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Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket Nos. FMCSA–97–2858 and 99–5710 (formerly FHWA–97–2858 and 99–5710)]

RINs 2126–AA51 and 2126–AA44 [formerly RINs 2125–AE22 and 2125–AE60]

Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt the statutory definition of a commercial motor vehicle (CMV) found at 49 U.S.C. 31132. The FMCSA is also amending the FMCSRs to require that motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) for compensation file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register. The agency is imposing these requirements to monitor the operational safety of motor carriers operating small passenger-carrying vehicles for compensation. This rulemaking is in response to the Transportation Equity Act for the 21st Century (TEA–21).

DATES: This rule is effective on February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to previous rulemaking notices concerning the dockets referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Section 204 of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, at 2833) defined a "commercial motor vehicle" as one having a gross vehicle weight rating (GVWR) of 10,001 pounds or more; designed to transport more than 15 passengers, including the driver; or transporting hazardous materials in quantities requiring the vehicle to be placarded. This definition, codified at 49 U.S.C. 31132(1), was the basis for the regulatory definition of a CMV in 49 CFR 390.5, which determines the jurisdictional limits and applicability of most of the FMCSRs. The Senate Committee on Commerce, Science and Transportation, in a report which accompanied the MCSA stated: "The 10,000-pound limit, which is in the current BMCS [Bureau of Motor Carrier Safety, now the FMCSA] regulations, is proposed to focus enforcement efforts and because small vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial vehicles, and can best be regulated under State automobile licensing, inspection, and traffic surveillance procedures." S. Rep. No. 98–424, at 6–7 (1984), reprinted in 1984 U.S.C.C.A.N. 4785, 4790–91.

Although the MCSA demonstrated congressional intent to focus the applicability of the FMCSRs on larger vehicles, Congress did not repeal section 204 of the Motor Carrier Act of 1935 (Chapter 498, 49 Stat. 543, 546). This statute, now codified at 49 U.S.C. 31502, authorizes the FMCSA to regulate the safety of all for-hire motor carriers of passengers and property, and private carriers of property without respect to the weight or passenger capacity of the vehicles they operate.

When the Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170) to require implementation of a single, classified commercial driver's license program, it also limited the motor vehicles subject to the program to those designed to transport more than 15 passengers, including the driver (now codified at 49 U.S.C. 31301(4)(B) with slightly different wording). This, too, revealed the congressional policy of applying available Federal motor carrier safety resources to larger vehicles.

The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, 919) changed the MCSA's definition of a commercial motor vehicle. As amended, 49 U.S.C. 31132(1) defined a commercial motor vehicle, in part, as a vehicle that is "designed or used to transport passengers for compensation, but exclud(es) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places; (or) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation." The ICCTA authorized, but did not require, the FHWA to change the FMCSRs; accordingly, the agency did not incorporate the amended language into the CMV definition in 49 CFR 390.5. The agency notes that the ICCTA included the phrase "designed or used" in specifying the passenger-carrying threshold for the FMCSRs. This change will make the FMCSRs applicable based upon the number of passengers in the vehicle or the number of designated seating positions, whichever is greater. In other words, a bus designed to carry 13 people but actually carrying 18 would be subject to the FMCSRs.

Section 4008(a)(2) of the TEA–21 (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) again amended the passenger-vehicle component of the CMV definition in 49 U.S.C. 31132(1). Section 4008 also changed the weight threshold in the CMV definition by adding "gross vehicle weight" (GVW) to the previous "gross vehicle weight rating" (GVWR). The agency may now exercise its jurisdiction based on the GVW or GVWR, whichever is greater. A vehicle with a GVWR of 9,500 pounds that was loaded to 10,500 pounds GVW would therefore be subject to the FMCSRs if it was operating in interstate commerce. Commercial motor vehicle is now defined (in 49 U.S.C 31132) 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 TEA–21, if they were not already covered, "except to the extent that the Secretary [of Transportation] determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations."

The FMCSA views section 4008(b) of the 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. Although the House Conference Report (H.R. Conf. Rep. No. 104–422(1995)) on the ICCTA definitional change directed the agency not to impose on the States (as grant conditions under the Motor Carrier Safety Assistance Program (MCSAP)) the burden of regulating a new population of carriers covered by the definition, no such restriction is included in TEA–21 or its legislative history. The mandate of the TEA–21 is thus stricter than that of the ICCTA.

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

Elsewhere in today's **Federal Register**, the FMCSA published a notice of proposed rulemaking to amend the FMCSRs to implement section 212 of the MCSIA. The proposal addresses the safety oversight of camionetas operations and other van operations that have been determined to pose a serious safety risk and, consequently, focuses on many concerns raised by the Congress, the commercial passenger carrier industry, and the commenters in this proceeding. The remainder of this preamble focuses on the issues related to bringing closure to the rulemaking dockets identified at the top of this document.

Summary of Advance Notice of Proposed Rulemaking

On August 5, 1998 (63 FR 41766), the FHWA published an advance notice of proposed rulemaking (ANPRM) to announce that the agency was considering amending the FMCSRs in response to section 4008(a) of the TEA–21, to seek information about the potential impact of the TEA–21 definition, and to request public comment on the question of whether any class of vehicles should be exempted. The agency also requested comment on whether the term "for compensation" may be interpreted to distinguish among the types of van services currently in existence.

The agency received 733 comments in response to the ANPRM. The commenters included State and local government agencies, transit authorities, vanpool organizations, vanpool members, universities, trade associations, members of the Congress, and private citizens. Most (more than 720) of the commenters were opposed to making the FMCSRs applicable to the operation of small passenger-carrying CMVs. However, several commenters believed it is necessary to regulate these vehicles and, in certain cases, identified what they believe are the specific safety issues section 4008(a) of the TEA–21 was intended to resolve.

The majority of the commenters opposed to the rulemaking were organizers, members of vanpools, State and local agencies, and vanpool associations that believe implementing the definition of a passenger vehicle in section 4008(a) of the TEA–21 would adversely impact vanpool participation by imposing more stringent standards on drivers of these vehicles. Some of the commenters argued that there was no data to support imposing the FMCSRs on the operators of small CMVs, while others emphasized the adverse impacts that the rulemaking could have on transportation providers for elderly and disabled citizens.

