

to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 17. Add § 721.10182 to subpart E to read as follows:

**§ 721.10182 1-Propene, 2,3,3,3-tetrafluoro-.**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1-propene, 2,3,3,3-tetrafluoro- (PMN P-07-601; CAS No. 754-12-1; also known as HFO-1234yf) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as a motor vehicle air conditioning (MVAC) refrigerant in new passenger cars and vehicles as defined in 40 CFR 82.32 (c) and (d). The initial charging of MVAC units with the PMN substance will be done by the motor vehicle original equipment manufacturer. All servicing, maintenance, and disposal involving the PMN substance will be done only by Clean Air Act (CAA) section 609 certified technicians using CAA section 609 certified refrigerant handling equipment. The PMN substance only will be sold or distributed in 20-pound (net weight) containers or larger).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 390

[Docket No. FMCSA-2009-0127]

RIN 2126-AA98

### Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with the safety regulations regardless of the distance traveled. Specifically, this rule makes certain FMCSRs applicable to the operation of such vehicles when they are operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

**DATES:** *Effective:* This rule is effective May 3, 2010. *Compliance:* Motor carriers must be in compliance with this rule no later than June 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta Bitner, Chief, Commercial Passenger Carrier Safety Division, Office of Enforcement and Compliance; (202) 385-2428; [loretta.bitner@dot.gov](mailto:loretta.bitner@dot.gov).

**Docket:** For access to the docket to read background documents including those referenced in this document go to <http://www.regulations.gov> at any time or visit the U.S. Department of Transportation Dockets located on the ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET.,

Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### Legal Basis for the Rulemaking

Section 4136 of SAFETEA-LU [Pub. L. 109-59, 119 Stat. 1144, 1745, August 10, 2005] (set out as a note to 49 U.S.C. 31136) states that “[t]he Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) shall apply to all interstate operations of such carriers regardless of the distance traveled.”

The FMCSA notes that the legislative history of this provision of SAFETEA-LU is sparse and, in some respects, inconsistent with the mandate of section 4136. The Senate bill (S. 1567, 109th Cong. 1st Sess. (July 29, 2005)) that contained the provisions relating to motor carrier safety that became part of SAFETEA-LU included the following provisions, in section 106(2): “The Secretary of Transportation shall \* \* \* ensure that Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) apply to all interstate operations of such carries [sic] regardless of the distance traveled.”

The committee report accompanying this bill said that this provision “would ensure that the Secretary enforces Federal motor carrier safety regulations that apply to interstate CMVs designed to transport between 9 and 15 passengers, regardless of the distance traveled.” Sen. Report No. 109-120 (109th Cong. 1st Sess., July 29, 2005), at 20.

In the House of Representatives, similar language was found in section 4130 of an early version H.R. 3 (109th Cong. 1st Sess., 2005), which stated “[t]he Federal motor carrier safety regulations (other than regulations relating to commercial drivers license and drug and alcohol testing requirements) shall apply to all interstate operations of commercial motor vehicles used to transport between 9 and 15 passengers (including the driver), regardless of the distance traveled.” House Report 109-12 (109th Cong., 1st Sess., March 7, 2005), at 306.

The House committee report described the purpose of this provision as follows:

- “This section directs the Secretary to extend the Federal motor carrier safety regulations found in 49 Code of Federal Regulations, Parts 387, 390 through 399 to all operations of commercial motor vehicles designed to transport between nine and

fifteen passengers (including the driver), regardless of their operational distance. This section amends the final rule issued by DOT on August 12, 2003.

- The Committee intends the Secretary to address this situation through the rulemaking process. As part of the rulemaking, the Secretary shall amend the final rule addressing commercial motor vehicles transporting nine to fifteen passengers to specifically exclude vanpool operations as defined by section 132(f) of the Internal Revenue Code. The rulemaking also exempts stretch sedan limousines that are designed to seat nine to fifteen passengers. The rulemaking does not exempt SUV stretch limousines, or super stretch sedan limousines that are designed to seat sixteen or more passengers (including the driver)."

