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### C. Privacy Act

DOT solicits comments from the public to better inform its guidance process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov). As described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy), the comments are searchable by the name of the submitter.

## II. Background

The **Federal Register** notice published on August 16, 2022 (87 FR 50282) requested comments on FMCSA's proposed MEH. The MEH includes updates to the published Medical Advisory Criteria and proposed regulatory guidance. The **Federal Register** notice provided a 45-day comment period, which ends September 30, 2022.

FMCSA received a request from the Owner-Operator Independent Drivers Association to extend the comment period for an additional 60 days. A former truck driver (Bob Stanton) requested 180 days from publication of the notice to submit comments. Another individual (Daniel Spaulding) suggested that a longer period was necessary to understand the draft MEH. In summary they both stated that the draft MEH is 122 pages long with highly detailed and technical information, and that additional time is needed to thoroughly review the updated MEH and to develop meaningful feedback. Copies of the requests are available in the docket for this notice.

In consideration of these requests and to allow additional time to review and submit comments, FMCSA extends the deadline for submitting comments in response to the August 16, 2022 (87 FR 50282) **Federal Register** publication until October 31, 2022.

### John Van Steenburg,

*Executive Director and Chief Safety Officer.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 594

[Docket No. NHTSA-2022-0081]

RIN 2127-AL74

#### Schedule of Fees

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes fees for Fiscal Year (FY) 2023 and future FYs relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). In addition to proposing new fee amounts, this document also proposes three modifications to existing provisions of part 594. The first seeks to modify our assessment of the administrative costs of registered importer (RI) renewals by authorizing collection of inspection costs as part of the inspected entity's monthly invoice instead of adding those costs to its annual renewal fee. The second proposal would seek to adjust how a vehicle inspection fee is determined in cases where an RI requests inspection of a vehicle subject to an eligibility petition. Finally, the third proposal would clarify circumstances in which NHTSA (the Agency) would charge additional fees for submission of conformity packages with errors or omissions. The fees in this update are mandated by statute and are necessary to maintain the RI program.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than September 29, 2022.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <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, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Neil Thurgood, Office of Vehicle Safety Compliance, NHTSA at 202-366-5291. For legal issues, you may call Thomas Healy, Office of Chief Counsel, NHTSA at 202-366-2992.

#### SUPPLEMENTARY INFORMATION:

### I. Introduction

*What action is NHTSA taking?*

The Imported Vehicle Safety Compliance Act of 1988, which took effect on January 31, 1990, established new requirements for the importation of vehicles that had not been certified as meeting applicable FMVSS. On and after that date, motor vehicles not manufactured to conform to the FMVSS may be imported on a permanent basis only by a person or entity known as a "registered importer" (RI) that has registered with NHTSA, or by persons who have contracts with RIs to perform conformance work. RIs are regulated by NHTSA and modify nonconforming vehicles to meet U.S. safety standards. Under the statutory scheme, the Agency must first determine that the nonconforming vehicle is eligible for importation. Eligible vehicles are accompanied by a bond given to secure the performance of the conformance work, or, if the vehicle is not brought into full conformance, to ensure its exportation or abandonment to the United States at no cost to the Federal government.

NHTSA must impose fees to cover administrative costs incurred in administering the registered importer program. 49 U.S.C. 30141(a)(1)(B)(3) and (e) direct NHTSA to establish fees to cover the costs of carrying out the registration program for importers, processing the vehicle bonds, and making import eligibility determinations. Section 30141(e) states that these fees must be reviewed and adjusted at least every 2 years and that the fees for a FY must be established before the FY in question.

On September 29, 1989, NHTSA issued 49 CFR part 594, establishing the initial fees authorized by the Imported Vehicle Safety Compliance Act of 1988. NHTSA has subsequently revised the fee schedules consistent with the directive that the fees be updated. NHTSA last set fees for FY 2015 and later through a final rule published in the **Federal Register** on September 24, 2014 (79 FR 57002). That final rule was preceded by a Notice of Proposed Rulemaking (NPRM) published on July 31, 2014, (79 FR 44363) in which the Agency explained that the methodology employed for calculating the fees and a more fulsome explanation of the regulatory history of fee setting could be found in a notice published on June 24, 1996 (61 FR 32411).