Of the 733 comments submitted in response to the agency's ANPRM, only a few expressed support for implementing section 4008(a). The reasons for supporting the adoption of the revised definition of a CMV varied from the belief that highway safety would be improved if the commercial driver's license and controlled substances and alcohol testing rules were applicable to drivers of small passenger-carrying vehicles, to the belief that applying the safety regulations to these vehicles would improve school bus transportation. None of the commenters in support of regulating small passenger-carrying vehicles believed implementing section 4008(a) of the TEA–21 would result in adverse impacts to those businesses.

Summary of Interim Final Rule and Notice of Proposed Rulemaking

On September 3, 1999 (64 FR 48510), the FHWA published an interim final rule to adopt the statutory definition of a CMV found at 49 U.S.C. 31132. The interim final rule also exempted the operation of vehicles designed or used to transport more than 8 passengers (including the driver) for compensation, from all the FMCSRs for six months. On the same day, the agency published a notice of proposed rulemaking (NPRM) (64 FR 48518) to require that these motor carriers file a motor carrier identification report, mark their CMVs with a USDOT identification number and certain other information (*i.e.*, name or trade name and address of the principal place of business), and maintain an accident register.

Discussion of Comments to the Interim Final Rule and NPRM

There were nine comments in response to the interim final rule. The commenters were: the American Bus Association (ABA); the American Public Transit Association (APTA); the Colorado Department of Public Safety (Colorado DPS); the International Taxicab and Livery Association (ITLA); Greyhound Lines, Inc. (Greyhound); the National Funeral Directors Association (NFDA); the National Limousine Association, Inc. (NLA); the San Mateo County Transit District; and the Texas Department of Public Safety (Texas DPS).

There were 20 comments in response to the notice of proposed rulemaking. The commenters were: Mr. Ignacio Almada, a concerned college student; the Amalgamated Transit Union (ATU); the ABA; the American Car Rental Association (ACRA); Mr. E.A. Brown, a concerned citizen; Casa de Proyecto Libertad; the Commercial Vehicle Safety Alliance (CVSA); the Colorado DPS; Farmworker Justice Fund, Inc. (FJF); Greyhound; the ITLA; the Iowa Department of Transportation; Mr. Rick Farris, a concerned citizen; the League of United Latin American Citizens (LULAC); the National Automobile Dealers Association (NADA); the National Council of La Raza (NCLR); the NFDA; the NLA; Mr. Evan Nacherlilla, a concerned college student; and the Texas DPS.

Comments in Support of Making the FMCSRs Applicable to Operators of Small CMVs

The ABA, Mr. Ignacio Almada, the ATU, Mr. E. B. Brown, Casa de Proyecto Libertad, the Colorado DPS, the CVSA, the FJF, Greyhound, the LULAC, Mr. Evan Nacherlilla, the NCLR, the San Mateo County Transit District, and the Texas DPS expressed support for making all the FMCSRs applicable to the operators of small passenger-carrying CMVs. Greyhound stated:

Greyhound respectfully urges the Department of Transportation (DOT) to fully apply the Federal Motor Carrier Safety Regulations (FMCSRs) (except drug and alcohol testing and CDL requirements) to all interstate and international for-hire van service performed in the United States when such service extends beyond the commercial zones of cities or similar local boundaries and is performed by entities primarily engaged in providing surface transportation.

This compromise position provides safety regulation for those long haul van operators who are not now subject to meaningful regulation and whose safety record, in terms of fatalities, is far worse than the highly regulated intercity bus industry, which provides comparable service. At the same time, it exempts from federal regulation those short haul and incidental operators, such as vanpools, limousine operators, and rental car and hotel shuttles, whose operations may not be appropriate for federal safety regulation.

Substantial record evidence, including nationwide surveys submitted both in response to the ANPRM and again with these comments, demonstrates that long haul commercial vans are involved in a high level of fatal accidents, yet they are not subject to the federal safety regulations—driver qualifications, hours of service, and vehicle inspection and maintenance requirements—that are intended to prevent those accidents.

It is this type of evidence that led Congress to enact section 4008 of TEA–21 mandating application of the FMCSRs to commercial van operators by June 9, 1999 except to the extent that DOT through a rulemaking exempted some of those operators. That deadline is long passed and it is time for DOT to act expeditiously to protect the public by adopting a final rule applying the FMCSRs to long haul commercial vans.

Greyhound included in its comments information about recent accidents involving small passenger-carrying CMVs. Greyhound stated:

Greyhound conducted a nationwide clippings survey of all van accidents during the third quarter of 1998. Greyhound took the survey results, analyzed each news report, and eliminated all accidents that involved, or appeared to involve, all family, church, or other not-for-hire vans. What remained were 23 commercial van accidents involving 64 fatalities and over 100 injuries. On an annualized basis, this is 92 accidents, 256 fatalities and over 400 injuries. Greyhound's October 5, 1998 letter transmitting that survey to the docket is attached hereto as Attachment 1.

As part of this reply, we have done the same thing for the third quarter of 1999. The number of fatalities for 1999 is somewhat higher than for 1998. In the third quarter of 1999, there were 26 commercial van accidents involving 69 fatalities and approximately 150 injuries. On an annualized basis, that is 104 fatal accidents with 276 deaths and approximately 600 injuries. We attach hereto as Attachment 2, the third quarter, 1999 newspaper reports of fatal accidents that definitely or apparently involve commercial vans.

The ABA indicated that its members support making the FMCSRs applicable to the operators of small passenger-carrying CMVs. The ABA stated:

(T)he need to apply the FMCSRs to 9–15 passenger vans is more than a theoretical concern. ABA and its members have presented substantial evidence to the FHWA of the extensive scope of small passenger van operations throughout the United States. While it is true that neither ABA nor the FHWA has comprehensive data on the extent of compensated transportation services currently provided by operators of vans seating 9 to 15 passengers, ABA has discovered information indicating that this is a substantial and growing market, particularly but not exclusively in markets for predominantly Hispanic passengers. Moreover, this service is not merely local in scope, but includes interstate service throughout the United States, and foreign commerce service to and from Mexico.

In 1995, ABA member Greyhound Lines, Inc. provided to the FHWA and Congress information on the growth of van service emanating from Houston, Texas. That data showed literally dozens [of] operators performing van and motorcoach service from points in Mexico to points throughout the United States. Not any of that service was subject to the FMCSRs to the extent the vehicles carried fewer than 16 passengers.

The ABA indicated that it believes the accident data submitted by Greyhound should be sufficient in proving that there is a safety problem with operators of small passenger-carrying CMVs.

