 10 hours following 8 consecutive hours off duty. No driver may operate a passenger-carrying CMV if the driver has been on duty more than 15 hours following 8 consecutive hours off duty (regardless of whether he or she drove). Furthermore, drivers of passenger-carrying CMVs must not 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 passenger-carrying CMVs beyond a 100 air-mile radius of the normal work-reporting location, a record of duty status (log book) is required to document the number of hours on duty and the number of hours driving.

The hours of service rules include a 100 air-mile radius exemption from the log book requirement for drivers who operate passenger-carrying vehicles

within a 100 air-mile radius of their normal work reporting location, provided the driver: returns to the work reporting location and is released from work within 12 consecutive hours; has at least 8 consecutive hours off duty separating each 12 hours on duty; and does not exceed 10 hours maximum driving time following 8 consecutive hours off duty. As an alternative to the log book, motor carriers of passengers must maintain accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, the time the driver is released from duty each day, and the total time for the preceding 7 days for drivers used for the first time or intermittently.

As discussed above, the agency is *not* (emphasis added) making the CDL 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 amended the statutory definition of CMV used for those regulations (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).

#### Compliance Schedule

After the effective date of this rule, motor carriers will have 90 days (or 120 days from the **Federal Register** publication date) to comply with the safety regulations. The agency believes this is sufficient time for the affected motor carriers to establish and implement safety management controls to achieve compliance with the FMCSRs. Furthermore, the agency believes that NHTSA FARS data suggest that it is in the public interest to require compliance with the FMCSRs as soon as practicable.

#### Relationship Between Final Rules and Transportation of Migrant Workers

The FMCSA has determined that some of the motor carriers covered by this rulemaking may also be subject to the agency's rules for transporters of migrant workers in 49 CFR part 398. The agency prescribes certain requirements for motor carriers that transport migrant workers 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 operate vehicles designed or used to transport between 9 and 15 passengers, in interstate commerce, are covered by this final rule if the driver operates beyond a 75 air-mile radius from their normal work reporting location. The final rule generally establishes more stringent safety requirements than those found in 49 CFR part 398. This is not the case, however, with § 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 passenger-carrying CMVs (§ 395.5(a)(1)), which allows a driver to drive up to 16 hours out of 24 under certain circumstances.

Although compliance with part 395 would result in a less restrictive requirement in this instance, 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 that transports the migrant workers but 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. FMCSA believes that overall, part 395 is more stringent than part 398 and that compliance with all of the requirements of part 395 will improve safety.

FMCSA believes that it is appropriate to require more rigorous safety standards for carriers of migrant workers if their operations are conducted in a manner similar to intercity motorcoach businesses. Therefore, the agency is

amending § 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 motorcoach operations.

#### 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, assign safety ratings, take remedial action when required, and prohibit motor carriers receiving an "Unsatisfactory" safety rating from operating a CMV. As a result of this final rule, motor carriers operating small passenger-carrying CMVs are now 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 will be subject to compliance reviews and receive safety ratings. Those receiving an "Unsatisfactory" safety rating will be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers will be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce. The agency is amending § 385.1, Purpose and scope, to reflect the new passenger-carrying threshold for the applicability of the FMCSRs and the safety fitness procedures.

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

FMCSA has attempted to evaluate the potential costs of the final rule. The agency has considered currently available data concerning the number of affected motor carriers, CMVs, and drivers. The agency estimates that this rulemaking could affect up to 1,843 for-hire motor carriers of passengers with active operating authority who operate only 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, FMCSA does not have a definitive source for this information at this time because for-hire small passenger motor carriers were only recently required to complete the Form MCS-150, Motor Carrier Identification Report, which is used to gather information about motor carriers subject to the FMCSRs. However, the agency is now gathering 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 Taxicab, Limousine & Paratransit Association (TLPA) is useful in helping to estimate the number of drivers and vehicles that will be covered by this final rule. In comments submitted in response to the August 5, 1998, ANPRM (63 FR 41766) on the subject of safety requirements for the operators of small passenger-carrying CMVs, the TLPA estimated that there are 74,000 vans nationwide being operated for compensation. The TLPA estimated that van fleets average less than 10 vans. In addition, the TLPA 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.