NHTSA is directed by statute to periodically review and make appropriate adjustments in the fees established for the administration of the RI program. See 49 U.S.C. 30141(e). The fees applicable in any FY are to be established before the beginning of such year. *Id.* The fees established in this proposed rule would come into effect beginning with FY 2023, which begins on October 1, 2022. A table comparing current fees with the fee amounts proposed in this update follows this section.

The statute authorizes fees to cover the costs of administering the importer

registration program, of making import eligibility decisions, of reviewing vehicle-specific conformity documentation (conformity packages) submitted by RIs, and of processing the bonds furnished to the Department of Homeland Security (Customs and Border Protection, hereafter referred to as Customs).

The volume of nonconforming vehicles imported into the United States, primarily from Canada, has been steadily increasing in the years that have elapsed since these fees were last updated. In the 2014 calendar year (CY), 71 registered importers facilitated the importation of approximately 73,800 vehicles. By CY 2016, the number of RIs had risen to 87 and slightly more than 300,000 vehicles were processed by these RIs. The volume of imported vehicles held steady around 300,000 for the years that followed. In CY 2020, a year in which many businesses were shuttered or operating at decreased capacity owing to the COVID-19 public health crisis, 121 RIs still managed to import over 300,000 vehicles, and the total in CY 2021 exceeded 370,000. This protracted, large increase in volume has strained Agency resources while concurrently increasing NHTSA's concerns about enforcement. The increased numbers of conformity packages have required the Agency to authorize overtime, divert employees

assigned to other tasks, and take other measures to complete timely reviews. While RIs have been submitting their conformity packages electronically as a temporary measure during the COVID-19 public health crisis, the bulk of these packages have historically been prepared in hard copy on paper. To reduce burdens associated with both preparing and processing conformity packages, NHTSA is currently developing a system that will serve as a permanent avenue for submitting conformity packages electronically rather than in hard copy.

Enforcement concerns have prompted the Agency to perform more inspections of RI facilities and records to ensure compliance and to initiate suspensions against RIs found to be operating in violation of the statutes and regulations administered by NHTSA. Actions to revoke or suspend RIs incur costs that are recoverable as a component of the RI annual fee. Five RIs were suspended in CY 2021, and the costs of those suspensions have been considered in calculation of the updated RI maintenance fee. Other ongoing investigative matters that conclude after this update will be considered in the next cyclical update to the schedule of fees.

TABLE I—COMPARISON OF CURRENT AND UPDATED FEE AMOUNTS

	Current	Update	Difference
Registration/Renewal:			
<i>New Applications*</i> .....	\$333	\$437	\$104
<i>Application Renewal*</i> .....	215	488	273
<i>RI Program Maintenance</i> .....	511	3,131	2,620
<i>Total Registration Application</i> .....	844	3,568	2,724
<i>Total Registration Renewal</i> .....	726	3,619	2,893
Petitions for Eligibility:			
<i>Substantially Similar*</i> .....	175	320	145
<i>Capable*</i> .....	800	1,280	480
Vehicle Importations:			
<i>Non-Canadian Substantially Similar</i> .....	138	273	135
<i>Non-Canadian Capable</i> .....	138	273	135
<i>Administrator initiated</i> .....	125	125	0
Bond Processing:			
<i>HS-474</i> .....	9.34	11.20	1.86
<i>Cash Deposits</i> .....	499	499	0
Processing Conformity Certificate:			
<i>Paper Entry</i> .....	10	21	11
<i>ABI Entry</i> .....	6	14	8
<i>ABI Entry W/Errors</i> .....	57	58	1
<i>Indirect Costs—Overhead</i> .....	25.73	42.25	16.52

\* Does not include associated inspection costs.

## II. Requirements of the Fee Regulation

### Section 594.6—Annual Fee for Administration of the Importer Registration Program

49 U.S.C. 30141(a)(3) directs that RIs must pay the annual fees established “to pay for the costs of carrying out the registration program for importers.

. . .” This fee is payable by both new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. *See* 49 CFR 592.5(f).