House Report 109–12, at 441.

The House and Senate conferees included in section 4136 of SAFETEA–LU (as quoted above) a provision very similar to both the Senate and House bills. But it reconciled the obviously different underlying intentions of the two bodies with the following: "The conference adopts the identical House and Senate language applying the Federal Motor Carrier Safety Regulations to interstate van operations. Further, the conference agrees to exempt vanpool operations."

House Conference Report No. 109–203 (109th Cong., 1st Sess., 2005) at 1003. It appears from this history that the central, albeit narrow, purpose of the statutory language ultimately adopted (which varied little from the similar House and Senate proposals) was to apply, *regardless of the distance traveled*, all FMCSRs applicable to operations of vehicles designed to transport between 9 and 15 passengers (including the driver). Other than the change relating to the distance traveled, other criteria determining the applicability of the FMCSRs to such vehicles are unaffected by section 4136. The effect of this central purpose on FMCSA's current regulations, and the changes necessary to put it into effect, are discussed in more detail below.

However, it also appears the House committee's desire to exempt "vanpool operations as defined in section 132(f) of the Internal Revenue Code" and "stretch sedan limousines" from the rule required by section 4136 was not accepted by the conference between the two chambers, and was not included in the final statutory language.<sup>1</sup> Moreover, it is not clear if the reference in the Conference Report to "vanpool operations" was intended to refer to the

same type of operations described in the House report, and again the statutory language of section 4136 does not include any exception or exemption for "vanpool operations."

It is important to note that the Agency, like the courts, does not have the authority to implement any of the exemptions contemplated by the Conference Report or other legislative history. "[I]n the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive. \* \* \* Unless exceptional circumstances dictate otherwise, [w]hen we find the terms of a statute unambiguous, judicial inquiry is complete." *Burlington Northern R. Co. v. Oklahoma Tax Comm.*, 481 U.S. 454, 461 (1984) (internal quotations and citations omitted). In this case, the unambiguous language of section 4136 is conclusive, and there is no evidence of exceptional circumstances that would support a different view as to the reach of the statute.

### Background

On August 12, 2003 (68 FR 47860), FMCSA published a final rule making the FMCSRs applicable to all motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce for direct compensation when the vehicle is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These requirements were based on the Agency's: (1) understanding of the requirements of section 212 of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1764, December 9, 1999]; (2) analysis of comments submitted in response to previous rulemaking actions concerning the passenger vehicle component of the CMV definition at 49 U.S.C. 31132(1). (See section 4008(a)(2) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107, June 9, 1998]); and (3) analysis of crash data concerning large vans. The Agency indicated that it believed this approach would be more effective than other alternatives for responding to congressional and public safety concerns about what is commonly referred to as long-haul van operations for direct compensation throughout the United States, including for-hire vans operated by foreign-based motor carriers into and out of the United States for direct compensation. The 2003 final rule recounted and reviewed the several legislative changes and regulatory actions that preceded that final rule.

All of the requirements adopted in that final rule applicable to the operations of these smaller passenger-carrying vehicles for direct compensation beyond a 75-air-mile radius are now made applicable by this final rule, regardless of the distance traveled. This final rule does not make any other changes in the applicability of the FMCSRs to small-passenger-carrying vehicles. This means, for example, that operators of such vehicles for indirect compensation are not subject to the safety-related operational regulations in 49 CFR parts 390–399, and are only subject to the provisions specifically included in amended 49 CFR 390.3(f)(6).