Several organizations and one State agency believe the FMCSA's rulemaking is necessary to improve the operational safety of vans used by motor carriers transporting migrant workers, immigrants, and people of Hispanic descent. Casa de Proyecto Libertad (or Liberty Project), an immigrant advocacy group in the Rio Grande Valley, stated:

It has come to our attention that many of these migrants are dying after entering the United States as victims of unregulated commercial passenger vans. These vans, or camionetas, operate on the Southwest border, traveling great distances between points in Mexico and the U.S. They are often operated over 12 hours a day by one driver and are packed full with migrants, vastly exceeding the 9 to 15 passenger limit. These already bad conditions are often exacerbated by worn tires and poorly working brakes. We at Proyecto Libertad work to better the futures of migrants and refugees, however it is of great concern to us that the safety of these same people is compromised because these vans are not required to meet federal safety standards. A majority of the deaths that result from this unregulated industry involve Hispanics; out of an estimated 250 casualties per year, 60 percent are Hispanic.

The regulations that the FHWA is presently exploring are an important first step, however, we also believe that there are further safety components that should be covered. The absence of regulation allows anyone to set up a business to transport paying passengers without concern for any margin of safety, no matter how small. Therefore, it is important to step up any regulation that FHWA considers with some simple but necessary requirements for commercial passenger vans including: length of driving time, basic vehicle safety standards and maintenance requirements, and stricter driver qualifications.

In order to improve the industry's safety record, FHWA must commit to taking the regulations to a higher level of safety. FHWA will, in effect, be stepping in to save lives of people unwittingly using unsafe commercial passenger vans, as well as those who come in contact with them on the country's roads.

The National Council of La Raza and the Farmworker Justice Fund, Inc. also submitted comments concerning the safety of Hispanic passengers. The FJF described itself as a litigation and advocacy organization that represents migrant and seasonal farmworkers around the nation. Its primary focus is on wages and working conditions, occupational health and safety, immigration status, and women's rights. The NCLR and the FJF stated:

Both NCLR and FJF support the proposed regulations for interstate commercial passenger vans designed for 9–15 passengers, but only as part of the overall applications of the FMCSRs to this group. The proposed exemption of for-hire passenger vehicles from basic safety regulations will result in the loss of hundreds of lives each year, most of them Latino migrant workers traveling from border states to the central U.S. states in commercial interstate passenger vans known as camionetas. The vast majority—80 percent by some estimates—of the victims who have died as a result of the use of these unregulated vehicles is Latino. Allowing these camionetas to continue to be in use without regulation is tantamount to dismissing the lives of their victims as insubstantial.

Camionetas typically are older, dilapidated vans. Border guards report that balding tires, worn brakes, lack of seatbelts and fire extinguishers are the norm for these vehicles. Instead of 15 passengers that these vehicles are designed to carry, camionetas are often overcrowded with 30 passengers or more. To save money, camioneta owners often assign only one driver for the long journey. Each of these factors poses significant safety risks.

The Texas DPS stated:

(We) can fully appreciate the dilemma that the revision of the definition of a commercial motor vehicle creates for the FHWA, as many small businesses would become subject to the regulations. There is no way to determine how many new motor carriers, drivers, and vehicles would be subject to the new requirements. While the new definition will create an inequitable situation for some of these carriers, we must not lose sight of what I believe was the primary inpetus behind the change in the definition—the "camionetas" operating between major cities in Texas and the other southern states to and from our borders with Mexico. We have been in discussion with the Texas Bus Association over the past three years concerning the operation of the camionetas in Texas. These vehicles and drivers often provide the same transportation services over the same routes as the large bus companies, with the benefit of not having to comply with the safety regulations. The drivers operate unregulated for longer hours than their bus counterparts in vans that endure an enormous amount of wear and tear on a daily basis. The passengers that subscribe to the service these carriers provide do so because of choice, convenience, and a greater sense of security with the driver and carrier. However, their decision to use these carriers should not be interpreted as a waiver of their rights to the same protection and safety assurances that they would receive by travelling on a major bus line.

While the camionetas may be the prime reason for the change in the definition of a commercial motor vehicle, (we) would suspect that there are other van services within the nation that inspire similar safety concerns. There are other van services that will be included in this definition and made subject to the FMCSR that should be exempted. Day care centers and hotel shuttle vans may be prime examples of these carriers. However, (we) cannot endorse exempting these carriers from the regulations since they operate wholly within a municipality's commercial zone and will have little direct exposure to the state agencies that normally enforce the FMCSR. There are many municipal police agencies that are also authorized to enforce the FMCSR that may have a legitimate need to regulate these carriers within their jurisdictions. (We) believe that their opinion on the issue should be considered.

Comments in Opposition to Making the FMCSRs Applicable to Operators of Small CMVs

Mr. Rick Farris and the Iowa Department of Transportation expressed opposition to making the FMCSRs applicable to operators of small passenger-carrying CMVs subject to the FMCSRs. The ACRA, ITLA, NADA, NFDA, and NLA opposed making the FMCSRs applicable to their respective members, rather than expressing total opposition to regulating operators of small passenger-carrying CMVs.

The ACRA stated:

ACRA advocates that the Agency postpone regulating small passenger-carrying motor vehicles until evidence is available that demonstrates these vehicles pose a safety risk. Congress has given FHWA the discretion to regulate these vehicles based upon FHWA's expertise in the area of CMVs. If the Agency does not have the information available to consider these smaller CMVs a safety risk, then FHWA should develop that information before deciding to regulate. In all cases of government action, there should be a firm factual foundation for the action—that foundation should not be developed after the promulgation of potentially burdensome regulations.

If FHWA decides to move forward with this rulemaking, ACRA urges that the Agency find that airport shuttle vans and buses with passenger capacities of 15 or less, such as those operated by car rental companies, fall outside the definition of "commercial motor vehicles." Car rental shuttle services do not fall within the scope of Congress' intent because these shuttle services are not "for compensation" within the plain or economic meaning of that term. They merely provide a courtesy service for potential customers of a car rental agency. The fact that car rental shuttle services are operated by "businesses" (as referenced in the Agency's Regulatory Guidance for FMCSRs) is not, in and of itself, sufficient to extend the federal government's regulatory reach over this small subgroup of small passenger-carrying motor vehicles.

If FHWA ultimately ignores this argument and decides to cover these courtesy shuttles within the scope of this rulemaking, ACRA urges the Agency to restrict the scope of its regulations to the three areas proposed in the NPRM. Considering the limited factual foundation that FHWA has for classifying these smaller vehicles as CMVs, it is not appropriate to burden the owners of these vehicles with the full regulatory requirements of the FMCSRs. If FHWA is intent on regulating these smaller vehicles, then the limited burdens proposed in the NPRM would be far preferable to full FMCSR application.

