

(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.