Similarly, this final rule would not apply to commuter vanpools which FMCSA has previously indicated it did not believe Congress intended for the Agency to regulate. Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle, 64 FR 48510, 48514 (Sept. 3, 1999) (IFR). The Agency stated in that IFR that the use of the phrase "for compensation" in the definition of "commercial motor vehicle" in 49 U.S.C. 31132(1)(B) meant that Congress intended for regulation to "be limited to vans operated in the furtherance of a commercial enterprise, which is generally not the case for commuter vanpools \* \* \* [T]he agency does not intend to regulate commuter vanpools that are not operated in the furtherance of a commercial enterprise." During its subsequent consideration of regulations for small passenger-carrying vehicles, the Agency did not indicate any change in this view of the scope of its regulatory authority. Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs, 66 FR 2756, 2761, 2763 (Jan. 11, 2001) (final rule); Safety Requirements for Operators of Small Passenger-Carrying Vehicles Used in Interstate Commerce, 66 FR 2767, 2769 (Jan. 11, 2001) (notice of proposed rulemaking); and 68 FR 47860 (Aug. 12, 2003) (final rule). Therefore, the FMCSRs were and are still not applicable to "commuter vanpools," and enactment of section 4136 of SAFETEA–LU did not change this regulatory status.

On the other hand, the statute does have the effect of now applying all of the operational FMCSRs to vanpools operated in furtherance of a commercial enterprise within the 75 air-mile limit adopted in 2003. Such operations would have been excluded from the application of the FMCSRs only because of the distance traveled, and section 4136 has set aside that limitation.

<sup>1</sup> It is also not clear that the statutory language that passed the House, which says nothing about any exceptions or exemptions, would have been sufficient to require the implementation of the two desired exemptions.

Finally, FMCSA also must point out that, as explained in the 1999 interim final rule, the operation of a van by an individual who receives money from other participants in the vanpool is not considered to be an operation in furtherance of a commercial enterprise. The Agency “does not believe that this type of arrangement should be considered ‘for compensation’ and does not intend to regulate such operations.” 64 FR 48514.

In summary, certain types of vanpool operations currently are not subject to the FMCSRs for reasons other than the distance traveled. Notwithstanding the absence of explicit statutory language in section 4136 concerning the apparent intention of the conference committee to exempt “vanpool operations,” FMCSA believes that many types of vanpool operations have not been subject to the FMCSRs, and that the operative language of section 4136 does not change that situation.

#### Effect of the Final Rule

The FMCSA amends the FMCSRs to require that motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce for direct compensation comply with the regulations contained in 49 CFR parts 390, 391, 392, 393, 395 and 396, regardless of the distance traveled.

These motor carriers must comply with the general requirements under part 390, including but not limited to vehicle marking requirements. Motor carriers must ensure that every self-propelled CMV they operate is marked as specified in paragraphs (b), (c), and (d) under 49 CFR 390.21, including among other things, the requirement to mark the vehicle with the USDOT Number and the legal name or a single trade name of the motor carrier operating the vehicle. The final rule eliminates the exception under § 390.3(f)(6)(ii) which permitted small passenger-carrying vehicles operated within a 75 air-mile radius of the normal work reporting location to be marked only with the USDOT Number and to exclude the legal or trade name.

These motor carriers are required to ensure that each of their drivers meets all of the minimum qualifications for interstate CMV drivers prescribed in part 391, including physical qualifications and maintaining records to document compliance.

The rules in part 392 regarding driving of CMVs also are applicable. Part 392 requirements include general prohibitions against the use of alcohol, drugs and other substances while operating a CMV or operating a CMV

while ill or fatigued. The motor carrier must ensure that its drivers comply with rules governing operation of CMVs at railroad grade crossings, practices to ensure a CMV is safely stopped, fueling precautions, and other general prohibited practices such as transporting unauthorized persons, towing or pushing loaded buses.

Motor carriers must meet all applicable requirements in part 393 concerning parts and accessories necessary for safe operation of a CMV. Applicable requirements include, among other things, lamps, reflective devices, and electrical wiring; brakes; glazing and window construction; fuel systems; and emergency equipment.

Under part 395, motor carriers must ensure that their drivers comply with the applicable hours-of-service requirements for motor carriers of passengers. Most, if not all, operators of small-passenger carrying vehicles within the 75 air-mile limit and their drivers will be covered by the short-haul operations provisions of 49 CFR § 395.1(e)(1). If the driver operates within a 100 air-mile radius of the normal work-reporting location and the driver returns to that location and is released from work within 12 consecutive hours after starting work, then the driver must not drive more than 10 hours after 8 hours off duty and must have at least 8 consecutive hours off duty separating each 12 hours on duty. Drivers covered by these short-haul provisions are not required to maintain a record-of-duty status (log book). However, the employer must maintain for 6 months records of each driver's time of both reporting for and being released from duty, and the number of hours on duty each day.