The regulation establishing the annual fees for facilitating registration of importers is found in 594.6. The initial annual fee for a new registrant contains three components for which both direct and indirect costs are to be recovered. The first component covers the cost of processing an application submitted by a person seeking to become a registered importer (49 CFR 594.6(a)(1)). The second component covers costs attributable to any necessary inspection of an applicant’s facilities (49 CFR 594.6(a)(2)) and the third component covers the remaining costs (49 CFR 594.6(a)(3)). The first and third components are paid with the initial application. All inspection costs incurred before consideration of an initial application are payable by the end of the tenth calendar day after notification by the Agency (*See* 54 FR 40100, 40102, September 29, 1989, and 49 CFR 594.6(c)). Renewal fees after the initial fee have the same three components—processing costs, inspection costs and remaining costs (49 CFR 594.6(e)).

Section 594.6 also addresses the annual fees associated with continuous administration of the RI program. These costs include calculating, revising, and publishing the fees to apply in the next FY, processing and reviewing annual RI renewal statements, processing the annual fee, processing and reviewing changes to an RI’s registration, conducting inspections to verify RIs are complying with regulations, and acting to suspend or revoke RI registrations (49 CFR 594.6(f)). The direct and indirect costs that NHTSA recovers for renewal applications, administration, and maintenance of the RI program are defined in § 594.6(g) and (h).

Direct costs are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage dedicated to processing renewals and administering the registration, per RI. Under 49 CFR

592.6(j), the Agency may inspect a facility and the records that the RI must keep in fulfillment of its program responsibilities. Thus, the direct costs included in establishing the annual fee for a specific RI include costs of transportation and per diem attributable to inspections of that RI for administration of the registration program (to the extent those costs were not included in a previous annual fee) (49 CFR 594.6(g)).

Indirect costs included in renewing RI registrations include a pro rata allocation of the average benefits of persons employed in processing annual statements, or changes thereto, in recommending continuation of RI status, and a pro rata allocation of the costs attributable to maintaining the office space, computer systems and related items (49 CFR 594.6(h)). This update includes the to-date development costs of a computer system being developed to aid in cataloging information and reports related to RIs’ registration records and activities. This cost will be distributed across all active RIs (121 as of the writing of this notice) and included in the maintenance fee for active registered importers with the goal that total development cost will be recovered after four years.

Historically, costs attributable to suspension and revocation actions have been included as an element of the program maintenance portion of the application and renewal fees, and have been composed of the direct and indirect costs attributable to investigation of the offending RI, as well as preparation of, distribution of, and reviewing responses to orders to show cause. Past fee updates typically covered two-year periods covering only one suspension or revocation. The five suspensions alluded to in the introduction happened in CY 2021 alone, and total \$360,222.65 in direct and indirect costs to the Agency. In order to recover this amount over the two years this updated fee schedule is intended to cover, half of this amount is distributed across all RIs (121 present and any future) as a factor in the program maintenance cost that is ultimately included in both the registration and renewal fees.

To comply with the statutory directive to set fees, we reviewed the existing fees and their bases to establish fees sufficient to cover costs. The initial component of the Registration Program Fee is the fee to cover expenses attributable to processing and acting upon registration applications. We have determined that this fee should be increased from \$333 to \$437 for new applications. The adjustments reflect

our time expenditures in reviewing applications and account for the increase in direct costs relating to the increases in salaries of employees on the General Schedule and the increase in contractor costs to the Agency, as well as the increases in indirect costs attributed to the Agency’s overhead costs. Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is \$3,1318 for each RI, which includes a portion attributable to the costs of suspending a number of registrations, as well as a portion of development costs of the new RI recordkeeping and investigation system. When this figure is added to the proposed \$437 (representing the registration application component), the cost to a new applicant for RI status comes to \$3,568, which is the fee we propose. This represents an increase of \$2,724 over the existing fee.

We must also recover costs attributable to reviewing of a participating RI’s annual statement and verifying the continuing validity of information already submitted. We have determined that the fee for the review of the annual statement—essentially the RI “renewal fee”—should be increased from \$215 to \$488. When the \$3,131 maintenance portion is added to the \$488 annual statement component, the total cost to an RI for renewing its registration comes to \$3,619, which represents an increase of \$2,893. The increase in these fees is attributable primarily to the increase in costs over the last 8 years since fees were last increased, including increased maintenance costs arising from multiple suspensions, as well as to the increase in direct costs relating to the increases in salaries of employees on the General Schedule, increases in indirect costs attributed to overhead, and the increase in the maintenance portion of the fee attributable to development of the new investigative/recordkeeping tool for administering the RI program.