The ITLA expressed concern about imposing the FMCSR's on the operators of small passenger-carrying CMVs given the apparent lack of data on the safety of such operators. The ITLA stated:

ITLA's position is that FHWA must extend the current six month extension if the rulemaking concerning the application of the limited FMCSRs is not complete at the time that the current six month exemption expires. It is ITLA's reading of FHWA's NPRM that FHWA proposes to only apply the three requirements listed in the NPRM to the operators of small passenger-carrying CMVs, and that the rule proposed in the NPRM would continue to provide an exception to the general application of all of the FMCSRs except for the three listed. ITLA is totally opposed to the application of any other FMCSRs to small passenger-carrying CMVs unless and until FHWA obtains safety data indicating that other FMCSRs should be applied to this class of vehicle.

While the ITLA is opposed to making the safety regulations applicable to its members operating small passenger-carrying CMVs, the association believes certain types of vanpool operations should be regulated if the agency regulates the operation of small CMVs. In its comments to the interim final rule the ITLA stated:

ITLA is very concerned with the FHWA's indicated position that it will not make the FMCSRs applicable to vanpools. FHWA has indicated that it does not intend to "regulate commuter vanpools that are not operated in the furtherance of a commercial enterprise." FHWA limits its discussion of this issue to vans which are operated by individuals as part of a "vanpooling" arrangement. FHWA appears to dismiss, as irrelevant, the fact that members of the vanpool may pay a monthly fee to an individual to provide the vanpool service. This vanpool service could easily be provided in lieu of a commercial enterprise. The fact the individual providing the service is not a business seems to be irrelevant. The type of service being provided should be the controlling factor. In addition, FHWA totally ignores the fact that several companies provide vans to their employees to operate vanpools. In addition, ITLA must presume that FHWA intends to apply applicable FMCSRs to operators of vans which provide vanpool services as a commercial enterprise. ITLA urges the FHWA to closely reexamine this issue before making a final determination concerning the applicability of the FMCSRs to "non-commercial" vanpools.

The NFDA indicated that its members generally do not operate vehicles designed or used to transport 9 to 15 passengers. However, the organization believes that when such vehicles are operated in a funeral procession, they should be exempt from Federal safety regulations. The NFDA stated:

While most funeral homes provide limousine services to families, the vast majority of these vehicles are not designed or used to transport more than 8 passengers. However, there are members of NFDA that do provide funeral livery vehicles that can transport more than 8 passengers and which would be subject to the Interim Final Rule.

NFDA believes that an exemption is warranted for vehicles used in connection with a funeral service since they are typically operating in a funeral procession under a police escort and subject to special state and local laws * * *.

Given these precautions and the fact that funeral processions typically travel short distances and at low speeds under a police escort, an exemption from the Interim Final Rule is warranted for a commercial motor vehicle designed or used to transport more than 8 passengers that is used in connection with a funeral service or funeral procession. NFDA respectfully requests that commercial motor vehicles designed or used to transport more than 8 passengers (including the driver) for compensation be exempt from the Interim Final Rule when used in connection with a funeral service or funeral procession.

Comments Concerning the Definition of the Term "For Compensation" and Recommendations on Types of Carriage That Should Be Regulated

The preamble to the NPRM included a discussion of the term "for compensation." The discussion referenced certain regulatory guidance the agency published in the **Federal Register** on April 4, 1997 (62 FR 16370). The agency indicated that the term "for compensation" was considered the same as "for hire" and discussed its interpretation of for-hire motor carriers. The NADA disagreed with the agency's interpretation of what constitutes a for-hire motor carrier. The NADA stated:

NADA strongly disagrees with this interpretation and the FHWA's reliance on it to justify the potential regulation of 12 or 15 passenger vans used by dealerships to shuttle customers at no cost. Regarding dealerships that operate courtesy shuttles in interstate commerce, NADA knows of none that charge riders a fee. Moreover, service customers who ride these shuttles are not charged more for vehicle repair or service work than customers who do not.

In its proposal, the FHWA seems to suggest that Congress did not intend for the FHWA to regulate van pools, schools or school bus contractors. If so, then it follows logically that Congress did not intend for free shuttle services to be regulated. Unlike free shuttle service riders, van poolers, school systems and community bus users "compensate" directly or indirectly for their transportation. From a policy standpoint, free shuttle services are akin to van pools in that they reduce traffic congestion and air pollution by eliminating the use of a greater number of vehicles with fewer occupants in each vehicle.

What Congress did intend to regulate was entities which are primarily or significantly in the business of for-hire people transportation. Certainly these would include bus, commercial van or taxi services operating vehicles such as 12 and 15 passenger vans or 11 passenger limousines in interstate commerce. In the interest of avoiding an overly expansive definition and in the interest of clarity, the FHWA should promulgate a final rule that defines for-hire transportation to include only directly compensated, fee-paid transportation. Of course, NADA recognizes that dealerships operating courtesy shuttle vans not for compensation are subject to the over 15 passenger vehicle set out in 49 USC 31132(1)(C).

The ABA also provided comments concerning the meaning of the term "for compensation." The ABA believes the FMCSA should interpret the term in a way that limits the scope of the rulemaking to entities primarily engaged in the for-hire transportation of passengers. The ABA believes the scope of the rulemaking should be further limited to small passenger-carrying CMV operations outside of commercial zones, as defined in 49 CFR part 372. The ABA stated:

ABA continues to believe that the term "for compensation" be defined the same as the term "for hire," and agrees with FHWA's assertion that the term "for compensation" is synonymous with "for-hire." However, ABA proposes that the FHWA adopt the "primarily engaged in" test and the "commercial zone" exemption discussed above. This approach will allow the FHWA to retain its current definitions and policies, minimize the burden on these non-transportation companies and greatly reduce the populations of new entities for enforcement purposes.

The ABA indicated that it does not believe that hotel and rental car shuttles should be covered under the FMCSRs. Since theses operations are primarily non-transportation businesses, they should not be considered for-hire passenger carriers.

Comments Concerning the MCS–150

Mr. Evan Nacherlilla and Mr. Ignacio Almada believe the FMCSA should collect information concerning each employee's and driver's previous driving record, experience, and criminal record. These commenters also believe the agency should create a database available to the general public via the Internet that identifies all motor carriers operating small passenger-carrying CMVs. They argue that this will allow the public to make informed decisions whether to engage in business with certain motor carriers.