FMCSA believes most of the estimates provided by the TLPA appear to be representative of businesses that would not be covered by this rule, because this rulemaking applies to long-haul van operations, not for-hire operations that are local in nature. However, the agency will use the TLPA's previous 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 18,430 small passenger-carrying vehicles (10 vans per fleet  $\times$  1,843 for-hire operations) would be covered under the FMCSRs.

The use of the estimates above is not intended to serve as a determination whether the passenger-carrying operations are small businesses. The estimates are used solely for the purpose of estimating the potential costs of this rulemaking action. TLPA's comments concerning the agency's estimate of the number of small businesses that could be affected by this rulemaking are addressed in the rulemaking analysis portion of this notice.

The agency estimates that the number of drivers affected will be a fraction of the 165,000 drivers in the TLPA 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 will be approximately 22,000 (165,000 divided by 7.5) since the number of motor carriers currently operating as for-hire motor carriers of passengers with small passenger-carrying vehicles is approximately one-seventh of the TLPA'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, FMCSA reviewed earnings information from the "Occupational Outlook Handbook," 2000-01 Edition, Bulletin 2520, published by the U.S. Department of Labor. We are using the earnings information to determine the costs of requiring motor carrier employees and individuals who perform services for motor carriers to complete certain records that would not otherwise be completed in the normal course of business, and to perform certain tasks associated with complying with the requirements.

The agency is using the earnings figures for taxi-drivers and 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.

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 estimated that the supervisors are paid \$ 0.75 an hour more than the service technicians, or \$22.

#### Medical Examination and Certification

Drivers subject to the rule are required to obtain a medical examiner's certificate. FMCSA estimates that the average cost of a comprehensive medical examination is \$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 \$3,300,000 [(\$300 per exam per driver)  $\times$  (22,000 drivers) = \$6,600,000 every two years] based on an estimated 22,000 drivers who would be subject to the rule.

Generally, it takes a medical examiner, such as a physician, doctor of osteopathy, physician assistant, advance practice nurse, or doctor of chiropractic, about 20 minutes to complete a medical examination form and one minute to fill out the medical certificate. Based on the \$132,000 median annual earning 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 \$485,100 (\$63 an hour  $\times$  (21 minutes  $\times$  1 hour per 60 minutes)  $\times$  22,000 medical exams performed for drivers). This is the cost every two years. The cost each year would be \$242,550.

Therefore, the total annual costs for the physical exam would be approximately \$3,542,550.

#### Driver Qualification Files

FMCSA estimates that the operators of small passenger-carrying CMVs will have to create 22,000 driver qualifications files during the first year and create approximately 2,860 new files (13 percent of 22,000) 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 will be responsible for maintaining



approximately 19,140 existing files (22,000 – 2,860) every year after the first year this rule is in effect and creating 2,860 new files per year.

The creation of a single, complete driver qualification file involves an annual expenditure of approximately 25 minutes, which is the sum of 21 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 \$188,557 (0.35 hours per driver employed × 22,000 drivers × \$22 an hour per supervisor) plus (0.07 hours per driver employed × 22,000 drivers × \$12.44 an hour per driver), or \$169,400 for the time supervisors spend on this task and \$19,157 for drivers. For subsequent years the cost for creating new driver qualification files would be \$24,512 (0.35 hours per driver employed × 2,860 drivers × \$22 an hour per supervisor) plus (0.07 hours per driver employed × 2,860 driver × \$12.44 an hour per driver), or \$22,022 for the time supervisors spend on this task and \$2,490 for drivers.

Each driver is required by § 391.27 to furnish their employing motor carrier with a list of traffic violations. FMCSA estimates that it takes a driver approximately 2 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 5 minutes per driver to complete this task. The cost of complying with the list of traffic violations is \$7,143 [19,140 drivers × (0.03 hours per driver) × (\$12.44 an hour for a driver)]. The cost of complying with the annual review is \$33,686 [(19,140 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 \$40,829.

Therefore, the estimated cost for driver qualification files is \$188,557 for the first year carriers are required to comply with the safety-related operational provisions of the FMCSRs, and \$65,341 for each subsequent year (\$24,512 for creating new qualification files, \$7,143 for the list of traffic violations, and \$33,686 for the driving record review).