Authority for NHTSA to recover the costs of inspecting an RI’s facility and examining an RI’s records has been included in part 594 since it was first promulgated in 1989. *See* 54 FR 40100, 40102, September 29, 1989. As originally conceived, these costs would be recovered in one of two ways. In the case of an inspection conducted for the purposes of reviewing an initial registration, the Agency indicated that it would bill the applicant for these costs and require payment before proceeding to final review of the application. *Id.* In the case of renewal applications, NHTSA indicated that the costs of inspections would be incorporated into

the administrative costs that would be recovered from the inspected RI as part of its renewal fee. *Id.*

NHTSA is reaffirming that it will be including the cost of facility and recordkeeping inspections in the administrative costs that must be paid annually by an inspected RI. The Agency is, however, proposing that inspection costs be collected in the same fashion as inspection costs incurred in the initial application process. Therefore, an existing RI that has been inspected would be billed at the conclusion of the inspection, and would be subject to automatic suspension under 49 CFR 592.7(a)(1) if the Agency did not receive payment within fifteen calendar days of the date of the invoice. As noted above, 49 CFR 594.6(h) enumerates RI registration renewal indirect costs and provides that they represent a pro rata allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and “a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.” See 49 CFR 594.6(h).

The indirect costs that are currently in effect are \$25.73. These costs represent hourly overhead expenses attributed to the average NHTSA employee. We are increasing this figure by \$16.52, to \$42.25. This increase is based on increases in enacted budgetary costs within the DOT since the fees were last adjusted, which are primarily attributable to increases in operating expenses for the Agency over the 8 years since fees were last increased.

*Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions*

49 U.S.C. Section 30141(a)(3)(B) requires that RIs pay other fees the Secretary of Transportation establishes to cover the costs of “making the [eligibility] decisions under this subchapter.” This includes decisions on whether the vehicle subject to a petition for an eligibility determination is substantially similar to a motor vehicle that was originally manufactured for sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar FMVSS-certified motor vehicle, the decision is made on whether the safety features of the subject vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that

NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, under 49 CFR 593.5, or on the Administrator’s own initiative under 49 CFR 593.8.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner requesting the decision, and in part by RIs importing vehicles rendered eligible under that decision. As a result, the fee to be charged for reviewing the submitted package covering each imported vehicle includes the estimated pro rata share of the costs, both direct and indirect, borne upon the Agency in making all the eligibility decisions in a FY.

Since we last amended the fee schedule, the overall number of vehicles imported by RIs has increased, while the number of petitions has decreased. The total number of vehicles imported by RIs over the period beginning with CY 2015 averaged 299,133 vehicles each year. Over the same period, the number of vehicles imported under an import eligibility petition that was submitted by an RI (as opposed to an import eligibility decision made on the Agency’s initiative) was only 1,408 or approximately 201 vehicles each year.

Since the inception of the RI program, RIs have submitted 860 petitions to NHTSA, averaging 29 per year. However, in CYs 2015 through 2021, only 92 petitions were submitted by RIs, an average of about 12 each year. As a result, the Agency has devoted less staff time to reviewing and processing import eligibility petitions since we last revised the fees.

Despite these trends, however, increased direct and indirect costs since 2014, including costs associated with publication of notices in the **Federal Register**, will increase the pro rata share of petition costs assessed against the importer of each vehicle covered by the eligibility decision. We project that in each of the next two fiscal years, the Agency’s annual costs for processing 12 petitions (the calculated annual average) will be \$61,553.64. The petitioners, assuming the increased filing fees contemplated below, would pay \$6,720 of that amount in processing fees, leaving the remaining \$54,833.64 to be recovered from the importers of the approximately 201 vehicles projected to be imported under petition-based import eligibility decisions. Dividing \$54,833.64 by 201 yields a pro rata fee of approximately \$273 for each vehicle imported under an eligibility decision that results from the granting of a petition. We are therefore proposing to increase the pro rata share of petition

costs that are to be assessed against the importer of each vehicle from \$138 to \$273. The same \$273 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a FMVSS-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

The above analysis incorporates proposed increases in the currently established fees of \$175 and \$800 that cover the initial processing of “substantially similar” petitions and petitions for vehicles that have no substantially similar U.S.-certified counterpart, respectively. These fees have not been adjusted over several iterations of fee updates, and therefore we propose to increase the fees to \$320 and \$1,280 for vehicles petitioned under 593.6(a) and 593.6(b), respectively. These adjustments more accurately reflect the costs associated with petition review and publication and maintain a ratio between petition costs paid by the petitioner and subsequent importers of the covered vehicles that is similar to the ratio found in earlier updates.