Comments Concerning Marking of CMVs

The ITLA and the NFDA opposed the proposal that operators of small passenger-carrying CMVs be required to mark their vehicles in accordance with 49 CFR 390.21. The ITLA stated:

Although the ITLA recognizes the limited applicability of FMCSRs that FHWA is proposing, the ITLA does question the necessity of imposing the marking requirements of 49 CFR 390.21 on limousines and other "luxury-type passenger service" vehicles. Under the provisions of 49 CFR 390.401, limousines and other "luxury-type passenger service" vehicles with a capacity of six or fewer passengers are exempt from the marking requirements of 49 CFR part 390, Subpart D. ITLA urges the FHWA to expand this exemption to vehicles providing similar services which carry 9 to 15 passengers including the driver. The nature of the service provided in such vehicles is luxury service, as acknowledged by FHWA in the existing regulations at 49 CFR 390.401. The imposition of the marking requirements on larger capacity limousines and other luxury-type passenger service" vehicles would appear to serve no useful safety purpose, but would diminish or eliminate the "luxury" nature of the service provided by unnecessarily marking the vehicles in question.

The NFDA stated:

While this regulation does not impose undue regulatory burdens for most motor carriers operating CMVs, they would cause significant consumer dissatisfaction with funeral homes operating CMVs. It would offend many funeral consumers if limousines used by funeral homes were marked with ODOT numbers and the name and address of the funeral home. These markings would appear to many consumers as an undignified advertisement painted on a limousine that is being used in connection with a funeral service. For these reasons, NFDA would request exemption from the proposed regulation for all CMVs used by a funeral home in connection with a funeral service or funeral procession.

Comments Concerning the Proposal to Require an Accident Register

Mr. Evan Nacherlilla and Mr. Ignacio Almada believe the accident register for the operators of small passenger-carrying vehicles should include the "legal conclusion to the accident and the individual dollar amount in damage to all vehicles involved." These commenters indicated that documenting this information would make it easier for any interested party to determine if the driver of the CMV was responsible for the accident, and to determine the severity of the accident. They also suggest that the accident register cover all accidents for the previous 60 months.

FMCSA Response to Comments

The FMCSA has carefully considered all of the comments received in response to the interim final rule and the NPRM. We have grouped the comments by subject for discussion.

Safety Performance Information Submitted by Commenters

The ABA, ATU, Casa de Proyecto Libertad, and Greyhound have presented compelling information detailing accidents and deaths occurring in small passenger vans in the United States. These submissions indicate that commercial van transportation is increasing across the country, particularly in markets serving the U.S.–Mexico border. The camionetas operations along the border were singled out in the comments as posing significant unregulated safety risks to passengers and the travelling public. The Texas DPS echoed this view and recommended they should be subject to the FMCSRs. Notwithstanding the emphasis on camionetas operations, the commenters raise questions about the safety of other long-haul, interstate van operators as well.

The information presented by the various commenters raises safety issues

the FMCSA must address. Our plan to address the issues begins with this final rule. When this rule becomes effective, all businesses operating vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation in interstate commerce will be required to complete a motor carrier identification report, mark their vehicles with a USDOT identification number, and maintain an accident register. The agency is taking this action to gather information about the operations and safety of motor carriers operating small passenger-carrying vehicles for compensation.

Elsewhere in today's **Federal Register**, the FMCSA published another rulemaking required by section 212 of the MCSIA. It addresses the safety oversight of camionetas operations and other van operations that might pose a serious safety risk and, consequently, focuses on many concerns raised by the commenters in this proceeding. For that reason, the FMCSA requests that those who have participated in this rulemaking assist the agency in implementing section 212 of the MCSIA. The accident information from news clippings paints a vivid, but indiscriminate, picture of safety problems in van transportation. The challenge for the FMCSA is to develop information that enables the agency to focus its regulations on the industry segment that poses serious safety risks. By this rulemaking, the FMCSA has narrowed its focus to for-hire motor carriers operating vehicles designed or used to transport 9 to 15 passengers in interstate commerce. The other rulemaking concerning section 212 of the MCSIA considers which segments of that group should be subject to the safety-related operational FMCSRs. The agency encourages all interested parties to respond to the notice of proposed rulemaking on this subject and welcomes information that helps us make that determination.

Response to Comments Concerning the Meaning of the Phrase "For Compensation"

The FMCSA recognizes the concerns that the ABA, ACRA, Greyhound, NADA, and NFDA have about how the agency interprets the phrase "for compensation." Although these commenters believe the phrase should, for the purpose of implementing section 4008 of the TEA–21, be interpreted to be applicable to only those entities that are directly compensated (*i.e.*, entities that are primarily engaged in the for-hire transportation of passengers), the FMCSA will continue to use the broader interpretation of the phrase. The agency stands by its previously stated position that the phrase "for compensation" is synonymous with "for hire" and its April 4, 1997 (62 FR 16370, 16407), interpretation of "for-hire motor carrier." The interpretation states:

> The FHWA has determined that any *business* (emphasis added) entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters; hotel/motel shuttle transporters; rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

The reference to six-passenger taxicabs operating on fixed routes was included in the guidance due to a CMV definition set forth in the ICCTA. The ICCTA amended the statutory definition of a CMV, adding "designed or used to transport passengers for compensation, but exclud[es] vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places." The TEA–21 definition removed this clause from the definition of CMV.

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

Response to Comments About Transportation of Migrant Workers

The FMCSA recognizes that some commenters believe that migrant workers face disproportionately high fatality rates in small passenger-carrying CMVs because the FMCSRs do not apply. Although the FMCSRs do not apply to small vans at this time, the FMCSA has in place safety regulations applicable to motor carriers that transport migrant workers more than 75 miles in interstate or foreign commerce (49 CFR part 398). These regulations apply to 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. Overall, the rules address the safety concerns expressed by commenters. For example, § 398.6 prohibits drivers from operating a vehicle for more than 10 hours in any 24-hour period, unless the driver is given 8 hours rest immediately following the 10 hours driving time. Drivers must meet the physical qualification standards in § 398.3 to qualify as a driver of migrant workers. Equipment standards are prescribed in § 398.4 to ensure that the carrier's motor vehicles are safe. Moreover, carriers are required to have their vehicles systematically inspected (§ 398.7). As these regulations prescribe broad safety standards for motor carriers of migrant workers, the FMCSA does not see a basis for additional regulation in this specific segment of the industry.

