

enforce intrastate laws and regulations concerning the operation of these CMVs if their accident data warrants such action.

Based on the agency's analysis of the FARS data for 1996, 1997, and 1998, approximately 32 percent (51 out of 161) of all fatal crashes involving large vans transporting 9 or more passengers at the time of the accident during those three years occurred in just three States (California (24 fatal accidents), Texas (15 fatal accidents), and Florida (12 fatal accidents)). This suggests that it may not be necessary for each State to adopt and enforce intrastate regulations concerning small passenger-carrying CMVs. However, States such as California, Texas, and Florida should give strong consideration to adopting and enforcing intrastate regulations given the FARS data.

Commercial Driver's License, and Controlled Substances and Alcohol Testing Regulations

Seven commenters supported making the commercial driver's license (CDL), and controlled substances and alcohol testing regulations applicable to commercial van operations.

Response: While FMCSA understands commenter concerns, section 212 of the MCSIA did not expand the agency's statutory authority concerning the establishment and enforcement of the CDL and controlled substances and alcohol testing rules. Congress did not amend the statutory definition of "commercial motor vehicle" in chapter 313 of title 49, United States Code, which governs the applicability of the CDL and controlled substances and alcohol testing requirements. Therefore, FMCSA does not have the statutory authority to apply these requirements to commercial van operations. The passenger-carrying threshold that Congress provided under that statutory definition remains at 16 or more passengers, including the driver.

Applicability of Safety Fitness Procedures

The proposed rule requested comments on making the safety fitness procedures under part 385 applicable to motor carriers operating small passenger-carrying CMVs. The safety fitness procedures in 49 CFR part 385 provide guidance in assessing the safety management controls that motor carriers use to ensure compliance with the FMCSRs. Five commenters supported applicability of safety fitness procedures to such carriers. No commenter expressed specific opposition in relation to this proposal.

Response: FMCSA continues to believe that it is appropriate to make the safety fitness procedures applicable to motor carriers that operate vehicles designed or used to transport between 9 and 15 passengers, when the carrier is directly compensated for its transportation services, and the commercial vehicle is operated beyond a 75 air mile radius from the driver's normal work-reporting location. Motor carriers operating small passenger-carrying CMVs are now subject to compliance reviews and the same safety fitness procedures and standards used to evaluate other interstate motor carriers. Therefore, section 385.1, as amended on May 13, 2002 (67 FR 31978), by the interim final rule concerning new entrant motor carriers, made part 385 applicable to all motor carriers subject to the FMCSRs, except non-business private motor carriers of passengers. Carriers that operate small passenger-carrying vehicles, and that receive an "Unsatisfactory" safety rating will be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers will be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce.

Discussion of the Final Rule

The FMCSA is revising the FMCSRs to require that motor carriers operating CMVs that are designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation in interstate commerce (including transportation between points in Canada or Mexico, and points in the United States) comply with the regulations contained in 49 CFR parts 390, 391, 392, 393, 395 and 396, and the safety fitness procedures in part 385, when the driver of the vehicle operates it beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from his/her normal work-reporting location. This means the motor carriers are required to ensure that each of their drivers meet all of the minimum qualifications for interstate CMV drivers, including physical qualifications prescribed in part 391, and maintain records to document compliance. The driver disqualification provisions of 49 CFR 391.15 are also applicable. Motor carriers and their drivers must also comply with the driving rules of part 392, and vehicles must meet all applicable requirements in part 393 concerning parts and accessories necessary for safe operation.

To avoid potential confusion, the exception under § 390.3(f)(6) has been revised to exempt the operation of

CMVs designed or used to transport between 9 and 15 passengers, not for direct compensation, *provided the vehicle does not otherwise meet the definition of a commercial motor vehicle* (emphasis added). The agency believes that the proposed regulatory language could have been misunderstood to imply that vehicles designed or used to transport between 9 and 15 passengers, not for direct compensation, are exempt from the FMCSRs, even if the CMV meets the 10,001-pound weight threshold for applicability of the safety regulations, or is used to transport hazardous materials in a quantity requiring the use of placards.

Part 396 requires that each motor carrier must have a systematic inspection, repair, and maintenance program for the CMVs it operates, and must ensure that vehicles are in safe and proper operating condition at all times. They must also maintain records to document compliance with these rules.

In addition, motor carriers must ensure that each vehicle is inspected at least once every 12 months by a qualified inspector/mechanic and that any motor carrier employee responsible for the adequacy of any brake-related inspection, repair, or maintenance work meets certain minimum qualifications. They must also maintain records to document compliance with these rules.

Motor carriers must ensure that their drivers comply with the hours-of-service requirements of part 395, including reporting, recordkeeping, verifying, and responding to law enforcement requests. No driver of a passenger-carrying CMV may drive more than 10 hours following 8 consecutive hours off duty. No driver may operate a passenger-carrying CMV if the driver has been on duty more than 15 hours following 8 consecutive hours off duty (regardless of whether he or she drove). Furthermore, drivers of passenger-carrying CMVs must not drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). For drivers that operate passenger-carrying CMVs beyond a 100 air-mile radius of the normal work-reporting location, a record of duty status (log book) is required to document the number of hours on duty and the number of hours driving.

The hours of service rules include a 100 air-mile radius exemption from the log book requirement for drivers who operate passenger-carrying vehicles