In accordance with 49 CFR 395.5, any drivers who operate beyond a 100 air-mile radius from the normal work-reporting location must not drive more than 10 hours after 8 consecutive hours off duty or operate CMVs after being on duty more than 15 hours, following 8 consecutive hours off duty. Furthermore, drivers must not drive after being on duty 60 hours in any 7 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). In addition, 49 CFR 395.8 requires these drivers to document the number of hours on duty and the number of hours driving and record his/her duty status.

Although these hours-of-service requirements will now be applicable to operators within the 75 air-mile limit, FMCSA does not believe that they will

impose any additional cost burdens, for purposes of assessing either the costs of this final rule or the burden of information collection. These operators are most likely not currently allowing drivers to drive more than 10 hours or to be on duty more than 12 or 15 hours. The information collection requirements are usually and customarily met by maintenance of payroll records by the operators in the ordinary course of business for drivers covered by the short-haul operations provisions.

In addition to the requirements described in the preceding paragraphs, each motor carrier is required under part 396 to have a systematic inspection, repair, and maintenance program for the CMVs it operates, and to ensure that vehicles are in safe and proper operating condition at all times. They are also required to maintain records to document compliance with these rules. Motor carriers are required to ensure that each vehicle is inspected at least once every 12 months by a qualified inspector/mechanic and that any motor carrier employee who is 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.

The FMCSA is *not* making the commercial driver's license and controlled substances and alcohol testing requirements applicable to operators of small passenger-carrying CMVs, because section 4136 does not change the existing non-application of those requirements that results from the statutory definition of CMV in 49 U.S.C. 31301(4) used for those programs. Consequently, the passenger-carrying threshold for CDL and controlled substances and alcohol testing requirements remains at 16 passengers (including the driver).

#### New Entrant Program

The 2003 final rule required all motor carriers that operate CMVs designed or used to transport between 9 and 15 passengers for direct compensation to complete a motor carrier identification report (Form MCS-150), and to obtain a USDOT Number. This included carriers operating within the 75 air-mile exclusion. 49 CFR 390.3(f)(6). All such carriers that have fulfilled the requirements of the 2003 final rule would already be included in FMCSA's census of motor carriers and would have been considered new entrants and subject to a limited new entrant review to ensure their compliance with the very limited requirements of the rule (i.e., maintaining an accident register and marking of their CMVs).

Any carriers that have already registered will be subject to safety requirements such as driver qualifications and hours of service and be required to have appropriate safety management controls in place to ensure compliance with the FMCSRs. However, any carriers not previously registered will be considered new entrant motor carriers. Those carriers will be covered by the revised New Entrant Safety Assurance Process recently adopted by the Agency. 73 FR 76472 (Dec. 16, 2008).

#### **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, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "Unsatisfactory" from operating a CMV. As a result of this final rule, motor carriers operating small passenger-carrying CMVs within a 75 air-mile radius of the driver's normal work-reporting location 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 are subject to compliance reviews and will receive safety ratings. Those 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.

#### **Implementation Schedule**

The FMCSA is requiring that subject motor carriers comply with the safety requirements 30 days after the effective date of the final rule. This means that motor carriers have approximately 120 days after the date of publication of this rule to comply with the safety regulations. The Agency believes this is sufficient time for the motor carriers that will be affected to establish and implement safety management controls to achieve compliance with the FMCSRs.