Response to Comments Concerning Information on the Form MCS–150

The FMCSA has considered Mr. Evan Nacherlilla's and Mr. Ignacio Almada's comments concerning the collection of data on the Form MCS–150 about individual driving records, experience, and criminal records. Motor carriers are already required to consider driving records and information from previous employers as part of the process for hiring drivers. The FMCSA believes that this responsibility should remain with the employer and sees no public benefit to having the agency collect this information. With regard to Mr. Evan Nacherlilla's and Mr. Ignacio Almada's comments about the creation of a database that identifies all motor carriers operating small passenger-carrying CMVs, the FMCSA has already developed databases of all interstate motor carriers that have complied with the agency's requirement to complete the motor carrier identification report (see 49 CFR 390.19), and for-hire motor carriers that must obtain operating authority (see 49 CFR part 365). The public may request safety profiles of interstate motor carriers by calling 1–800–832–5660. The public may also obtain information about motor carriers via the Internet by visiting the agency's website at *http://www.fmcsa.dot.gov.*

Response to Comments Concerning Marking of CMVs

The FMCSA continues to believe that small passenger-carrying CMVs should be marked to help enforcement officials and the general public identify these vehicles. However, after considering the comments received in response to the NPRM, the agency has determined that marking these vehicles with USDOT identification numbers only is sufficient at this time. The agency is not requiring that the name of the carrier, and the principal place of business be marked on these CMVs. The types of passenger-carrying operations being conducted by many of these businesses (*e.g.*, vehicles in funeral processions) is such that it would be distasteful to clients and

customers to have the vehicles marked in the same manner as larger CMVs. Clients and customers of limousine services and other luxury-type passenger service would most likely prefer that the vehicles be discretely marked. A requirement that these vehicles display the name of the motor carrier and principal place of business with markings that are readily legible, during daylight hours, from a distance of 50 feet while the vehicle is stationary would be anything but discrete. Marking the vehicles with the USDOT identification number only, would provide a unique identifier linking the vehicle to the motor carrier, without being a visual annoyance to clients and customers. The identification number must be visible from a distance of 50 feet from the CMV, but this requirement should be much less offensive to customers than displaying the name and principal place of business for the motor carrier.

The FMCSA believes that, given the relatively small size of vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation when compared to other CMVs, motorists should be able to quickly locate the USDOT identification numbers displayed on the sides of the vehicles. Further, motorists should be able to see the license plate(s) on these small CMVs more easily than those on larger vehicles. For urgent matters (such as accidents or allegations of dangerous driver behavior) that necessitate immediate action by State or local law enforcement officials, the license plates will enable those officials to trace the vehicle back to the registered owner (*i.e.*, the motor carrier or leasing company) and the display of the company name and principal place of business is not critical. For other matters, such as individuals who wish to submit complaints about unsafe motor carriers (*e.g.*, motorists who have only the USDOT identification number, clients or customers who know only the name of the business, or motor carrier employees reporting information about their employers), the FMCSA will have sufficient information to locate these carriers and take appropriate action. Accordingly, the FMCSA will only require that small passenger-carrying CMVs be marked with the USDOT identification number.

Response to Comments About the Accident Register

The FMCSA does not believe it is necessary to require that the accident register include more information than is currently required by 49 CFR 390.15. There is no discernible benefit to Mr. Evan Nacherlilla's and Mr. Ignacio Almada's suggestion that the agency require motor carriers to include in their accident registers information about findings of guilt or innocence for each accident. The agency also sees little benefit to requiring that information be retained by the motor carrier for 60 months. The commenters have not provided any information to suggest that the current requirements are insufficient.

The FMCSA is concerned about the total number of accidents, as defined in 49 CFR 390.5, that a motor carrier has experienced for the previous 12 months, when an assessment of the motor carrier's safety management controls must be made. The agency calculates motor carriers' accident rates (the number of recordable accidents per million miles of CMV travel) as part of the process for determining their safety rating. Accidents are a factor in that process when a motor carrier incurs two or more recordable accidents within the 12 months prior to a compliance review. The agency considers "preventability" when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. The agency uses the following standard in making a determination of preventability: "If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable." This standard is presented in appendix B to part 385, Explanation of Safety Rating Process.

The commenters have not provided any information to support the implicit assertion that the current accident information used as a factor in assessing a motor carrier's safety fitness is inadequate. Irrespective of whether the driver receives a ticket for violating State or local traffic laws, or is convicted of a more serious offense, the FMCSA continues to believe that all recordable accidents should be considered when determining a motor carrier's safety fitness. The FMCSA is able to obtain all the information it needs concerning accidents involving a motor carrier subject to 49 CFR 390.15, either from other records maintained by the motor carrier or from State or local enforcement agencies that responded to the accident(s) in question. Therefore, the FMCSA has in place a reliable means of gathering information about accidents involving fatalities, injuries requiring medical treatment away from the scene of the accident, or disabling damage to any of the vehicles involved in the incident.

With regard to the suggestion that the accident register include the dollar amount of damages in each accident, the FMCSA does not believe such information is a reliable means of assessing the severity of accidents. For example, a CMV collision involving the total loss of an expensive brand new import car would be listed as a more severe accident than one involving the total loss of 10-year-old import car of the same make and model. The fatality, injury, and disabling damage criteria provide a more effective means of distinguishing between accidents involving only minor injuries and/or property damage, and those that are more severe.

Discussion of the Final Rule

The FMCSA is making final the amendments to the definition of "commercial motor vehicle" in § 390.5 that were adopted on an interim final basis on September 3, 1999 (64 FR at 48516–48517). All of the amendments are based on statute. The FMCSA is also adopting a revised version of § 390.3(f)(6) to require that operators of CMVs designed or used to transport 9 to 15 passengers for compensation complete a motor carrier identification report (49 CFR 390.19), comply with certain provisions of the CMV marking regulation (49 CFR 390.21, except § 390.21(b)(1)), and maintain an accident register (49 CFR 390.15). These actions will enable us to monitor the operational safety of all motor carriers operating small passenger vehicles for compensation. In addition, the three requirements will help the agency compile information on the number of motor carriers operating small passenger-carrying vehicles for compensation, the locations of their principal places of businesses, the number of vehicles operated, and the number of drivers employed. Through marking of the vehicles with USDOT identification numbers, State agencies will be able to identify small passenger-carrying vehicles and collect accident data for submission to the FMCSA through the agency's SAFETYNET database. The requirement that motor carriers operating small passenger-carrying CMVs maintain accident information will enable the agency to conduct special studies concerning the safety performance of these carriers.