#### Records of Duty Status

As indicated above, FMCSA believes the final rule will apply to 22,000 drivers. It is estimated that each driver would spend approximately 6.5 minutes per workday to complete a record of duty status and work 240 workdays a year. The information collection burden for completing the record of duty status would be approximately 571,999 hours [22,000 drivers × (6.5 minutes per day × 1 hour per 60 minutes) × (240 workdays)]. The estimated total cost burden related to completing the record of duty status is approximately \$7,115,667 based on an estimated time burden of 571,999 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.

FMCSA estimates that each motor carrier, affected by this rule, will need a supervisor responsible for reviewing its drivers' records of duty status and that the supervisor will spend approximately three minutes per day reviewing each driver's records to ensure compliance with the hours-of-service rules. The information collection burden for reviewing the record of duty status would be approximately 264,000 hours [22,000 drivers × (3 minutes per day per driver's log × 1 hour per 60 minutes) × (240 workdays)]. Using the earnings estimate presented above (*i.e.*, \$22 per hour for supervisors), the annual cost would be \$5,808,000.

Therefore, the total costs for requiring motor carriers to comply with part 395 would be \$12,923,667.

#### Vehicle Inspection, Repair, and Maintenance

FMCSA estimates the various recordkeeping requirements in part 396 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 also be retained. 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 18,430 vehicles that would be covered by the proposed rule, the total cost for systematic inspection, repair, and maintenance, and periodic inspection records would be \$345,931.

Drivers must 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 22,000 drivers, the cost per year for the industry would be \$3,300,000.

Finally, looking at the cost for inspector qualifications, 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 \$6,745.

Therefore, the estimated total cost burden related to the vehicle inspection, repair, and maintenance recordkeeping is approximately \$3,652,676 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 \$23,850,000 for the first year and \$20,184,234 each year thereafter. A summary of the first-year costs is presented below:

|  |
|--|
| <b>Summary of First-Year Costs<br/>to Comply with the FMCSRs</b>                             |
| \$7,085,100 for medical exams<br>(\$3,542,550 prorated annual estimate for subsequent years) |
| \$188,557 for driver qualifications files<br>(\$65,341 subsequent years)                     |
| \$12,923,667 for hours of service recordkeeping  |
| \$3,652,676 for inspection, repair, and maintenance  |
| <b>Total: \$23,850,000</b>   |

#### Benefits

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 will be improved through compliance with the FMCSRs. Furthermore, section 212 of the MCSIA requires that the agency 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 agency believes the benefits of this rulemaking outweigh the estimated costs. The benefit of preventing as few as 8 of the 58 fatal accidents in 1998 involving large vans transporting 9 or more passengers at the time of the crash would outweigh the estimated costs. This is especially the case when consideration is also given to the prevention of injury and property-damage only accidents that occur annually.

FMCSA has considered the accident information submitted by commenters. The agency also considered data from the NHTSA 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. Having the FMCSRs apply 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.

#### Rulemaking Analyses

##### *Privacy Act Statement*

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

##### *Regulatory Planning and Review and DOT Regulatory Policies and Procedures*

We have determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and significant under Department of Transportation regulatory policies and procedures because of the substantial public interest concerning extending the FMCSRs to a larger population of for-hire motor carriers of passengers. This final rule requires 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 commercial vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location: 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. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action will be \$23,850,000 for the first year, and \$20,184,234 for each subsequent year. The benefit of preventing as few as 8 of the 58 fatal accidents in 1998 involving large vans transporting 9 or more passengers at the time of the crash would outweigh the estimated costs. The agency estimates that each fatality prevented would be equivalent to a benefit of \$3 million, based on the Department of Transportation's guidance memorandum on "Treatment of Value of Life and Injuries in Preparing Economic Evaluations."

Preventing 8 single-fatality accidents per year would result in at least \$24 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 Impact Statement is not necessary.

#### *Regulatory Flexibility Act Analysis*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA considered the effects of this regulatory action on small entities and determined that this final rule will not affect a substantial number of small entities that operate CMVs designed or used to transport between 9 and 15 passengers, for compensation, in interstate commerce. However, the agency believes the rule will have a significant impact on some of the small entities operating such vehicles.

