

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