Motor Carrier Identification Report

Section 390.19 of the FMCSRs requires motor carriers to file Form MCS–150, Motor Carrier Identification

Report, before beginning operations in interstate commerce, and to file an update of the report every 24 months. The information from the Form MCS–150 is used to create a file in the Motor Carrier Management Information System (MCMIS), a database containing safety information about interstate motor carriers (e.g., compliance review results, roadside inspection results, CMV accidents, etc.).

The FMCSA is requiring that operators of small passenger-carrying CMVs file Form MCS–150 to enable the agency to determine how many motor carriers are affected by the TEA–21 revision to the CMV definition, the number of drivers employed and vehicles operated by these carriers, and the principal place of business for each of these entities. Each motor carrier will be assigned a USDOT census or identification number which, when marked on each CMV operated by the motor carrier, will help enforcement officials and the general public identify these businesses.

Vehicle Marking

Section 390.21 requires that motor carriers mark their CMVs with the name or trade name of the business, the city or community and State in which the motor carrier maintains its principal place of business, and its motor carrier identification number. The FMCSA is requiring the operators of small passenger-carrying vehicles to comply with all the provisions of the marking rule, except § 390.21(b)(1) concerning the display of the name or trade name of the motor carrier. This will help to ensure that enforcement officials and the public can identify motor carriers' vehicles and that accidents (as defined in 49 CFR 390.5) can be recorded by the States and entered into the FMCSA's SAFETYNET database. The FMCSA will use the information to study the number and locations of accidents, and the motor carriers involved, to determine if there are patterns or trends concerning the safety performance of these carriers.

Accident Register

Section 390.15 requires that motor carriers make all records and information pertaining to an accident available to the FMCSA upon request. Motor carriers must give the agency all reasonable assistance in the investigation of any accident. Motor carriers also must maintain at the principal place of business, for a period of one year after an accident occurs, an accident register with the following information:

(1) Date of the accident;

(2) City or town in which or most near where the accident occurred, and the State in which the accident occurred;

(3) Driver's name;

(4) Number of injuries;

(5) Number of fatalities; and

(6) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released.

Copies of all accident reports required by State or other government entities or insurers also must be maintained by the motor carriers.

The FMCSA is requiring that operators of CMVs designed or used to transport 9 to 15 passengers for compensation be required to comply with § 390.15 to assist the agency in conducting investigations and, if necessary, special studies about the safety performance of particular motor carriers or segments of the industry. For example, if one of a motor carrier's small passenger-carrying vehicles is involved in a major accident or a series of accidents, the FMCSA could review the records required by § 390.15 as part of the process of determining whether there are deficiencies with the carrier's safety management controls.

Explanation of the Term "For Compensation"

The TEA–21 definition of a passenger CMV includes the phrase "for compensation" in 49 U.S.C. 31132(1)(B). However, the TEA–21 did not include a definition of the phrase. As stated above, the FMCSA considers the term to be synonymous with "for hire." The FMCSA intends that this rulemaking be applicable to all interstate for-hire motor carriers of passengers operating CMVs designed or used to transport 9 to 15 people. Although some commenters to the interim final rule and NPRM suggested that a distinction be made between businesses that are primarily engaged in the for-hire transportation of passengers and those that are primarily engaged in a non-transportation related enterprise, the agency does not believe it is appropriate to exempt a for-hire motor carrier from the requirements being proposed on the basis of how the motor carrier is paid for its services.

Rulemaking Analysis and Notices

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

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest concerning the possible extension of the applicability of the FMCSRs to a larger population of motor carrier operations. This rule requires that operators of vehicles designed or used to carry between 9 and 15 passengers (including the driver) for compensation, in interstate commerce, file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register.

The FMCSA believes the costs of complying with the requirements to submit a motor carrier identification report and to maintain an accident register are negligible. These requirements impose only information collection burdens (*i.e.*, completion of forms, recordkeeping, etc.) and are discussed in greater detail below in the "Paperwork Reduction Act" section of this notice.

The FMCSA estimates that the cost of marking CMVs will be between $11 and $27 per vehicle depending on the number of vehicles the motor carrier operates. Although the actual cost to the industry should be less than that originally estimated in the agency's NPRM—the final rule requires that less information be displayed than was originally proposed—the FMCSA is using the same estimate range to avoid underestimating the burden on the industry. These cost estimates are based upon the FMCSA's regulatory evaluation and regulatory flexibility analysis prepared for the June 2, 2000 (65 FR 35287), final rule concerning CMV marking requirements. The complete regulatory evaluation and regulatory flexibility analysis are included in FMCSA Docket No. FMCSA–98–3947.

Since motor carriers operating CMVs designed or used to transport 9 to 15 passengers currently are not required to complete Form MCS–150, the FMCSA does not have sufficient data to estimate the total number of CMVs that would need to be marked in accordance with § 390.21. However, one of the commenters responding to the August 5, 1998, ANPRM (63 FR 41766) provided information that may be useful in estimating the population of vehicles that would need to be marked. The International Taxicab and Livery Association (ITLA) stated:

> According to information available to ITLA, there are approximately 50,000 limousines in use that would be affected by the definitional change. It should be noted that there are over 9000 limousine operators nationwide (also operating premium sedan services), and that the median fleet size is less than 5. In addition, the average annual

miles operated by limousines is approximately 23,000 miles.

ITLA estimates that there are approximately 74,000 vans nationwide—the breakdown between "mini-vans" and those affected by the proposed definition is not available. Van fleets average less than 10 vans, with an approximate annual mileage of 40,000 per vehicle, and an average trip length of less than 8 miles lasting significantly less than 1 hour.

In September of 1998, the American Business Information (a mailing list sales company) released a sales catalog that reports the following information:

SIC code	Type of service	# of U.S. companies
4111–01 ...	Airport Transportation.	4,752
4119–01 ...	Handicapped Transportation.	1,302
4119–03 ...	Limousine Transportation.	9,482
4121–01	Taxicab Transportation.	7,348
Total	.....	22,884

The ITLA indicated that, if the agency decides to make 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. If there are 125,000 vehicles designed or used to transport 9 to 15 passengers for compensation in interstate commerce, the costs to the industry for marking CMVs could be between $1,375,000 and $3,375,000. The costs are one-time expenses and would not be recurring. Generally, the marking would last the normal life of the vehicle.