FMCSA is requiring motor carriers that operate CMVs, designed or used to transport between 9 and 15 passengers, in interstate commerce, to be made subject to the safety-related operational FMCSRs when they are directly compensated for such services and the vehicle is operated beyond 75 air miles (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These motor carriers will be required to comply with 49 CFR parts 390, 391, 392, 393, 395, and 396. FMCSA estimates that this rule will affect 1,843 of the estimated 14,000 entities that operate CMVs designed or used to transport between 9 and 15 passengers for compensation, and that most, if not all, of these 14,000 businesses are small entities based on criteria established by the Small Business Administration (SBA).<sup>2</sup>

<sup>2</sup> The SBA's Office of Size Standards publishes a list of Small Business Size Standards matched to the North American Industry Classification System (NAICS). The U.S. Office of Management and Budget (OMB) classifies approximately 1,000 activities as industries under NAICS. For each industry, except those in public administration, SBA has established a size standard. Industries are described in detail in *North American Industry Classification System—United States, 1997*. It can be found in many libraries or purchased from the National Technical Information Service, by calling (800) 553-6847 or (703) 605-6000. Subsector 485 of the NAICS covers transit and ground passenger transportation. SBA has established \$6,000,000 in annual receipts as the maximum size for a small business for all of the classifications under this subsector (e.g., interurban and rural bus transportation, bus service, taxi service, limousine service, charter bus industry). Gross receipts are averaged over a firm's latest 3 completed fiscal years to determine its average annual receipts.

The estimate of 1,843 is based on the current number of for-hire motor carriers of passengers with active authority that operate only CMVs with a seating capacity of 15 passengers or less. Although the universe of for-hire motor carriers of passengers potentially subject to this rule consists of approximately 14,000 entities, we estimate that the final rule will apply to only the 1,843 carriers whose operations require interstate operating authority under the FMCSA's commercial regulations. 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 may overstate the population of affected carriers since some of the licensed carriers may be exclusively operating equipment carrying less than 9 passengers. However, FMCSA's estimate 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. Therefore, the agency believes its estimate of 1,843 motor carriers of passengers is a reasonable estimate of the number of entities that will be subject to this rule.

This final rule is the last in a series of rulemaking actions intended to improve the safety of operation of vehicles designed or used to transport between 9 and 15 passengers, for compensation, in interstate commerce. After reviewing the public comments received in response to previous rulemaking notices in this series, and completing an analysis of accident data, the agency continues to believe that it is appropriate to limit the applicability of the rule to those motor carriers that are most likely to have safety performance problems. Therefore, this rule involves 1,843 out of the 14,000 small entities that the agency is authorized to regulate under section 212 of MCSIA.

The rulemaking series mentioned above began with the August 5, 1998 (63 FR 41766) ANPRM in which the agency

"Receipts" means the firm's gross or total income, plus cost of goods sold, as defined by or reported on the firm's Federal Income Tax return. Therefore, only those motor carriers of passengers that averaged \$6,000,000 or less in annual receipts for the past 3 fiscal years would be considered small businesses for the purposes of the regulatory flexibility analysis.

requested public comment from all interested parties concerning the potential impact of amending the definition of "commercial motor vehicle" to make the FMCSRs applicable to the operation of small passenger-carrying CMVs. The agency specifically asked for comments concerning the types and numbers of passenger carriers that would be covered by the safety regulations under the revised definition of CMV provided in section 4008(a) of TEA-21. At that time, we indicated that due to the preliminary nature of the ANPRM and the lack of information about the potential costs of the rulemaking, the agency could not evaluate the potential regulatory changes on small entities. The agency solicited comments, information, and data on these potential impacts on small entities.

On September 3, 1999, the agency published an interim final rule (64 FR 48510) and a NPRM (64 FR 48518) based on the comments received in response to the ANPRM. The agency used the interim final rule to adopt the statutory definition of CMV provided by TEA-21, and temporarily exempt the operation of small passenger-carrying vehicles from all of the FMCSRs pending completion of a companion rulemaking that would help the agency gather additional information about the entities operating vehicles designed or used to transport between 9 and 15 passengers. The exemption was necessary because the agency viewed section 4008(a) of TEA-21 as a mandate either to impose the FMCSRs on previously unregulated smaller capacity vehicles, or to exempt through a rulemaking proceeding some or all of the operators of such vehicles. The statute provided that operators of small passenger-carrying vehicles would automatically become subject to the FMCSRs unless the agency, through a rulemaking proceeding, determines that it is appropriate to exempt such operators from the safety regulations.

