

operation of 911 services, E-911 services, or Next Generation 911 services, and that if a taxing jurisdiction in the State that receives 911 grant funds diverts any portion of designated 911 charges imposed by the taxing jurisdiction for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available, the State will ensure that 911 grant funds distributed to that taxing jurisdiction are returned.

Signature of State 911 Coordinator
(or representative of single governmental body)

Title

Date

Appendix D To Part 400—Annual Certification For 911 Grant Recipients—Tribal Organizations

(To be submitted annually after grant award while grant funds are available)

On behalf of [Tribal Organization], I, [print name], hereby certify that the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located has not diverted and will not divert any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing through the time period during which grant funds are available.

I further certify that the Tribal Organization will ensure that the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located that receives 911 grant funds does not divert any portion of designated 911 charges imposed by the taxing jurisdiction (or jurisdictions) for any purpose other than the purposes for which such charges are designated during the time period which grant funds are available.

I agree that, as a condition of receipt of the grant, the Tribal Organization will return all grant funds if the taxing jurisdiction (or jurisdictions) within which the Tribal Organization is located obligates or expends, at any time for the full duration of this grant, designated 911 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 911 services, E-911 services, or Next Generation 911 services.

Signature of Responsible Official

Title

Date

[FR Doc. 2017-19944 Filed 9-20-17; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA-2017-0118]

RIN 2126-AC03

Fees for the Unified Carrier Registration Plan and Agreement

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

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: FMCSA proposes to establish reductions in the annual registration fees collected from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the registration years 2018, 2019 and subsequent years. For the 2018 registration year, the fees would be reduced below the current level by approximately 9.10% to ensure that fee revenues do not exceed the statutory maximum, and to account for the excess funds held in the depository. For the 2019 registration year, the fees would be reduced below the current level by approximately 4.55% to ensure the fee revenues in that and future years do not exceed the statutory maximum.

DATES: Comments on this notice of proposed rulemaking must be received on or before October 2, 2017.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2017-0118 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Folsom, Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 by telephone at 202-385-2405. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

This notice of proposed rulemaking (NPRM) is organized as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
 - D. Waiver of Advance Notice of Proposed Rulemaking
- II. Executive Summary
 - A. Purpose and Summary of the Major Provisions
 - B. Benefits and Costs
- III. Abbreviations and Acronyms
- IV. Legal Basis
- V. Statutory Requirements
 - A. Legislative History
 - B. Fee Requirements
- VI. Background
- VII. Discussion of Proposed Rulemaking
- VIII. Section-by-Section Analysis
- IX. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)
 - B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs
 - C. Regulatory Flexibility Act (Small Entities)
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act (Collection of Information)
 - G. E.O. 13132 (Federalism)
 - H. E.O. 12988 (Civil Justice Reform)
 - I. E.O. 13045 (Protection of Children)
 - J. E.O. 12630 (Taking of Private Property)
 - K. Privacy
 - L. E.O. 12372 (Intergovernmental Review)
 - M. E.O. 13211 (Energy Supply, Distribution, or Use)
 - N. E.O. 13175 (Indian Tribal Governments)
 - O. National Technology Transfer and Advancement Act (Technical Standards)
 - P. Environment (NEPA, CAA, Environmental Justice)

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2017-0118), indicate the specific section of this document to which each section applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of

these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA–2017–0118, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE., Washington, DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the

docket number, FMCSA–2017–0118, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

D. Advanced Notice of Proposed Rulemaking Not Required

Under section 5202 of the FAST Act, Public Law, 114–94 (FAST Act), FMCSA is required to publish an advance notice of proposed rulemaking for any major or significant rules, unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. FMCSA has determined that this proposed rule is not significant; therefore, it is not a major rule that requires an ANPRM.

II. Executive Summary

A. Purpose and Summary of the Major Provisions

The UCR Plan and the 41 States participating in the UCR Agreement establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors (UCR Board); 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA. Revenues collected are allocated to the participating States and the UCR Plan. In accordance with the statute, adjustments must be requested by the UCR Plan when annual revenues exceed the maximum allowed in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii). Also, excess funds held by the UCR Plan after payments to the States and for administrative costs are retained in its depository and subsequent fees charged are reduced as required by 49 U.S.C. 14504a(h)(4).

