

TABLE 21.—DISTRIBUTION OF FIRMS BY SIZE, IN YEAR 2000

| Industry: ¹ | Number of firms | | | |
|--|-------------------------|-------------------|-----------------|--|
| | Employment less than 20 | Employment 20–500 | Employment 500+ | Approximate number of small firms ² |
| Short-haul Trucking or For-Hire | 54,281 | 4,943 | 227 | 56,752 |
| Non-Trucking: | | | | |
| Agriculture, forest, fisheries | 23,814 | 1,539 | 97 | 25,353 |
| Groceries and related products | 27,074 | 5,515 | 451 | 32,589 |
| Stone, clay, glass, concrete | 7,784 | 3,319 | 352 | 11,103 |
| Mining | 15,880 | 2,541 | 335 | 18,421 |
| Eating and Drinking Places | 105,595 | 11,455 | 447 | 111,323 |
| Wholesale trade (excludes Groceries) | 301,595 | 49,258 | 3,300 | 350,853 |
| Petroleum + coal products | 633 | 363 | 140 | 996 |
| Construction | 639,129 | 61,812 | 1,006 | 670,035 |
| Food and kindred products | 17,876 | 5,842 | 672 | 23,718 |
| Lumber, wood products, furniture | 25,414 | 8,460 | 499 | 33,874 |
| Transportation, communications, utilities, except trucking | 79,844 | 13,302 | 1,351 | 93,146 |
| Retail trade (excludes Eating & Drinking) | 841,109 | 83,204 | 3,385 | 882,711 |
| Pulp, Paper, Printing | 31,899 | 8,363 | 574 | 40,262 |
| Total | 2,171,927 | 259,916 | 12,836 | 2,351,136 |

¹ Industries in which drivers represent less than 1% of the labor force are not presented in the table.

² Assumes small firms are those with 500 or fewer employees for industries with employment-based cutoffs. For other industries, the number of small firms was assumed to be all of those with employment below 20, and half of those with employment between 20 and 500.

Source: Statistics of U.S. Businesses (SUSB), developed by U.S. Census Bureau for SBA, retrieved from SBA Office of Advocacy Web site http://www.sba.gov/advo/stats/us88_00.pdf.

Thresholds Used for This Analysis

To construct a factual basis for certifying that the rules will not impose significant costs on substantial numbers of small entities, the FMCSA must select thresholds for significant costs and substantial numbers. Selecting these thresholds is complicated, but not rendered impossible, by the lack of an accepted definition for either significant or substantial. The FMCSA started by considering the standard practices in other federal agencies. In general, a test of costs to revenues is more common than a test of costs to profit or other measures. The FMCSA believes that, because profit levels are harder to measure, comparing costs to revenues is more appropriate for this analysis. In the HOS case, the FMCSA considers a profit test to be misleading because typical profit levels are not likely to be reflective of the profitability of the most affected entities. The FMCSA bases this observation on the specific way that the rules affect firms. Because the rules limit maximum working and driving hours, they will affect only operations in which drivers and equipment are intensely utilized—those in which drivers habitually work more than 13 hours per day. These operations will tend to bring in the most revenues per driver, will have the greatest ability to spread out their overhead, capital, and fringe benefit costs, and are likely to have the most stable and predictable operations (given the frequency of high-utilization days). Furthermore, they will

tend to have the lowest wage costs per hour (as explained in Chapter 6 of the RIA). Thus, the FMCSA can expect that the most efficient and profitable firms are over-represented among the most heavily affected operations. Firms that are among the most affected by the HOS rules can still operate more efficiently (in terms of the intensity of work by their drivers) than large majorities of their competitors, and can therefore still be competitive. These observations minimized the need to compare large impacts to average profit rates as a way to judge whether the rules would have significant impacts.

In setting the threshold for ascertaining no significant impacts, the FMCSA selected a threshold of costs equal to one percent of revenues because a low threshold would minimize the chance of inappropriately certifying the rules. The FMCSA notes that this threshold is only one third as high as the 3 percent cut-off used by: the Environmental Protection Agency's (EPA) Office of Air and Radiation; EPA's Office of Prevention, Pesticides, and Toxic Substances; EPA's Office of Water; and EPA's Office of Solid Waste and Emergency Response. It is only one fifth of that used by Department of Commerce's National Marine Fisheries Service, at the low end of the range used by DOT's Federal Aviation Administration, and no higher than that used by the Department of Health and Human Service's Food and Drug Administration or Department of

Labor's Occupational Safety and Health Administration (OSHA). Though the use of these thresholds by other agencies does not prove that a threshold of costs equal to 1 percent of revenues is not significant, it does show that it is not out of line with other estimates.

For setting the threshold for substantial numbers, we have selected 10 percent of the small entities. This value, which is an order of magnitude smaller than the population as a whole, is considerably below the 20 percent selected by several EPA offices. These thresholds are not intended to set precedents for other regulations, and are not intended to imply that any cost above 1 percent revenues is a significant impact, nor that more than 10 percent is a substantial number.

Estimation of Cost Impacts

The FMCSA's method for estimating the costs imposed by the FMCSA option on short-haul operations is described in detail in Chapters 5 and 6 of the RIA. Here, the agency provides a brief summary of that approach.

The two main parts of the method are, first, the estimation of the change in labor productivity resulting from the HOS rules, and second, the estimation of the costs of that change in productivity. To estimate the change in labor productivity on short-haul operations, the agency first determined that the daily limits on work are more important constraints to short-haul operations than the weekly limits. Second, the agency constructed a