

within a 100 air-mile radius of their normal work reporting location, provided the driver: returns to the work reporting location and is released from work within 12 consecutive hours; has at least 8 consecutive hours off duty separating each 12 hours on duty; and does not exceed 10 hours maximum driving time following 8 consecutive hours off duty. As an alternative to the log book, motor carriers of passengers must maintain accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, the time the driver is released from duty each day, and the total time for the preceding 7 days for drivers used for the first time or intermittently.

As discussed above, the agency is *not* (emphasis added) making the CDL and controlled substances and alcohol testing requirements applicable to operators of small passenger-carrying CMVs, because neither section 4008 of the TEA-21 nor section 212 of the MCSIA amended the statutory definition of CMV used for those regulations (49 U.S.C. 31301). Consequently, the passenger-carrying threshold for CDL, and controlled substances and alcohol testing requirements remains at 16 (including the driver).

#### Compliance Schedule

After the effective date of this rule, motor carriers will have 90 days (or 120 days from the **Federal Register** publication date) to comply with the safety regulations. The agency believes this is sufficient time for the affected motor carriers to establish and implement safety management controls to achieve compliance with the FMCSRs. Furthermore, the agency believes that NHTSA FARS data suggest that it is in the public interest to require compliance with the FMCSRs as soon as practicable.

#### Relationship Between Final Rules and Transportation of Migrant Workers

The FMCSA has determined that some of the motor carriers covered by this rulemaking may also be subject to the agency's rules for transporters of migrant workers in 49 CFR part 398. The agency prescribes certain requirements for motor carriers that transport migrant workers a total distance of more than 75 miles in interstate or foreign commerce. Section 398.1 defines a migrant worker as any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the

Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). The term "carrier of migrant workers by motor vehicle" means any person, with certain limited exceptions, who transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

Carriers of migrant workers that are directly compensated for their transportation services and that operate vehicles designed or used to transport between 9 and 15 passengers, in interstate commerce, are covered by this final rule if the driver operates beyond a 75 air-mile radius from their normal work reporting location. The final rule generally establishes more stringent safety requirements than those found in 49 CFR part 398. This is not the case, however, with § 398.6, which prohibits motor carriers from permitting or requiring drivers to operate vehicles for more than 10 hours in any 24-hour period, unless the driver is given eight hours rest immediately following the 10 hours driving time. This daily limit is more restrictive than the comparable provision for drivers of larger passenger-carrying CMVs (§ 395.5(a)(1)), which allows a driver to drive up to 16 hours out of 24 under certain circumstances.

Although compliance with part 395 would result in a less restrictive requirement in this instance, FMCSA does not believe this deviation is significant in terms of highway safety. The restriction in part 398 is based only on the amount of time the driver operates the vehicle that transports the migrant workers but does not take into account other activities that may affect the driver's fitness for duty and level of alertness. Part 395 includes rules to prohibit driving after being on-duty (both driving time and time spent performing other tasks) for more than 15 hours following at least eight consecutive hours off-duty. Part 395 also takes into account any compensated work, irrespective of whether the work was performed for the motor carrier. For example, if the driver has a part-time job, the time spent on the part-time job must be factored into the calculations to determine the available driving time. FMCSA believes that overall, part 395 is more stringent than part 398 and that compliance with all of the requirements of part 395 will improve safety.

FMCSA believes that it is appropriate to require more rigorous safety standards for carriers of migrant workers if their operations are conducted in a manner similar to intercity motorcoach businesses. Therefore, the agency is

amending § 398.2, Applicability, of the transporters of migrant worker rules to make it clear to the affected motor carriers when they must comply with the same FMCSRs as intercity motorcoach operations.

#### Applicability of Safety Fitness Procedures to Operators of Small Passenger-Carrying CMVs

Part 385 of the FMCSRs establishes procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required, and prohibit motor carriers receiving an "Unsatisfactory" safety rating from operating a CMV. As a result of this final rule, motor carriers operating small passenger-carrying CMVs are now covered by the same safety fitness procedures and standards used to evaluate other interstate motor carriers. This means that motor carriers affected by this rulemaking will be subject to compliance reviews and receive safety ratings. Those receiving 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. The agency is amending § 385.1, Purpose and scope, to reflect the new passenger-carrying threshold for the applicability of the FMCSRs and the safety fitness procedures.

#### Itemization of the Estimated Costs of Imposing Safety-Related Requirements

FMCSA has attempted to evaluate the potential costs of the final rule. The agency has considered currently available data concerning the number of affected motor carriers, CMVs, and drivers. The agency estimates that this rulemaking could affect up to 1,843 for-hire motor carriers of passengers with active operating authority who operate only CMVs with a seating capacity of 15 passengers or less.

Each of these motor carriers has on file with the FMCSA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number does not include the following: (1) motor carriers that may have pending applications for operating authority; (2) passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility; (3) private motor carriers of passengers; or (4) carriers which also operate larger vehicles, as well as smaller vehicles. This number may also