While none of the commenters responded to the request for information about potential impacts of the rulemaking on small entities, the TLPA 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 agency reviewed its database of for-hire interstate motor carriers of passengers to determine whether TLPA's estimate was reasonable. At that time, we indicated there were 1,636 for-hire motor carriers of passengers with active operating authority that had on file with the

agency proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. Recognizing that TLPAs' estimate included a wide range of passenger-carrying operations that far exceeded the limited number of carriers with active operating authority, the agency stated that it could not confirm the accuracy of the number.

The September 3, 1999 NPRM proposed that each motor carrier operating small passenger-carrying vehicles submit a Motor Carrier Identification Report (FMCSA Form MCS-150), maintain an accident register, and mark their CMVs with the motor carrier identification number assigned by the agency (64 FR 48518). The agency stated that this would provide it with information about the number of passenger carriers, their business locations, and the number of drivers employed and vehicles operated. We believed that the proposal could affect a substantial number of small entities, but would not have a significant impact on them. The agency stated that if the TLPAs' estimate of 14,000 interstate motor carriers operating CMVs designed or used to transport 9- to 15- passengers was accurate, and most or all of these businesses are classified as small businesses by SBA, the rulemaking would affect up to 14,000 small entities. The agency provided examples of the potential costs to mark each vehicle, in accordance with 49 CFR 390.21, with a worse case scenario of a one-time cost of \$420 for a carrier with a fleet of 20 vehicles.

With the enactment of MCSIA, the agency was required to take a more aggressive regulatory approach and impose safety requirements on: (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. Therefore, the agency was required to continue the series of rulemaking actions in the absence of definitive industry characteristic and safety performance data, including data concerning the potential impact on small businesses that would be made subject to the FMCSRs.

On January 11, 2001, FMCSA issued a final rule adopting the statutory definition of CMV as revised by section 4008 of TEA-21, and requiring motor carriers operating small passenger-carrying vehicles to submit the identification report, mark their vehicles, and maintain an accident register (66 FR 2756). On the same day,

in response to section 212 of MCSIA, the agency issued an NPRM (66 FR 2767) proposing that motor carriers operating vehicles 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 of the passengers covers a distance greater than 75 air miles (86.3 statute miles).

FMCSA indicated that in order to avoid underestimating the potential impact of the rule on small entities, it estimated that 1,648 passenger carriers would be subject to the proposed requirements. This estimate was based on the number of for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. The agency argued that using the estimate of 1,648 carriers from the database of motor carriers of passengers provided a reasonable estimate of the number of entities that could be subject to the proposed rules. The agency estimated that the costs per carrier would be \$6,200 for the first year the requirements are in effect, and \$6,100 per year thereafter, if the costs are distributed evenly among the carriers.

FMCSA estimated that the costs per carrier associated with the NPRM would, on average, be 2.2 percent of their revenues based on data from the SBA's 1997 "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" tables. The agency reviewed revenues for motor carriers in the intercity and rural bus transportation segment of the industry. The SBA data indicated there are 145 firms in this category with less than 20 employees—the 20-employee threshold was chosen by FMCSA to be consistent with its estimate of the average number of drivers likely to be employed by the 1,648 for-hire passenger carriers. These 145 carriers had combined revenues of \$41,793,000. The average revenues were considered by dividing the combined revenues by the total number of firms, or \$288,227 in revenues per year for each carrier.

FMCSA made a preliminary determination that the proposed rule would not affect a substantial number of small entities because it would be applicable to only a fraction of the 14,000 entities operating 9- to 15-passenger vehicles for compensation. However, the agency recognized that the NPRM would have a significant impact on some of the small entities, especially in those cases where the profit margins are approximately 2.2 percent or less. The agency indicated that there is a

possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.2 percent or less. Because it was limiting the applicability of the rules to only a fraction of the universe of eligible small entities (thus minimizing the overall impact), and the estimated costs of the rule would be 2.2 percent of the revenues of the affected small entities, the agency did not believe that a more comprehensive analysis was needed to ensure compliance with the Regulatory Flexibility Act. This was particularly in view of the fact that the agency was statutorily required to regulate operators of 9- to 15-passenger vehicles and had exercised its discretion, as limited by MCSIA, to minimize the impact on small entities.

After publication of the January 11, 2001 NPRM, the agency increased its estimate of the potential costs of the rule for small entities based on: (1) A revision of the estimated information collection burden for driver records of duty status; (2) a correction of the estimate of the costs for medical examinations for drivers; and (3) consultation with SBA about the number of small businesses and their revenues.