#### **Estimated Costs and Benefits of Imposing Safety-Related Requirements**

The 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 FMCSA estimates that approximately 12,200 motor carriers currently have active authority to operate 9- to 15-passenger vehicles for direct compensation. These 12,200 motor carriers operate approximately 43,200 small passenger vehicles and employ roughly 57,900 drivers, all of which could potentially be affected by this rule. The cost to complete medical examinations and certifications for drivers, create and maintain driver qualification files, and inspect, repair and maintain affected vehicles is estimated at \$29 million for the first year and \$22 million for each additional year the rule is in effect. A regulatory evaluation has been prepared and is available in the docket for this rulemaking.

The FMCSA estimates there are 558 fatal crashes each year involving large vans with between 9 and 15 passengers aboard at the time of the crash (at a cost of \$6.315 million per crash). The Agency estimates there are 2,234 injury crashes each year involving 9- to 15-passenger vehicles (at a cost of \$0.336 million per crash). Therefore, the annual reduction in crashes necessary for the benefits of the proposal to outweigh the costs is only two-thirds of one percent (0.67%) of all such crashes for the first year and one-half of one percent (0.51%) for each additional year thereafter. The Agency believes the increased focus on passenger carrier operations brought about by this rulemaking will help to accomplish an improvement in safety.

#### **Rulemaking Analyses and Notices**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an Agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are unnecessary. The final rule amends FMCSA's regulations to make them consistent with section 4136 of SAFETEA-LU, a provision which makes the FMCSRs applicable to the operation of 9- to 15-passenger vehicles when such vehicles are operated for direct compensation, in interstate commerce, regardless of the distance traveled.

Because the statutory language does not provide FMCSA any discretion in adopting the necessary changes to its regulations, FMCSA finds good cause under 5 U.S.C. 553(b) that prior notice and comment on this final rule is unnecessary.

#### **Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FMCSA has determined that this rulemaking action is a not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of Department of Transportation regulatory policies and procedures because there has not been substantial public interest concerning the extension of the applicability of the FMCSRs to a larger population of for-hire motor carriers of passengers.

This final rule requires that for hire operators of vehicles designed or used to carry between 9 and 15 passengers (including the driver) in interstate commerce comply with applicable provisions of 49 CFR parts 325 and 350–399 when the commercial vehicle is operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These regulations include, but are not limited to, 49 CFR part 391, Qualifications of drivers; 49 CFR part 392, Driving of commercial motor vehicles; 49 CFR part 393, Parts and accessories necessary for safe operation; 49 CFR part 395, Hours of service of drivers; and 49 CFR part 396, Inspection, repair, and maintenance.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations and proposed regulations on the basis that the benefits justify the costs. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action will be \$29 million for the first year, and \$22 million for each subsequent year. The benefits of reducing fatal and injury crashes by 0.51% annually (0.67% in the first year) would outweigh the estimated costs of the rule.

For purposes of Executive Order 12866, this rulemaking does *not* impose an economic burden greater than \$100 million on these motor carriers. Therefore, a full regulatory evaluation is not necessary.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities and determined that this final rule would not affect a substantial number of small entities, but would have a significant impact on those affected.

The FMCSA is requiring that all motor carriers operating CMVs designed or used to transport between 9 and 15 passengers in interstate commerce be

made subject to the safety-related operational FMCSRs when they are directly compensated for such services. This includes carriers operating such vehicles within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These motor carriers would be required to comply with 49 CFR parts 390, 391, 392, 393, 395, and 396.

If most or all of these businesses are classified as small businesses by the Small Business Administration (SBA),

the rule could potentially affect up to approximately 12,200 small entities. However, some of these small entities may be foreign-based motor carriers that the agency is not required to include in the Regulatory Flexibility Act analysis. To avoid underestimating the potential impact on small entities, FMCSA is using an estimate of 12,200.

As indicated earlier, FMCSA estimates that the sum of all estimated costs of requiring operators of small passenger-carrying CMVs to comply

with 49 CFR parts 391, 393, and 396 is approximately \$29 million for the first year and \$22 million per year thereafter. If the costs of the rulemaking are distributed evenly among these 12,200 motor carriers, the costs per carrier would be approximately \$2,400 for the first year the requirements are in effect, and about \$1,800 per year thereafter. A summary of the estimated costs per motor carrier is presented below.