An RI has not requested inspection of a petition vehicle in recent history, so there is little evidence to suggest that the fee covering such inspections must be adjusted outside of potential adjustments to account for inflation. However, in the interest of unifying the Agency’s approach with respect to recovering inspection costs, NHTSA is proposing to change this from a flat fee to inclusion of costs of transportation, lodging, and per diem<sup>1</sup> attributable to these inspections in the final petition review fee charged to the RI.

*Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds*

49 U.S.C. Section 30141(a)(3) requires a registered importer to pay any other fees the Secretary of Transportation establishes “to pay for the costs of . . . processing bonds provided to the Secretary of the Treasury . . .” upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

<sup>1</sup> At standard CONUS rate as established by the General Services Administration.

The Department of Homeland Security (Customs) exercises the functions associated with the processing of these bonds. To carry out the statute, we make a reasonable determination of the costs that Customs incurs in processing the bonds. The cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs judged to be 20 minutes. To account for increases in General Schedule salary rates since this rule was last updated, we are increasing the processing fee from \$9.34 per bond to \$11.20.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as “cash deposits”) in an amount equal to the amount of the bond. See 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the Agency to consume considerable staff time and material resources. NHTSA has concluded that the expense incurred by the Agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of \$495 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. See the final rule published on July 11, 2008, at 73 FR 39890. The fee was later increased to \$499 in 2014.

In the years that have elapsed since this fee was last updated, there has been little demand on the part of RIs to submit cash deposits in lieu of conformance bonds. As we aim to maintain this fee in case it should prove useful in the future, the Agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond, and is proposing to maintain the fee of \$499. NHTSA intends to revisit the methodology for calculating this review in a future update.

*Section 594.10—Fee for Review and Processing of Conformity Certificate*

In a final rule published in the **Federal Register** on September 29, 1997, NHTSA established a new fee for reviewing and processing conformity certificates (62 FR 50876). In the

preamble to that final rule, the Agency explained that an annual volume of approximately 21,000 conformity packages which had to be processed and reviewed had prompted consideration of amending part 594 to add the new fee to cover expenses. The new section added, 594.10, declared that each RI must pay a fee based on the direct and indirect costs for the review and processing of each certificate of conformity submitted to the Agency. Those direct and indirect costs, defined in 594.10(b) and (c), are identical to those set forth elsewhere in part 594. Section 594.10(c) declares that the indirect costs of processing conformity packages are allocated on a pro rata basis.

In setting a value for this new fee, NHTSA calculated the direct costs (contract and professional staff time, computer costs, and costs for record assembly, marking, shipment, and storage) by surveying the resources being used to process and review 21,000 conformity packages each year. The analysis concluded that the work consumed annual staff time equivalent to 1.75 data entry personnel, .37 computer programmers and .90 safety and compliance analysts. *Id.* at 50880. Similar surveys were made of the costs in maintaining computer links with Customs, database maintenance, storage costs, shipping, and mail. NHTSA then set the direct cost component of the fee by dividing the sum of the direct costs by the number of conformity packages received. The identical methodology was used in calculating the indirect costs (benefits, rental and maintenance of office space and equipment, the use of office supplies, and other overhead items). Again, the costs incurred were divided by 21,000—the number of packages processed.

NHTSA adjusted this fee in 1998 (63 FR 45183, Aug. 25, 1998), and again periodically, until it was last adjusted in 2014 (79 FR 57002, Sept. 24, 2014). Except for adding provisions recognizing savings realized when payments are made by credit card and instituting special fees to recover the extra costs incurred when packages are found to contain errors, the Agency’s cost analyses appear to have remained unchanged from the time § 594.10 was first instituted in 1997.