First, the agency revised the estimated costs associated with the information collection burden for drivers' records of duty status, and submitted the revised estimate to OMB for approval. The agency estimated that the information collection burden for the records of duty status (required by 49 CFR part 395) for the operators of 9- to 15-passenger vehicles would be 137,250 hours, based on an estimated 18,300 drivers being subject to the requirements. Using the new estimates, approved by OMB [OMB Control No. 2126-0001] on information collection burden for the records of duty status, and applying the burden per driver and carrier to the entities that would operate small passenger-carrying CMVs, the agency now believes the additional burden would be 836,000 annual burden hours, for approximately 22,000 drivers. The result of the increased estimate of the annual burden hours for completing and retaining the records of duty status, and an increase in the number of drivers that would be subject to the hours of service rules, is an increase from \$2,539 per carrier per year for such records to \$7,012 per carrier per year.

FMCSA also revised its estimates of the costs for medical examinations of drivers. The agency's previous calculations included an error resulting in an estimate of \$1,718 per carrier per year. A correction of the error, plus a revision of the estimate of the number

of drivers yields an estimate of \$3,844 per carrier per year for medical examinations.

As indicated earlier, 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 \$23,850,000 for the first year and \$20,184,234 per year thereafter. If the costs of the rulemaking are distributed evenly among these 1,843 motor carriers, the costs per carrier would be approximately \$12,940

for the first year the requirements are in effect, and a little more than \$10,952 per year thereafter.

A summary of the estimated first-year costs per motor carrier is presented below:

| <b>Summary of First-Year Costs Per Motor Carrier to Comply with the FMCSRs</b> |
|--|
| \$3,844 for medical exams  |
| \$102 for driver qualifications files<br>(\$35 subsequent years)               |
| \$7,012 for hours-of-service recordkeeping                                     |
| \$1,982 for inspection, repair, and maintenance                                |
| <b>Total: \$12,940</b>   |

The actual costs each individual fleet would experience depend 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, such as driver qualifications and 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.

In order to better determine the potential impact on small businesses, FMCSA met with representatives of SBA. As a result of that meeting, the FMCSA reviewed the U.S. Department of Commerce's 1997 Economic Census, Transportation and Warehousing (Publication No. EC 97T48S-LS, Issued August 2000) to better determine the revenues of businesses under the NAICS subsector 485, which covers transit and ground transportation, and more accurately assess the number of small entities based on SBA's \$6,000,000

threshold for defining a small business in the passenger transportation industry.

For businesses covered by NAICS code 4852, interurban and rural bus transportation, the 1997 census data indicate there are 407 firms with combined revenues of \$1,147,432,000. For the purposes of this analysis, the revenues for the businesses in this group were divided by the number of firms resulting in an estimate of \$2,819,243 in revenues per year for each carrier [ $\$1,147,432,000/407$  firms = \$2,819,243].

The agency also considered businesses covered by NAICS code 4853, taxi and limousine service. The 1997 census data indicate there are 6,418 firms with combined revenues of \$3,154,521,000. For purposes of this analysis, the revenues for businesses in this group were also divided by the number of firms resulting in an estimate of \$491,511 in revenues per year for each carrier [ $\$3,154,521,000/6,418$  = \$491,511].

Based on the estimates above for the revenues per firm for interurban and rural bus transportation businesses, and revenues per firm for taxi and limousine

service businesses, FMCSA believes that most, if not all, of the firms in these categories appear to be small businesses based on SBA's \$6,000,000 threshold.

The costs per carrier associated with this rule would, on average, be approximately 0.45 percent of the revenues for interurban and rural bus services [ $(\$12,940 \text{ costs per carrier})/(\$2,819,243 \text{ revenues per carrier}) \times 100 = 0.45$  percent], and 2.6 percent of the revenues for taxi and limousine services [ $(\$12,940 \text{ costs per carrier})/\$491,511 \text{ revenues per carrier}) \times 100 = 2.6$  percent].

For interurban and rural bus services with a profit margin greater than 0.45 percent, the new rule will decrease their profits but the businesses would maintain some level of profit. For bus services with profit margins of 0.45 percent or less, the rule could result in the failure of the business. Likewise, for taxi and limousine services with a profit margin greater than 2.6 percent, the rule would decrease their profits but the businesses would maintain some level of profit. For taxi and limousine businesses with profit margins of 2.6

percent or less, the rule could result in failure of the business.