#### SUMMARY OF COSTS PER MOTOR CARRIER TO COMPLY WITH THE FMCSRs

Cost of	First year	Each year
Medical Exam and Certification .....	\$1,556	\$1,019
Create Driver Qualification Files .....	62	40
Inspection, Repair, Maintenance Process .....	751	751
<b>Grand Total Cost .....</b>	<b>2,369</b>	<b>1,810</b>

The FMCSA has reviewed data from the SBA to determine the typical revenues for a motor carrier in the intercity and rural bus transportation segment of the industry. This category description appeared to be similar to the types of motor carrier operations that would be covered by this rulemaking. The SBA's 1997 tables on "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" separated the firms into three groups: Those with less than 20 employees, those with less than 500 employees, and those with 500 or more employees.

The FMCSA focused on the group with less than 20 employees to be consistent with the Agency's estimate of the number of drivers employed by each of the 12,200 motor carriers likely to be affected by this rule. The SBA data indicated there are 145 firms in this category with combined revenues of \$41,793,000. For the purpose of this analysis, the revenues for the businesses in this group were divided by the number of firms resulting in an estimate of \$288,227 in revenues per year for each carrier [(\$41,793,000/145 firms)].

The costs per carrier associated with this rule would, on average, be approximately four-fifths of one percent (0.82%) of their revenues [(\$2,369 costs per carrier)/(\$288,227 revenues per carrier)] for the first year (and about three-fifths of one percent in any subsequent year (0.0063 = \$1,810/\$288,227)).

Given the cost per carrier of this rulemaking, it is important to remember that the new rule, by reducing crashes, could also lower the costs of operation—and for the average small business, a reduction of just one injury

crash every 142 years (\$336,220/\$2,369 = 142) would be enough for the benefits to outweigh the cost of this rulemaking.

The Agency believes the estimates presented above are reasonable given the limited information available about this segment of the motor carrier industry. Therefore, the Agency has made a determination that this rule would not affect a substantial number of small entities. Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this final rule will impact three currently-approved information collections.

#### OMB Control No. 2126–0003— Inspection, Repair and Maintenance

Motor carriers operating CMVs designed or used to transport between 9 and 15 passengers for direct compensation will be required to maintain records of inspection, repair, and maintenance for their CMVs in

accordance with 49 CFR part 396. The information collection requirements related to inspection, repair and maintenance have been approved by the OMB under the provisions of the PRA and assigned OMB Control No. 2126–0003, which expires on May 31, 2012.

The FMCSA estimates that it will take a total annual expenditure of 11 hours and 53 minutes per year per CMV to complete the required recordkeeping related to vehicular inspection, repair, and maintenance (48 minutes per vehicle per year for systematic inspection, repair, and maintenance; 5 minutes per year per vehicle for periodic inspection; and 11 hours per year per vehicle for driver vehicle inspection reports). The driver vehicle inspection report component requires 2 minutes 35 seconds to complete and review one report per work day when a driver finds no defects, and 3 minutes 20 seconds to complete and review one report and certify that repairs have been made when a driver finds a defect. FMCSA assumes that defects are discovered in 5 percent of driver inspections. On average, the annual burden per vehicle for driver inspection is 11 hours [250 working days per year × ((95% no defects × 2 minutes 35 seconds) + (5% defects × 3 minutes 20 seconds) ÷ 60 minutes per hour) = 10.92 hours = 11 hours rounded].

Evidence of a person's qualifications to perform periodic vehicle inspections must be retained by the motor carrier. Evidence of a person's qualifications to be a brake inspector must also be retained. The creation of these two types of qualification evidence involves an estimated one-time, non-recurring expenditure of 5 minutes by a safety

director, driver supervisor, or equivalent position for each type of inspector. Based on an estimate of 12,200 motor carriers that will be subject to the final rule and on the assumption that each motor carrier has at least one employee who is a qualified periodic vehicle inspector and one employee who is a qualified brake inspector, the estimated total time burden related to the inspector qualifications requirement is approximately 2,034 hours [(5 minutes for each periodic vehicle inspector certification  $\times$  12,200 motor carriers = 1,016.66 hours = 1,017 hours rounded) + (5 minutes for each brake inspector certification  $\times$  12,200 motor carriers = 1,016.66 hours = 1,017 hours rounded) + 60 minutes per hour].