As noted above, large increases in the volume of vehicles imported from Canada since 2015 have resulted in NHTSA receiving anywhere from 250,000 to over 350,000 vehicle conformity packages annually. The Agency has responded to this increased volume by dedicating more resources to the task of reviewing those conformity

packages. Accordingly, the methodology previously employed, which relied on 1997 level resource expenditures being distributed on a pro rata basis over the number of conformity packages received, is no longer valid.

For the purposes of this proposed rule, the Agency has calculated the costs of reviewing conformity packages by first assessing the resources now being applied to the task. The Agency calculated the direct cost of reviewing each conformity package as requiring a very conservative estimate of 10 minutes per package for a GS–12 step 5 employee—which establishes an absolute floor attributable to labor cost of \$8.15<sup>2</sup> per package. Storage costs of 26 cents (\$0.26) were added to this processing cost, resulting in a review cost of \$8.41 per conformity package. The annual cost of contract staff supporting the conformity review program imparts an additional direct cost of \$975,378.01, which, when distributed over the annual expected volume of around 300,000 conformity packages submitted to NHTSA each year, amounts to approximately \$3.25, which brings the total direct cost to \$11.66 per conformity package.

NHTSA then added the indirect costs for three full-time analysts and a portion of electronic development costs for a system being developed to facilitate electronic submission of conformity packages (\$460,504.50, which is one quarter of the to-date cost), and distributed this total, \$796,217.94, over the estimated average of 300,000 conformity packages submitted to NHTSA each year, arriving at indirect costs of \$2.66 for each conformity package. Adding the direct costs of \$11.66 and indirect costs of \$2.66 per package yields a total cost of approximately \$14.32 per package, which is the fee NHTSA proposes should be assessed in the simplest case, where the vehicle at issue has been entered electronically through the Automated Broker Interface (ABI) maintained by Customs, and the RI submitting the certificate is capable of corresponding by email and pays by credit card.

The Agency is considering reducing the review fee assessed for conformity packages submitted through the electronic submission system that is currently under development. However, because it would be impossible at this stage to quantify savings to the government, and potentially to RIs, realized through use of this system, we

<sup>2</sup> This represents one-sixth of the hourly pay rate for a GS 12 step 5 employee according to 2021 Washington DC locality pay

are instead soliciting comments on whether and how reducing this fee should be pursued.

Other conformity packages that require additional handling and more cumbersome payment methods, amounting to approximately 50% additional review and handling time, incur additional costs. Accordingly, NHTSA is proposing to adjust the fee for these packages to 150% of the review fee assessed for the simpler packages, or approximately \$21.

Finally, because incomplete or incorrect conformity packages are posing a significant problem for the Agency, NHTSA must address the fee attributable to review of conformity packages that contain one or more errors. This fee is being increased slightly under the new methodology for determining review fees to \$58 per problematic package from the previous level of \$57. Additionally, in order to account for escalating costs attributable to repeated resubmission of erroneous conformity packages, NHTSA is proposing to modify § 594.10(d) to clarify that the Agency reserves the right to assess the charge for each instance a conformity package is submitted containing errors, including instances in which a package is resubmitted with an error. Thus, the fee for reviewing packages containing errors is being adjusted to \$58, which accounts for 45 minutes of review time and 150% increased processing and handling costs, and this fee may be assessed in each instance that an erroneous package is resubmitted.

### III. Rulemaking Analyses

#### *A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures*

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides for making determinations as to whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this proposed rule under Executive Order 12866, E.O. 13563, and the DOT’s regulatory policies and procedures. NHTSA has determined that the proposed rule is not significant under Executive Order 12866, E.O. 13563, and the DOT’s regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA anticipates that the costs of this rule are so minimal as not to warrant preparation of a full regulatory evaluation.

Furthermore, this action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program.

#### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration’s regulations at 13 CFR part 121 define a small business, in part, as a business entity “which operates primarily within the United States.” 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Agency has considered the effects of this proposed rule under the Regulatory Flexibility Act and certifies that the amendments will not have a

significant economic impact upon a substantial number of small entities.