FMCSA does not have data on the revenues or profit margins of the 1,843 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, such as 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, 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 1,843 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 determination that this rule would not affect a substantial number of small entities. However, it could have a significant impact on some of these 1,843 small entities, especially in those cases where the profit margins are approximately 2.6 percent or less.

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 provides 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 it. There is a possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.6 percent or less. However, the number of failures among the estimated 1,843 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.

FMCSA has considered other regulatory alternatives as described earlier, and determined that this action is necessary to fulfill section 212 of the

MCSIA and respond to the safety problem indicated by the FARS and General Estimates System (GES) data. It is unlikely that a rule establishing less stringent requirements would have the same potential for improving the safety of operations of these CMVs.

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

#### *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. FMCSA determined that the requirements in this final rule will impact four currently-approved information collections. FMCSA is requiring 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.

#### Medical Examination and Certification—OMB Control No. 2126–0006

Drivers operating CMVs designed or used to transport between 9 and 15 passengers will 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 OMB Control No. 2126–0006, which is currently due to expire on October 31, 2003. FMCSA estimates it takes a medical examiner approximately 20 minutes to complete and document the medical examination and 1 minute to complete the medical certificate, and that it takes a motor carrier approximately 1 minute to make a copy of the medical certificate and file it. Therefore, the total time associated with this information collection, per driver, is 22 minutes. FMCSA estimates that approximately 22,000 drivers will be subject to the final rule. The estimated burden for the first year will be 8,067

burden hours [22,000 drivers × 22 minutes per driver, divided by 60 minutes in an hour]. Since the medical examiner's certificate is usually made valid for 24 months, the prorated annual burden will be approximately half that amount. Therefore, the annual burden hours will be 4,034. FMCSA submitted the amended medical qualification information collection to the OMB for review and approval.

#### Driver Qualification Files—OMB Approval No. 2126–0004

Motor carriers that employ drivers of CMVs designed or used to transport between 9 and 15 passengers will 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 OMB Control No. 2126–0004, which is currently due to expire on August 31, 2004. The following components are involved in this information collection: driver's employment application (2 minutes for drivers), review of driver's employment application (1 minute for motor carriers), initial inquiry of driving record and investigation of employment (15 minutes for motor carriers), list or certification of violations (2 minutes for drivers), and annual review of driving record (5 minutes for motor carriers). The burden hour estimate associated with this information collection is 25 minutes per driver, which includes 21 minutes for motor carriers and 4 minutes for drivers. Therefore, FMCSA estimates that the addition of the 22,000 drivers who will be subject to this final rule will increase the burden hours of this information collection by 9,167 [22,000 drivers × 25 minutes, divided by 60 minutes in an hour]. FMCSA submitted the amended driver qualification information collection to OMB for review and approval.

#### Records of Duty Status—OMB Control No. 2126–0001

Drivers operating CMVs designed or used to transport between 9 and 15 passengers will 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 OMB Control No. 2126–0001, which expires on March 31, 2005. FMCSA estimates the annual burden on each CMV driver to be approximately 26 hours [6 minutes and 30 seconds for each daily log × 240 workdays a year, divided by 60 minutes in an hour]. The

total burden for the 22,000 drivers affected by this rule will be 572,000 [22,000 drivers × 26 hours per year]. In addition, each motor carrier affected by this rule will have a supervisor responsible for reviewing its driver records of duty status and that the supervisor will spend approximately 12 hours per year reviewing these records to ensure compliance with the hours-of-service rules [3 minutes per day to review logs × 240 workdays]. The total burden for the supervisors of the 22,000 drivers affected by this rule will be 264,000 [22,000 drivers × 12 hours per year]. Therefore, the total additional burden for OMB Control No. 2126-0001 will be 836,000 annual burden hours [572,000 + 264,000]. FMCSA submitted the amended driver records of duty status information collection to OMB for review and approval.