These two distinct provisions are the reasons for the two-stage adjustment proposed in this rule. The NPRM proposes to provide for a reduction for at least the next two registration years to the annual registration fees established for the Unified Carrier Registration (UCR) Agreement.

The UCR Plan collects registration fees for each registration year. Collection begins on or about October 1st of the previous year, and continues until December 31st of the following year. For example, collection for the 2016 registration year began on October 1st, 2015, and will end on December 31st 2017. Currently the UCR Plan estimates that by December 31st of 2017, total revenues will exceed the statutory maximum for the 2016 registration year by \$5.13 million, or approximately 4.55%. This is the first time that revenues collected will exceed the statutory maximum. Therefore, in March 2017, the UCR Board requested that FMCSA adjust the fees in a two-stage process. For the 2018 registration year, with collection beginning on or about October 1st of 2017, the fees would be reduced below the current level by approximately 9.10% to ensure that fee revenues do not exceed the statutory maximum, and to reduce the excess funds held in the depository. For the 2019 registration year, with collection beginning on or about October 1st of 2018, the fees would be reduced below the current level by approximately 4.55% to ensure the fee revenues in that and future years do not exceed the statutory maximum. The UCR Plan requested that the reduction for 2018 be adopted no later than August 31, 2017, to enable the participating States and the UCR Plan to reflect the new fees when collections for the 2018 registration year begins on or about October 1, 2017. The adoption of the adjusted fees must be accomplished by rulemaking by FMCSA under authority delegated from the Secretary of Transportation.

B. Benefits and Costs

The changes proposed in this NPRM will reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the participating States. Fees are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Therefore, transfers are not considered in the monetization of

societal costs and benefits of rulemakings.

The UCR Plan's formal recommendation requested that FMCSA publish a rule reducing the fees paid per motor carrier, motor private carrier of property, broker, freight forwarder, and leasing company based on an analysis of current collections and past trends. The Agency reviewed the UCR Plan's formal recommendation and concluded that the UCR Plan's projection of the total revenues received for registration year 2016 may have been understated. This understatement would result in slightly higher fees for certain brackets. FMCSA conducted its own analysis, adjusted the methodology for projecting collections through the remainder of 2017, and updated the fees accordingly. The total amount targeted for collection by the UCR Plan will not change as a result of this rule, but the fees paid, or transfers, per affected entity will be reduced.

III. Abbreviations and Acronyms

The following is a list of abbreviations used in this document

Board Unified Carrier Registration Board of Directors
CAA Clean Air Act
CE Categorical Exclusion
FAST Act Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1312 (Dec. 2, 2015)
FMCSA Federal Motor Carrier Safety Administration
NCSTS National Conference of State Transportation Specialists
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SSRS Single State Registration System
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UCR Plan Unified Carrier Registration Plan

IV. Legal Basis for the Rulemaking

This rule proposes to make adjustments in the annual registration fees for the UCR Agreement established by 49 U.S.C. 14504a. The requested fee adjustments are required by 49 U.S.C. 14504a because, for the registration year 2016, the total revenues collected are expected to exceed for the first time the total revenue entitlements of \$107.78 million distributed to the 41 participating States plus the \$5 million established for the administrative costs associated with the UCR Plan and Agreement. The requested adjustments have been submitted by the UCR Plan in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which requires the Plan to request an adjustment by the

Secretary when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained “and the fees charged . . . shall be reduced by the Secretary accordingly.”

The Secretary also has broad rulemaking authority in 49 U.S.C. 13301(a) to carry out 49 U.S.C. 14504a, which is part of 49 U.S.C. subtitle IV, part B. Authority to administer these statutory provisions has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(2) and (7).