The FMCSA estimates that the total inspection, repair, and maintenance recordkeeping burden is approximately 515,394 hours in Year 1 [(43,200 CMVs  $\times$  11 hours 53 minutes per year per CMV)  $\div$  60 minutes per hour = 513,360 hours + (2,034 hours in the first year for inspector qualifications) = 515,394 hours] and 513,360 hours in subsequent years. [515,394 hours – 2,034 hours (one-time, non-recurring requirement) = 513,360]. FMCSA has submitted the amended, inspection, repair, and maintenance information collection to the OMB for review and approval.

#### *OMB Control No. 2126–0004, Driver Qualification Files*

The FMCSA estimates that there are currently 7,000,000 CMV drivers subject to the FMCSRs. This new regulation governing 9–15 passenger vans will subject approximately 57,900 additional CMV drivers, and their motor carriers, to the rules pertaining to the driver qualification file, or “DQ file,” for the first time.

The regulations pertinent to the qualifications of CMV drivers are contained in 49 CFR part 391. The evidence of each driver's qualifications is housed in a DQ file under that driver's name. This file must be made available to FMCSA investigators during a compliance review of the motor carrier. The creation, collection and maintenance of this evidence impose numerous paperwork burdens. FMCSA has prepared detailed descriptions of the burden of each of the paperwork-related tasks. These descriptions are included in the supporting statement FMCSA has filed with the OMB (OMB Control 2126–0004) contemporaneously with publication of this final rule. That document provides a full explanation of the paperwork burden imposed on the 9–15 passenger van industry today and details its small increase in the overall paperwork burden of the DQ file

requirements. Because current drivers will not have to re-apply for their positions, the burden associated with certain aspects of the application process will not be incurred when the rule becomes effective, but will be incurred in subsequent years as driver positions become vacant and will need to be filled. Conversely, current drivers will require driver record and safety performance investigations when the rule becomes effective, but the annual review of these qualifications will only occur in subsequent years.

The various tasks of the DQ file requirements fall into 3 categories: Driver hiring, annual review of driving record, and safety history responsibilities. Driver hiring includes the driver's employment application, which FMCSA estimates requires 15 minutes on average for the driver to complete, plus 1 minute for the motor carrier to review. Driver hiring also includes obtaining a copy of the official driving record of the driver from the appropriate jurisdiction(s). FMCSA estimates that this takes an average of 5 minutes. FMCSA estimates that the background investigation of the driver by the motor carrier takes an average of 20 minutes, and that the carrier's notification of the driver of his or her right to review and rebut elements of the investigation takes 1 minute per driver. The small percentage of CMV drivers who choose to review their history will, the Agency estimates, take an average of 5 minutes to do so. The total revised paperwork burden of these driver hiring tasks is 2,241,491 hours in the first year.

The annual review of driving record includes the certificate of violations of traffic laws in the past year that is completed by the CMV driver. This task requires an average of 2 minutes. The motor carrier's request for the official driving record of the driver, its review of the record when received, and filing it, takes an average of 5 minutes. For multiple-employer drivers, the Agency estimates only 1 minute is necessary because there is no requirement to obtain the official driving record on these drivers. When the driver is furnished to a motor carrier by the driver's regular employer, the Agency estimates that this task takes 3 minutes. The total revised paperwork burden of all the tasks related to the review of driving record is 838,834 hours in the first year.

Certain tasks related to the CMV driver's safety performance history must be performed by the CMV driver, as well as some performed by the hiring motor carrier, when a driver seeks to rebut the history that previous employers have provided to the hiring motor carrier.

