

involving a driver licensed in California, a large van registered in Oregon, and a fatal crash in Louisiana).

Forty-seven of the 146 fatal accidents (approximately 32 percent) appear to have been intrastate trips with the fatal accident taking place in the State where the driver was licensed and where the vehicle was registered, and at a distance greater than 100 statute miles from the driver's residence. The shortest distance among the likely intrastate trips was just over 100 statute miles, while the longest was more than 550 statute miles (a trip involving a driver licensed in California, a large van registered in California, and a fatal crash in California).

Fifty-four of the accidents (37 percent) occurred within 100 statute miles of the driver's residence with only a small percentage (seven out of 54 crashes, approximately 13 percent) involving what appears to be an interstate trip.

Overall, approximately 63 percent of the fatal accidents involving large vans occurred between 100 and 2,200 statute miles from the driver's residence with the longest distances linked typically to the trips that were most likely interstate in nature.

It is not possible to determine the distance the driver may have traveled to get to the work-reporting location, or to determine whether the van was operated by an individual working from home. However, FMCSA has factored into the analysis a maximum distance of 25 statute miles between the driver's residence and a possible work-reporting location. The Federal Highway Administration (FHWA) "Summary of Travel Trends 1995 Nationwide Personal Transportation Survey," FHWA-PL-00-006, December 1999, discussed in the NPRM, indicates that the average commute to work among the individuals participating in the survey was 11.63 miles. To decrease the likelihood of underestimating the average commuting distances of drivers of small passenger-carrying CMVs, the agency used an estimate of 25 miles, a little more than twice the average in the nationwide survey. When the estimated 25 statute miles for commuting to work is deducted from the estimates of the distance between the driver's residence and the crash location, the result is an estimate of 75 statute miles as the distance the driver may have traveled from the work reporting location to the crash site.

For simplicity, the agency used 75 air miles, which is equivalent to 86.3 statute miles, because the motor carrier industry and enforcement community have experience using air-miles, and the hours-of-service rules include an exemption from the records-of-duty

status requirement for drivers operating within a 100 air-mile radius of their work-reporting location.

As discussed in the above analysis that was the basis for the NPRM, the agency continues to believe a mileage threshold of 75 air miles (86.3 statute miles or 138.9 kilometers) should be used for determining the applicability of the safety regulations to for-hire operations of small passenger-carrying vehicles operating in interstate commerce. The analysis indicates that approximately 63 percent of 146 fatal accidents, in which a large van was actually transporting 9 or more occupants at the time of the crash, involved drivers that apparently traveled more than 75 statute miles from their work-reporting location. While the agency certainly agrees with commenters' concerns that the remaining 37 percent of the fatal accidents should not be ignored, this rule would not affect most of those accidents, given that they appear to be primarily intrastate in nature. Section 212 of the MCSIA does not extend FMCSA's jurisdiction to regulate *intrastate* passenger-carrier operations. Accordingly, the final rule adopts a 75 air-mile threshold.

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

State Adoption of Compatible Safety Regulations

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

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

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving CMVs. The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations (HMRs) for both interstate and intrastate motor carriers and drivers. The MCSAP rules are codified in 49 CFR parts 350 and 355.

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