

agency proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. Recognizing that TLPA's estimate included a wide range of passenger-carrying operations that far exceeded the limited number of carriers with active operating authority, the agency stated that it could not confirm the accuracy of the number.

The September 3, 1999 NPRM proposed that each motor carrier operating small passenger-carrying vehicles submit a Motor Carrier Identification Report (FMCSA Form MCS-150), maintain an accident register, and mark their CMVs with the motor carrier identification number assigned by the agency (64 FR 48518). The agency stated that this would provide it with information about the number of passenger carriers, their business locations, and the number of drivers employed and vehicles operated. We believed that the proposal could affect a substantial number of small entities, but would not have a significant impact on them. The agency stated that if the TLPA's estimate of 14,000 interstate motor carriers operating CMVs designed or used to transport 9- to 15- passengers was accurate, and most or all of these businesses are classified as small businesses by SBA, the rulemaking would affect up to 14,000 small entities. The agency provided examples of the potential costs to mark each vehicle, in accordance with 49 CFR 390.21, with a worse case scenario of a one-time cost of \$420 for a carrier with a fleet of 20 vehicles.

With the enactment of MCSIA, the agency was required to take a more aggressive regulatory approach and impose safety requirements on: (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. Therefore, the agency was required to continue the series of rulemaking actions in the absence of definitive industry characteristic and safety performance data, including data concerning the potential impact on small businesses that would be made subject to the FMCSRs.

On January 11, 2001, FMCSA issued a final rule adopting the statutory definition of CMV as revised by section 4008 of TEA-21, and requiring motor carriers operating small passenger-carrying vehicles to submit the identification report, mark their vehicles, and maintain an accident register (66 FR 2756). On the same day,

in response to section 212 of MCSIA, the agency issued an NPRM (66 FR 2767) proposing that motor carriers operating vehicles designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce comply with the safety regulations when they are directly compensated for such services, and the transportation of any of the passengers covers a distance greater than 75 air miles (86.3 statute miles).

FMCSA indicated that in order to avoid underestimating the potential impact of the rule on small entities, it estimated that 1,648 passenger carriers would be subject to the proposed requirements. This estimate was based on the number of for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. The agency argued that using the estimate of 1,648 carriers from the database of motor carriers of passengers provided a reasonable estimate of the number of entities that could be subject to the proposed rules. The agency estimated that the costs per carrier would be \$6,200 for the first year the requirements are in effect, and \$6,100 per year thereafter, if the costs are distributed evenly among the carriers.

FMCSA estimated that the costs per carrier associated with the NPRM would, on average, be 2.2 percent of their revenues based on data from the SBA's 1997 "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" tables. The agency reviewed revenues for motor carriers in the intercity and rural bus transportation segment of the industry. The SBA data indicated there are 145 firms in this category with less than 20 employees—the 20-employee threshold was chosen by FMCSA to be consistent with its estimate of the average number of drivers likely to be employed by the 1,648 for-hire passenger carriers. These 145 carriers had combined revenues of \$41,793,000. The average revenues were considered by dividing the combined revenues by the total number of firms, or \$288,227 in revenues per year for each carrier.

FMCSA made a preliminary determination that the proposed rule would not affect a substantial number of small entities because it would be applicable to only a fraction of the 14,000 entities operating 9- to 15-passenger vehicles for compensation. However, the agency recognized that the NPRM would have a significant impact on some of the small entities, especially in those cases where the profit margins are approximately 2.2 percent or less. The agency indicated that there is a

possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.2 percent or less. Because it was limiting the applicability of the rules to only a fraction of the universe of eligible small entities (thus minimizing the overall impact), and the estimated costs of the rule would be 2.2 percent of the revenues of the affected small entities, the agency did not believe that a more comprehensive analysis was needed to ensure compliance with the Regulatory Flexibility Act. This was particularly in view of the fact that the agency was statutorily required to regulate operators of 9- to 15-passenger vehicles and had exercised its discretion, as limited by MCSIA, to minimize the impact on small entities.

After publication of the January 11, 2001 NPRM, the agency increased its estimate of the potential costs of the rule for small entities based on: (1) A revision of the estimated information collection burden for driver records of duty status; (2) a correction of the estimate of the costs for medical examinations for drivers; and (3) consultation with SBA about the number of small businesses and their revenues.

First, the agency revised the estimated costs associated with the information collection burden for drivers' records of duty status, and submitted the revised estimate to OMB for approval. The agency estimated that the information collection burden for the records of duty status (required by 49 CFR part 395) for the operators of 9- to 15-passenger vehicles would be 137,250 hours, based on an estimated 18,300 drivers being subject to the requirements. Using the new estimates, approved by OMB [OMB Control No. 2126-0001] on information collection burden for the records of duty status, and applying the burden per driver and carrier to the entities that would operate small passenger-carrying CMVs, the agency now believes the additional burden would be 836,000 annual burden hours, for approximately 22,000 drivers. The result of the increased estimate of the annual burden hours for completing and retaining the records of duty status, and an increase in the number of drivers that would be subject to the hours of service rules, is an increase from \$2,539 per carrier per year for such records to \$7,012 per carrier per year.

FMCSA also revised its estimates of the costs for medical examinations of drivers. The agency's previous calculations included an error resulting in an estimate of \$1,718 per carrier per year. A correction of the error, plus a revision of the estimate of the number