V. Statutory Requirements for the UCR Fees

A. Legislative History

The statute states that the “Unified Carrier Registration Plan . . . mean[s] the organization . . . responsible for developing, implementing, and administering the unified carrier registration agreement” (49 U.S.C. 14504a(a)(9)) (UCR Plan). The UCR Agreement developed by the UCR Plan is the “interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies. . . .” (49 U.S.C. 14504a(a)(8)).

The legislative history of the statute indicates that the purpose of the UCR Plan and Agreement is both to replace the Single State Registration System (SSRS) for registration of interstate motor carrier entities with the States and to “ensure that States don't lose current revenues derived from SSRS” (S. Rep. 109–120, at 2 (2005)). The statute provides for a 15-member Board of Directors for the UCR Plan to be appointed by the Secretary of Transportation. The statute specifies that the UCR Board should consist of one individual (either the Federal Motor Carrier Safety Administration (FMCSA) Deputy Administrator or another Presidential appointee) from the Department of Transportation; four directors from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement (one from each of the four FMCSA service areas); five directors from among the professional staffs of State agencies responsible for administering the UCR Agreement, to be nominated by the National Conference of State Transportation Specialists (NCSTS); and five directors from the motor carrier industry, of whom at least

one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket.

The UCR Plan and the participating States are authorized by 49 U.S.C. 14504a(f) to establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The current annual fees charged are set out in 49 CFR 367.30. These fees were adopted by FMCSA in 2010 after a rulemaking proceeding that considered the substantial increase in fees over the fees initially established in 2007. Compare 75 FR 21993 (Apr. 27, 2010) with 72 FR 48585 (Aug. 24, 2007).

For carriers and freight forwarders, the fees vary according to the size of the vehicle fleets, as required by 49 U.S.C. 14504a(f). The fees collected are allocated to the States and the UCR Plan in accordance with 49 U.S.C. 14504a(h).

B. Fee Requirements

The statute specifies that fees are to be based upon the recommendation of the UCR Board, 49 U.S.C. 14504a(f)(1)(E)(ii). In recommending the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and the Agency shall consider the following factors:

- Administrative costs associated with the UCR Plan and Agreement.
- Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the Board; and.
- Provisions governing fees in 49 U.S.C. 14504a(f)(1).

The fees may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees assessed under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Plan. That section provides that a participating State, which participated in SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in the year before that enactment. Participating States that also collected intrastate registration fees from interstate motor carrier entities

(whether or not they participated in SSRS) are also entitled to receive revenues of this type under the UCR Agreement, in an amount equivalent to the amount received in the previous registration year. The section also requires that States that did not participate in SSRS previously, but which choose to participate in the UCR Plan, may receive revenues not to exceed \$500,000 per year.

FMCSA's interpretation of its responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement is guided by the primacy the statute places on the need both to set and to adjust the fees so that they "provide the revenues to which the States are entitled." The statute links the requirement that the fees be adjusted "within a reasonable range" to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E)). See also 49 U.S.C. 14504a(d)(7)(A)(ii).

Section 14504a(h)(4) gives additional support for this interpretation. This provision explicitly requires FMCSA to reduce the fees for all motor carrier entities in the year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs.

VI. Background

On March 14, 2017, the UCR Board voted unanimously to submit a recommendation to the Secretary for a reduction of registration fees collected by the Plan for 2018, with a subsequent upward adjustment in 2019. The recommendation was submitted to the Secretary on March 22, 2017, and a copy has been placed in the docket.¹ The requested fee adjustments are required by 49 U.S.C. 14504a because, for the registration year 2016, the total revenues collected have exceeded for the first time the total revenue entitlements of \$107.78 million distributed to the 41 participating States plus the \$5 million established for "the administrative costs associated with the unified carrier registration plan and agreement." 49 U.S.C. 14504a(d)(7)(A)(ii). The maximum revenue entitlements for each of the 41 participating States, totaling \$107.78 million and established in accordance with 49 U.S.C. 14504a(g), are set out in the table attached to the March 22, 2017 recommendation.