**Vehicle Inspection, Repair, and Maintenance—OMB Control No. 2126-0003**

Motor carriers operating CMVs designed or used to transport between 9 and 15 passengers for direct compensation will 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 OMB Control No. 2126-0003, which expires on May 31, 2004. FMCSA estimates that it will take a total expenditure of 12 hours and 57 minutes (or 777 minutes) per year per CMV to complete the required recordkeeping related to vehicular inspection, repair, and maintenance (48 minutes 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 also be retained. 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 1,843 motor carriers that will be subject to the rule and on the assumption that each motor carrier has at least (1) one employee who is a qualified periodic vehicle inspector and (2) one employee who is

a qualified brake inspector, the estimated total time burden related to the inspector qualifications rules is approximately 307 annual burden hours [(5 minutes for each periodic vehicle inspector certification × 1,843 motor carriers) + (5 minutes for each brake inspector certification × 1,843 motor carriers) = 18,430 minutes, divided by 60 minutes in an hour = 307 hours].

FMCSA estimates that the total inspection, repair, and maintenance recordkeeping burden is approximately 238,976 burden hours per year [18,430 CMVs × 777 minutes (or 12 hours and 57 minutes) per year per CMV, divided by 60 minutes in an hour = 238,669, plus an additional 307 = 238,976]. FMCSA submitted the amended inspection, repair, and maintenance information to OMB for review and approval.

The total estimated additional burden hours imposed by this rule will be 1,088,177 [4,034 (associated with OMB Control No. 2126-0006) + 9,167 (associated with OMB Control No. 2126-0004) + 836,000 (associated with OMB Control No. 2126-0001) + 238,976 (associated with OMB Control No. 2126-0003)]. The following table displays this information:

| OMB control No. | Currently-approved annual burden hours | Additional burden hours associated with this final rule |
|-----------------|--|---|
| 2126-0006       | 1,180,792                              | 4,034   |
| 2126-0004       | 941,856                                | 9,167   |
| 2126-0001       | 161,364,492                            | 836,000   |
| 2126-0003       | 35,107,856                             | 238,976   |
| Total ...       | 198,594,996                            | 1,088,177   |

In the NPRM stage, we requested comments regarding the information collection burden hour estimates. However, no comments were received during the NPRM comment period regarding the estimated information collection burdens.

**National Environmental Policy Act**

The agency has analyzed this rulemaking for purposes 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.

**Energy Effects**

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not economically significant and is

not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Unfunded Mandates Reform Act of 1995**

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

**Civil Justice Reform**

This rule 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.

**Protection of Children**

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

**Taking of Private Property**

This final 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.

**Federalism Assessment**

We have analyzed this rule in accordance with the principles and criteria of Executive Order 13132, Federalism. We have determined that this action does not have a substantial direct effect on States or impose additional costs or burdens on the States. Nothing in this document limits the policymaking discretion of the States or directly preempts any State law or regulation. Therefore, we have determined that this final rule does not have federalism implications.

**List of Subjects**

**49 CFR Part 390**

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

**49 CFR Part 398**

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

■ For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends title 49,

Code of Federal Regulations, parts 385, 390, and 398 as follows:

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

■ 1. The authority citation for part 390 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); secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; and 49 CFR 1.73.

■ 2. 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, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, 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 the vehicle is not being operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location, and provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

■ 3. 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 a person 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—TRANSPORTATION OF MIGRANT WORKERS**

■ 4. 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.

■ 5. 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) The vehicle used to transport migrant workers is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.

(2) Carriers of migrant workers by motor vehicle that operate 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 385, 390, 391, 392, 393, 395, and 396, when the motor vehicle is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location.

\* \* \* \* \*

Issued on: August 5, 2003.

**Annette M. Sandberg.**

*Administrator.*

[FR Doc. 03–20369 Filed 8–11–03; 8:45 am]

**BILLING CODE 4910–EX–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 021212307–3037–02; I.D. 080103C]

**Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Pollock with Trawl Gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for non-Community Development Quota (CDQ) pollock with trawl gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

For 2003, the chinook salmon PSC limit for the pollock fishery was set at 33,000 fish (68 FR 9907, March 3, 2003). Of that limit, 7.5 percent is allocated to the groundfish CDQ program as prohibited species quota reserve. Consequently, the 2003 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI, is 30,525 animals (§ 679.21(e)(1)(i) and (vii)).

In accordance with § 679.21(e)(7)(viii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI has been reached. Consequently, the Regional Administrator is prohibiting directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas defined at Figure 8 to 50 CFR part 679.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the