The following is NHTSA’s statement providing the factual basis for the certification under 5 U.S.C. 605(b). The proposed amendments would affect entities that modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the Agency has no reason to believe that these companies will be unable to pay the fees adjusted by this action. This notice does not propose any new fees and the fee increases proposed herein represent overdue increases from the fees previously established by NHTSA. Moreover, consistent with prevailing industry practices, these fees are likely to be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to NHTSA for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

#### *C. Executive Order 13132 (Federalism)*

Executive Order 13132 on “Federalism” requires NHTSA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” Executive Order 13132 defines the term “policies that have federalism implications” to include regulations that have “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.” Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have 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 as specified in Executive Order 13132. State and local governments will not be affected at all since they do not regulate the importation of motor vehicles or import or purchase nonconforming vehicles. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

#### D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The proposed action will not have a significant effect upon the environment because it is not anticipated that the annual volume of motor vehicles manufactured, sold, or operated will vary significantly from that existing before the promulgation of the rule.

#### E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, “Civil Justice Reform,” NHTSA has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this rule will not have any retroactive effect. Judicial review of a rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

#### F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Agency

publishes with the final rule an explanation why that alternative was not adopted. Because this proposed rule does not require the expenditure of resources beyond \$100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 594 is associated with a collection of information covered by OMB Clearance No. 2127–0002, a consolidated collection of information for “Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.” This proposed rule does not affect the burden hours associated with Clearance No. 2127–0002 because the rule only adjusts the fees associated with participating in the registered importer program. These new fees will not impose a new required collection of information or otherwise affect the scope of the program.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 15 U.S.C. 272, directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the Agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

In this proposed rule, we are adjusting the fees associated with the registered importer program. This document does not make substantive changes to the program nor do we adopt any technical standards. For these reasons, Section 12(d) of the NTTAA does not apply.

#### I. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, etc.). You may review the Department of Transportation’s (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

#### J. Public Participation

1. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. See 49 CFR 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

2. How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

3. How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information (CBI), to the NHTSA Chief Counsel. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation.<sup>3</sup>

In addition, you should submit a copy from which you have deleted the claimed CBI to the Docket by one of the methods set forth above.

To facilitate social distancing due to COVID–19, NHTSA is treating electronic submission as an acceptable method for submitting CBI to the Agency under 49 CFR part 512.

Any CBI submissions sent via email should be sent to an attorney in the

<sup>3</sup> See 49 CFR part 512.

Office of Chief Counsel at the address given above under **FOR FURTHER INFORMATION CONTACT**. Likewise, for CBI submissions via a secure file transfer application, an attorney in the Office of Chief Counsel must be set to receive a notification when files are submitted and have access to retrieve the submitted files. At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters.

Please note that these modified submission procedures are only to facilitate continued operations while maintaining appropriate social distancing due to COVID-19. Regular procedures for Part 512 submissions will resume upon further notice, when NHTSA and regulated entities discontinue operating primarily in telework status.

If you have any questions about CBI or the procedures for claiming CBI, please consult the attorney identified in the **FOR FURTHER INFORMATION CONTACT** section.

4. How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov> and follow the online instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

**K. Plain Language**

E.O. 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- 1. Have we organized the material to suit the public's needs?
- 2. Are the requirements in the rule clearly stated?
- 3. Does the rule contain technical language or jargon that isn't clear?
- 4. Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- 5. Would more (but shorter) sections be better?

6. Could we improve clarity by adding tables, lists, or diagrams?

7. What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

**L. Regulation Identifier Number (RIN)**

The DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 594**

Administrative practice and procedure, Imports, Motor vehicle safety, Motor vehicles.

For the reasons stated in the preamble, NHTSA proposes to amend 49 CFR part 594 as follows:

**PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141**

■ 1. The authority citation for part 594 is revised to read as follows:

**Authority:** 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8(g).

- 2. Amend § 594.6 by:
  - a. Revising the introductory text of paragraph (a);
  - b. Revising paragraph (b);
  - c. Revising the first sentence of paragraph (d);
  - d. Revising paragraph (g);
  - e. Revising the second sentence of paragraph (h); and
  - f. Revising paragraph (i)

**§ 594.6 Annual fee for administration of the registration program.**

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2022, must pay a fee of \$3,568, as calculated below, based upon the direct and indirect costs attributable to: \* \* \*

(b) That portion of the initial fee attributable to application processing for applications filed on and after October 1, 2022, is \$437. The sum of \$437, representing this portion, shall not be refundable if the application is denied or withdrawn.