As indicated in the analysis attached to the March 22, 2017 letter, as of the

end of February 2017, the UCR Plan had already collected for 2016 \$4.15 million more than the statutory maximum of \$112.78 million. The UCR Plan estimates that by the end of 2017, total revenues will exceed the statutory maximum for 2016 by \$5.13 million, or approximately 4.55%. The excess revenues collected will be held in a depository maintained by the Plan as required by 49 U.S.C. 14504a(h)(4).

The requested adjustments have been submitted by the UCR Plan in accordance with 49 U.S.C.

14504a(f)(1)(E)(ii), which requires it to request an adjustment when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained "and the fees charged . . . shall be reduced by the Secretary accordingly." These two provisions are distinct, and are the basis for the two-stage adjustment in the recommendation.

The requested adjustments would occur in two stages; an initial reduction below the current level by approximately 9.10% for 2018, followed by a reduction below the current level by approximately 4.55% for 2019. The adjusted fees recommended for each bracket for 2018 and 2019 are shown in the analysis attached to the March 22 letter. The UCR Plan has requested that the reduction for the 2018 registration year be adopted not later than August 31, 2017, to enable the participating States and the UCR Plan to reflect the new fees when fee collection for the 2018 registration year begins on October 1, 2017.

VII. Discussion of Proposed Rulemaking

The Agency reviewed the UCR Plan's formal recommendation and concluded that the UCR Plan's estimate of the total revenues received by the end of 2017 may have been understated. In order to estimate the revenue collections for the 2016 registration year, the UCR Plan's recommendation looks across years to find the minimum amount collected in each month, and then sums the minimum from each month to develop the total minimum projection. This method ignores the relationship between each month's registrations within a given registration year. Within each registration year there is a set number of carriers that would register; therefore, the number of registrations in each month is related to the number of registrations in previous months. FMCSA believes that using the proposed method artificially reduces the

total minimum projection, thereby increasing the fees charged. This understatement would result in slightly higher fees for certain brackets.

FMCSA conducted its own analysis, adjusted the methodology for projecting collections for the 2016 registration year, and updated the fees accordingly. FMCSA estimated the minimum projection of revenue collections for March through December of 2017 by summing the collections within each registration year (2013–2015) and then compared across years to find the minimum total amount. FMCSA projected that for the 2016 registration year, the minimum revenue collection for March through December of 2017 when the collection period would end would be \$1,035,305, which is \$55,000 more than the Plan's projection of \$980,139. Ultimately, the slightly higher minimum projection then results in a slightly lower fee for certain brackets. Where it exists, the resulting fee difference between the Plan's method and FMCSA's method is minimal.

VIII. Section-by-Section Analysis

For this NPRM, FMCSA proposes that the provisions of 49 CFR 367.30 will be revised to apply to registration years 2010 to 2017, inclusive. A proposed new 49 CFR 367.40 establishes the reduced fees for registration year 2018. A second proposed new section, 49 CFR 367.50, establishes fees for 2019, which will remain in effect in subsequent registration years unless and until revised in the future.

IX. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866, (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review, and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The changes proposed by this rule would adjust the registration fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan

¹ The UCR recommendation submitted March 22, 2017 including the letter request from the Board and all related tables is located in docket FMCSA–2017–0118 at: www.regulations.gov.

and the participating States. Fees are considered by OMB Circular A-4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

This rule would establish adjustments in the annual registration fees for the UCR Plan and Agreement. The total amount targeted for collection by the UCR Plan will not change as a result of this rule, but the fees paid, or transfers, per affected entity will be reduced. The primary entities affected by this rule are the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Because the total amount collected will continue to be the statutory maximum, the participating States will not be impacted by this rule. The primary impact of this rule would be a reduction in fees paid by individual motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The reduction will range from approximately \$7 to \$6,700 per entity in the first year, and from approximately \$3 to \$3,400 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771 requires that for “every one new [E.O. 13771 regulatory action] issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”² Implementation guidance for E.O. 13771 issued by the Office of Management and Budget (OMB) on April 5, 2017, defines two different types of E.O. 13771 actions: an E.O. 13771 deregulatory action, and an E.O. 13771 regulatory action.³

An E.O. 13771 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This rulemaking does not have total costs less than zero, and therefore is not an E.O. 13771 deregulatory action.