At this time, the FMCSA is not able to specifically quantify the safety benefits resulting from requiring CMVs to be marked. The requirement is necessary because it would be used to monitor the safety performance of these motor carriers. The safety performance data ultimately would be used to determine whether there are safety problems with operators of small passenger-carrying CMVs, and whether other FMCSRs should be made applicable to them.

The FMCSA has considered other rulemaking options, such as not imposing any regulatory burdens on these motor carriers, excluding the marking requirements from this final rule, or imposing more stringent requirements. The agency believes the option chosen will be most effective at helping to achieve its objective to monitor the safety performance of these passenger carriers. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action is minimal and a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that this rule will affect a substantial number of small entities, but will not have a significant impact on them. If the ITLA's estimate of 14,000 interstate motor carriers operating CMVs designed or used to transport 9 to 15 passengers is accurate, and most or all of these businesses are classified as small businesses by the Small Business Administration (SBA), the rule could affect up to 14,000 small entities.

Generally, the costs per vehicle for small companies to mark their CMVs will be greater than those for large companies. If a motor carrier has between 1 to 6 vehicles, the total cost per vehicle for marking is estimated at $27. The motor carrier's total cost would therefore be between $27 and $156. For a motor carrier operating 7 to 20 CMVs, the total cost per vehicle marking would be $21. The total cost for the motor carrier's fleet would be between $147 and $420. For a fleet of 21 to 99 vehicles, the total cost per vehicle marking would decrease to $16. The total cost for the motor carrier's fleet would be between $336 and $1,584. And, for a fleet of 100 to 999 vehicles the cost per vehicle marking would decrease to $11. The total fleet cost would be between $1,100 and $10,989.

For purposes of this rulemaking analysis, given the lack of any other relevant data on the subject, the FMCSA will use the ITLA's estimate for the number of businesses, vehicles, and drivers for these small passenger-carrying CMVs. The FMCSA's data concerning carriers that have operating authority can only be used to identify 1,648 interstate motor carriers operating vehicles designed or used to transport between 9 to 15 passengers. The agency believes there may be many more carriers and that the ITLA's estimate appears to be a reasonable number.

Based on its analysis summarized above, the FMCSA believes that this rulemaking could affect, but not have a significant impact on, a substantial number of small entities. For example, if a small entity operated between 7 and 20 CMVs, the total cost per vehicle marking would be $21. The total cost for the motor carrier's fleet would be between $147 and $420. The FMCSA does not consider this total fleet cost for marking the CMVs to be a significant impact on a business operating 20 vehicles, but a normal operating cost for doing business. The anticipated benefits (*i.e.*, enabling the FMCSA, State agencies, and others to identify small passenger-carrying vehicles involved in accidents and, in turn, determine whether additional regulatory requirements are necessary) outweigh the costs associated with this rule. Accordingly, the FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal contains new collection of information requirements for the purposes of the PRA. The FMCSA is requiring that motor carriers operating CMVs designed or used to transport 9 to 15 passengers meet the vehicle marking requirements at 49 CFR 390.21 (except § 390.21(b)(1)). The FMCSA believes it is important that small passenger-carrying CMVs be marked with USDOT numbers so that the public has an effective means to identify motor carriers operating in an unsafe manner. Such markings will also assist Federal and State officials in accident investigations.

The information collection requirements contained on Form MCS–150 have been approved by the OMB under the provisions of the PRA and assigned the control number of 2126–0013 which expires on October 31, 2002. The FMCSA estimates it takes approximately 20 minutes for interstate motor carriers to complete the Form MCS–150 the first time it is filed. The agency estimates that as a result of this rulemaking, 14,000 interstate motor carriers, currently not subject to the FMCSA's safety regulations, would have to complete the Form MCS–150. Motor carriers are required to complete the form before beginning operations in interstate commerce. Motor carriers

must also update the information submitted to the agency every 24 months. However, the agency estimates the update would take considerably less time because most of the information is likely to be the same and motor carriers would already have had the experience of completing the form at least once before the update. The agency estimates the update would take 10 minutes. Therefore, the FMCSA estimates an additional burden of 4,667 hours ((20 minutes per motor carrier × 14,000 motor carriers) / 60 minutes per hour) to OMB 2126–0013 for the initial filing of the Form MCS–150. The burden hours for OMB 2126–0013 would be further increased by 2,333 hours ((10 minutes per motor carrier × 14,000 motor carriers) / 60 minutes per hour) because of the biennial update. This final rule contains a requirement that businesses currently not subject to 49 CFR 390.19 file, and periodically update the Form MCS–150.

The information collection requirements for the accident register have been approved by the OMB under the provisions of the PRA and assigned the control number of 2126–0009 which expires on August 31, 2002. The FMCSA estimates it takes approximately 18 minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. However, since the FMCSA does not have sufficient information to estimate the number of accidents operators of small passenger-carrying CMVs have each year, the agency is unable to estimate the total time burden. If each of the estimated 14,000 interstate motor carriers operating small passenger-carrying vehicles has one accident per year, an additional burden of 4,200 hours per year ((18 minutes per motor carrier × 14,000 motor carriers)/60 minutes per hour) would be added to OMB No. 2126–0009. This final rule requires businesses currently not subject to 49 CFR 390.15 to maintain an accident register.

The FMCSA submitted both of these revised information collections, as required, to OMB for review and approval at the time the September 3, 1999, NPRM was published. Interested parties were invited to send comments regarding these information collection requirements. There were no substantive comments received. Therefore, the FMCSA is requesting that the revised information collections be approved at this time and is submitting this request to OMB.

National Environmental Policy Act

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism Assessment)

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

Regulation Identification Number

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

List of Subjects in 49 CFR Part 390

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

Issued on: January 4, 2001.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

Accordingly, part 390 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 390—[AMENDED]

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

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

2. Amend § 390.3 to revise paragraph (f)(6) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) *Exceptions.* * * *

(6) The operation of commercial motor vehicles designed or used to transport between 9 to 15 passengers (including the driver). However, motor carriers operating these vehicles for compensation are required to comply with 49 CFR 385.21, Motor carrier identification report, 49 CFR 390.15, Assistance in investigations and special studies, and 49 CFR 390.21, Marking of commercial motor vehicles (except § 390.21(b)(1)).

3. Amend § 390.5 to revise the definition of "Commercial motor vehicle" to read as follows:

§ 390.5 Definitions.

* * * * *

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

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

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

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

[FR Doc. 01–765 Filed 1–10–01; 8:45 am]

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