(d) That portion of the initial annual fee attributable to the remaining activities of administering the

registration program on and after October 1, 2022, is set forth in paragraph (i) of this section. \* \* \*

(g) The direct costs included in establishing the annual fee for maintaining registered importer status are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage, per Registered Importer. The direct costs included in establishing the annual fee for a specific Registered Importer include costs of transportation, lodging, and per diem allowance at the standard CONUS rate as established by the General Services Administration (*see https://www.gsa.gov/perdiem*), attributable to inspections conducted with respect to that Registered Importer in administering the registration program. If NHTSA makes an inspection of the Registered Importer's records or facilities, a supplemental fee will be required. NHTSA will notify the applicant in writing after the conclusion of any such inspection that a supplement to the annual fee in a stated amount is due upon receipt of such notice to recover the direct and indirect costs associated with such inspection and notification, and that the recipient will be subject to automatic revocation or suspension under 49 CFR 592.7(a)(1) if no such supplemental fee is received.

(h) \* \* \* This cost is \$42.25 per hour for the period beginning October 1, 2022.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program (excluding any charges for inspection costs), covering the period beginning October 1, 2022, is \$3,131. When added to the costs of registration of \$437, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are \$3,568. The annual renewal registration fee for the period beginning October 1, 2022, is \$3,619.

■ 3. Amend § 594.7 by revising paragraph (e) to read as follows:

**§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.**

(e) For petitions filed on and after October 1, 2022, the fee payable for seeking a determination under paragraph (a)(1) of this section is \$320. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is \$1,280. If the petitioner requests an inspection of a vehicle, costs of transportation, lodging, and per diem

allowance at the standard CONUS rate as established by the General Services Administration (*see* <https://www.gsa.gov/perdiem>) attributable to the inspection shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

\* \* \* \* \*

■ 4. Amend § 594.8 by revising the first sentences of paragraphs (b) and (c) to read as follows:

**§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.**

\* \* \* \* \*

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$273. \* \* \*

(c) If a determination has been made pursuant to the Administrator's initiative, the fee for each vehicle is \$125. \* \* \*

\* \* \* \* \*

■ 5. Amend § 594.9 by revising paragraphs (c) and (e) to read as follows:

**§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.**

\* \* \* \* \*

(c) The bond processing fee for each vehicle imported on and after October 1, 2022, for which a certificate of conformity is furnished is \$11.20.

\* \* \* \* \*

(e) The fee for each vehicle imported on and after October 1, 2022, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond is \$499.

■ 6. Amend § 594.10 by revising paragraph (d) to read as follows:

**§ 594.10 Fee for review and processing of conformity certificate.**

\* \* \* \* \*

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2022, is \$21. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an email address, the fee for the certificate is \$14, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be \$58 for every instance in which the foregoing materials are submitted incorrectly.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5 and 501.8.

Milton E. Cooper,

Director, Rulemaking Operations.

[FR Doc. 2022-19560 Filed 9-13-22; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R5-ES-2021-0163; FF09E21000 FXES1111090FEDR 223]

RIN 1018-BG15

#### Endangered and Threatened Wildlife and Plants; Endangered Species Status for Tricolored Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the tricolored bat (*Perimyotis subflavus*), a bat species from Guatemala, Honduras, Belize, Nicaragua, Mexico, a small part of southeastern Canada, and all or portions of the following 39 States and the District of Columbia: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, West Virginia, and Wyoming, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the tricolored bat. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the tricolored bat as an endangered species under the Act. If we finalize this rule as proposed, it will add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We find that designating critical habitat for this species is not prudent. We also are notifying the public that we have scheduled an informational meeting followed by a public hearing on the proposed rule.

**DATES:** We will accept comments received or postmarked on or before November 14, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

*Public informational meeting and public hearing:* We will hold a public informational meeting from 6:00 p.m. to 7:30 p.m., eastern time, followed by a public hearing from 7:30 p.m. to 8:30 p.m., eastern time, on October 12, 2022.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R5-ES-2021-0163, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R5-ES-2021-0163, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Public informational meeting and public hearing:* The public informational meeting and the public hearing will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

**FOR FURTHER INFORMATION CONTACT:** Sonja Jahrsdoerfer, Field Supervisor, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 110 Radnor Rd, Suite 101, State College, PA 16801; telephone 814-234-4090. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.