An E.O. 13771 regulatory action is defined as:

(i) A significant action as defined in Section 3(f) of E.O. 12866 that has been finalized, and that imposes total costs greater than zero; or

(ii) a significant guidance document (e.g., significant interpretive guidance) reviewed by Office of Information and Regulatory Affairs under the procedures of E.O. 12866 that has been finalized and that imposes total costs greater than zero.

The Agency action, in this case a rulemaking, must meet both the significance and the total cost criteria to be considered an E.O. 13771 regulatory action. This rulemaking is not a significant regulatory action as defined in Section 3(f) of E.O. 12866, and therefore does not meet the significance criterion for being an E.O. 13771 regulatory action. Consequently, this rulemaking is not an E.O. 13771 regulatory action and no further action under E.O. 13771 is required.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.⁴ Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule will directly affect the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Under the standards of the RFA, as amended by the SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, States are not considered small governmental

jurisdictions under Section 601(5) of the RFA, both because State government is not included among the various levels of government listed in Section 601(5), and because, even if this were the case, no State nor the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under Section 601(5) of the RFA.

The Small Business Administration (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2012 Economic Census⁵ data for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485). According to the 2012 Economic Census, approximately 99 percent of truck transportation firms, and approximately 97 percent of transit and ground transportation firms, had annual revenue less than the SBA revenue threshold of \$27.5 million and \$15 million, respectively. Therefore, FMCSA has determined that this rule will impact a substantial number of small entities.

However, FMCSA has determined that this rule will not have a significant impact on the affected entities. The effect of this rule will be to reduce the annual registration fee motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay. The reduction will range from approximately \$7 to \$6,700 per entity, in the first year, and from approximately \$3 to \$3,400 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities. FMCSA asserts that the reduction in fees will be entirely beneficial to these entities, and will not have a significant impact on the affected small entities. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the

² Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs*. 82 FR 9339–9341. February 3, 2017.

³ Executive Office of the President. Office of Management and Budget. *Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs.”* Memorandum M–17–21. April 5, 2017.

⁴ Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>.

⁵ U.S. Census Bureau, *2012 US Economic Census*. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table (accessed April 27th, 2017).

rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Gerald Folsom, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$155 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any

State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed

technology would collect, maintain, or disseminate information as a result of this rule. As a result, FMCSA has not conducted a privacy impact assessment.

L. E.O. 12372 (Intergovernmental Review)

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

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.(h). The Categorical Exclusion (CE) in paragraph 6.(h) covers regulations and actions taken pursuant to the regulations implementing procedures to collect fees that will be charged for motor carrier registrations. The proposed requirements in this rule are covered by this CE and the NPRM does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in

the regulations.gov Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental

justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 367

Insurance, Intergovernmental relations, Motor carriers, Surety bonds.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 367 to read as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. The authority citation for part 367 continues to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

■ 2. Revise § 367.30 to read as follows:

§ 367.30 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2010 and ending in 2017.

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR EACH REGISTRATION YEAR 2010–2017

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$76	\$76
B2	3–5	227	.....
B3	6–20	452	.....
B4	21–100	1,576	.....
B5	101–1,000	7,511	.....
B6	1,001 and above	73,346	.....

■ 3. Add new § 367.40 and § 367.50 to subpart B to read as follows:

§ 367.40 Fees under the Unified Carrier Registration Plan and Agreement for registration year 2018.

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2018

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$69	\$69
B2	3–5	206	.....
B3	6–20	410	.....
B4	21–100	1,431	.....
B5	101–1,000	6,820	.....
B6	1,001 and above	66,597	.....

§ 367.50 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2019.

FEEs UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2019 AND EACH SUBSEQUENT REGISTRATION YEAR THEREAFTER

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$73	\$73
B2	3–5	217	.....
B3	6–20	431	.....
B4	21–100	1,503	.....
B5	101–1,000	7,165	.....
B6	1,001 and above	69,971	.....

Issued under authority delegated in 49 CFR
1.87 on: September 14, 2017.
Daphne Y. Jefferson,
Deputy Administrator.
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