First, the driver-applicant consumes 3 minutes in drafting his or her request for a copy of the safety performance history. Second, the hiring motor carrier consumes an average of 3 minutes per request in providing that record to the driver. Finally, those CMV drivers who choose to formally rebut all or portions of the safety performance history consume approximately 30 minutes in drafting and forwarding the necessary information. The total revised paperwork burden of all the tasks related to these driver history tasks is 198,380 hours in the first year.

As stated, the additional DQ file paperwork burden in year one will differ from that in all subsequent years. The only initial burden during the first year will be 24,125 hours to obtain driver records (5 minutes) and safety performance histories (20 minutes) on the 57,900 current 9–15-passenger van drivers. In subsequent years, there will be 18,341 hours of additional burden related to hiring drivers to fill current positions that have become vacant; an additional 6,939 associated with the annual review of driver qualifications; and an additional 1,641 hours for other tasks associated with the safety performance history. In sum, the additional paperwork burden incurred by the 9–15 passenger drivers and motor carriers with respect to DQ files will be 26,921 hours (18,341 + 6,939 + 1,641) in subsequent years. When 24,125 hours are added to the currently-approved DQ file paperwork burden of 3,254,580 hours, the estimated paperwork burden of the DQ requirements increases to 3,278,705 burden hours, an increase of less than 1 percent in the first year.

#### *OMB Control No. 2126–0006, Medical Qualification Requirements*

Drivers of CMVs designed or used to transport between 9 and 15 passengers for direct compensation will be required to meet the medical examination and certification requirements at 49 CFR part 391, subpart E. The information collection requirements related to medical qualification requirements have been approved by OMB under the provisions of the PRA and assigned OMB Control No. 2126–0006, which expires on May 31, 2012.

Under this final rule, approximately 57,900 additional drivers will be subject to FMCSA physical qualification standards. A medical certificate usually is valid for 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. In addition, some employers require newly hired drivers to obtain a new medical certification even if the

driver's current certificate is still valid. As a result of these exceptions to the biennial medical certification schedule, the Agency estimates that the actual number of medical certifications conducted annually is 31 percent greater than would be the case if all drivers were only examined biennially. Biennial examinations would result in approximately 28,950 medical examinations per year, but the Agency estimates that approximately 37,925 examinations are conducted annually [28,950 regular medical examinations ×

1.31 (31% out-of-cycle medical examinations + 28,950 regular medical examinations) = 37,925].

It takes a medical examiner approximately 20 minutes to complete, document, and file the medical examination report and 1 minute to complete the medical examiner's certificate and furnish one copy to the person who was examined and one copy to the motor carrier who employs him or her. It takes a motor carrier approximately 1 minute to file the medical certificate. Therefore, the annual time burden for the medical

examination and certificate requirement is approximately 13,906 hours per year [(37,925 certificates × 22 minutes per certificate per year) ÷ 60 minutes per hour = 13,905.83 hours = 13,906 rounded]. FMCSA has submitted the amended, medical qualification information collection to the OMB for review and approval.

The total estimated additional time burden imposed by this final rule will be 553,425 hours in Year 1 and 554,187 hours in subsequent years as illustrated in the following table:

OMB control No.	Currently approved annual burden hours	Additional burden hours associated with the final rule in Year 1	Additional burden hours associated with the final rule in subsequent years
2126-0003 .....	59,214,494	515,394	513,360
2126-0004 .....	3,254,580	24,125	26,921
2126-0006 .....	1,682,701	13,906	13,906
Total .....	64,151,775	553,425	554,187

### National Environmental Policy Act

The FMCSA has analyzed this rulemaking in accordance with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). A copy of the final environmental assessment is included in the docket for this rulemaking.

### Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more in any one year.

### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

### Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

### Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This final rule does not impose additional costs or burdens on the States.

### List of Subjects in 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FMCSA amends part 390 of title 49, Code of Federal Regulations, as follows:

### PART 390—[AMENDED]

■ 1. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

### § 390.3 [Amended]

■ 2. In § 390.3, remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(i) as paragraph (f)(6).

Issued on: January 26, 2010.

**Anne S. Ferro,**  
Administrator.

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