

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW-A306, 445 12th Street, SW., Washington, DC 20554.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW-A325, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Initial Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term

"small business concern" under the Small Business Act. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).

8. This Further Notice of Proposed Rulemaking ("Further NPRM") seeks comment on two proposals. One proposal is to adopt a methodology by which non-geostationary satellite orbit, fixed satellite service ("NGSO FSS") applicants will demonstrate that they meet a limit on their interference into geostationary-satellite orbit systems operating in shared frequencies. The second proposal is to refine the definition of an in-line interference event to accommodate high-powered NGSO FSS systems. If commenters believe that the proposed rules discussed in the *Further NPRM* require additional RFA analysis, they should include a discussion of this in their comments.

9. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for NGSO FSS licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$12.5 million or less in annual revenues.

10. Therefore, we certify that the proposals in this *Further NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities.

Ordering Clauses

11. Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this *Further Notice of Proposed Rulemaking* is adopted.

12. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C.

801(a)(1)(A); and shall also send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 605(b). This initial certification will also be published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02-20818 Filed 8-15-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2002-12939; Notice 1]

RIN 2127-AI77

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year (FY) 2003 and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees are needed to maintain the registered importer (RI) program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 13, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at <http://dms.dot.gov>. Click on "Help & Information" of "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket and notice number of this document. You can find the number at the beginning of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Luke Loy, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202-366-5308).

For legal issues, you may call Mr. Coleman Sachs, Office of Chief Counsel, NHTSA (202-366-5238).

You may call Docket Management at 202-366-9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Introduction

On June 24, 1996, we published a notice in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR part 594 and the fees authorized by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100-562, since recodified as 49 U.S.C. 30141-30147. The reader is referred to that notice for background information relating to this rulemaking action. Certain fees became effective on January 31, 1990, and have been in effect and occasionally modified since then.

The fees applicable in any fiscal year are to be established before the beginning of such year. We are proposing fees that would become effective on October 1, 2002, the beginning of FY 2003. The statute authorizes fees to cover the costs of the importer registration program, to cover the cost of making import eligibility determinations, and to cover the cost of processing the bonds furnished to the Customs Service. We last amended the fee schedule in 2000. See final rule published on September 19, 2000 at 65 FR 56497. Those amendments have applied in Fiscal Years 2001-2002.

The fees are based on actual time and costs associated with the tasks for which the fees are assessed, and reflect the slight increase in hourly costs in the past two fiscal years attributable to the 3.57 and 4.52 percent raise (including the locality adjustment for Washington, DC) in salaries of employees on the General Schedule that became effective, respectively, on January 1, 2001 and January 1, 2002.

Requirements of the Fee Regulation

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

Section 30141(a)(3) of Title 49 U.S.C. provides that RI's must pay "the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * *." This fee is payable both by new applicants and by existing RI's. For an RI to maintain its registration, it must file a statement at the time it submits its annual fee affirming that the information it previously furnished in its registration

application (or in later amendments) remains correct (49 CFR 592.5(e)).

In compliance with the statutory directive, we reviewed the existing fees and their bases for the purpose of establishing fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We have tentatively determined that this fee should be increased from \$345 to \$395 for new applications. We have also tentatively determined that the fee representing the review of the annual statement should be increased from \$177 to \$195. The adjustments proposed reflect our recent experience in time spent reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the past two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from our need to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to possible revocation or suspension of registrations.

Based upon our review of the costs associated with this program, the portion of the fee attributable to the maintenance of the registration program is approximately \$260 for each RI, an increase of \$21. When this \$260 is added to the \$395 representing the registration application component, the cost to an applicant equals \$655, which is the fee we propose. This represents an increase of \$71 from the existing fee. When the \$260 is added to the \$195 representing the annual statement component, the total cost to the RI is \$455, which represents an increase of \$39.

Sec. 594.6(h) recounts indirect costs that were previously estimated at \$13.90 per man-hour. This should be raised \$0.95, to \$14.85, based on the agency costs discussed above.

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

Section 30141(a)(3) also requires registered importers to pay "other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter." This includes decisions on

whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantial similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by RI's or manufacturers, or pursuant to the Administrator's initiative.

The fee for a vehicle imported under an eligibility decision made pursuant to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated pro rata share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and the small raises under the General Schedule also must be taken into account in the computation of costs. However, we have been able to reduce our processing costs through combining several decisions in a single **Federal Register** notice as well as achieving efficiencies through improved word processing techniques. Accordingly, we propose to maintain the fee of \$175 presently required to accompany a "substantially similar" petition at the same level, and to also maintain at the same level the \$800 fee that accompanies petitions for vehicles that are not substantially similar and that have no U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee will remain at \$550 for each of those types of petitions.

The importer of each vehicle determined to be eligible for importation pursuant to a petition currently must pay \$125 upon its importation, the same fee applicable to those whose vehicles are covered by an eligibility determination on the agency's initiative (other than vehicles imported from Canada that are covered by vehicle eligibility numbers VSA-80 through VSA-83, for which no eligibility determination fee is assessed). The importation fee varies depending upon the basis on which the agency made the import eligibility decision. For vehicles covered by eligibility decisions resulting from petitions 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 fee would remain at \$125. For vehicles

covered by eligibility decisions resulting from petitions under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a vehicle that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, the fee would remain at \$105. Costs associated with previous eligibility decisions on the agency's own initiative will have been recovered by October 1, 2002. We would apply the fee of \$125 per vehicle only to vehicles covered by decisions made by the agency on its own initiative on and after October 1, 2002.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay “any other fees the Secretary of Transportation establishes * * * to pay for the costs of—(A) 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 the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that we will make a reasonable determination of the cost to the United States Customs Service of processing the bond. In essence, 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 has judged to be 20 minutes.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 2001 and 2002, we propose that the current processing fee be increased by \$0.45, from \$5.75 per bond to \$6.20.

Section 594.10—Fee for Review and Processing of Conformity Certificate

This fee requires each RI to pay \$16 per vehicle to cover the cost of the agency's review of any certificate of conformity furnished to the Administrator. However, if a RI enters a vehicle with the U.S. Customs Service through the Automated Broker Interface (ABS), has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the fee is \$6. Based upon an analysis of the direct and indirect costs for the review and processing of these certificates, we find that the costs for processing non-automated entries have increased on the average of \$2 per vehicle. We are therefore proposing to increase the fee for recovering these costs to \$18. Since

there has been no change in the cost to the agency for processing automated entries, we propose to maintain the fee for recovering these costs at the current \$6 level. However, if an ABS entry contains one or more errors, the timesaving advantages of electronic entry are not realized. Accordingly, we are proposing to assess the full \$18 fee for processing certificates based on ABS entries with one or more errors. However, if an acceptable electronic correction of the erroneous entry is sent to NHTSA, we are proposing to assess a \$12 fee for processing the certificate.

Comment Period

Section 30141(e) provides that the Secretary shall review and make appropriate adjustments at least every 2 years to the fees, before the beginning of the fiscal year in which they are to become effective. In order to satisfy this statutory requirement of making adjustments before the fiscal year, we are reducing the ordinary 30 day comment period. Receipt of comments by September 13, 2002 will enable us to meet the deadline.

Effective Date

The proposed effective date of the final rule is October 1, 2002.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866, “Regulatory Planning and Review.” Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the NHTSA docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec.

601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect entities that currently 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 a substantial number of these companies cannot pay the fees proposed by this action, which are either unchanged or only modestly increased from those now being paid by these entities, and which can be recouped through their customers. Costs to owners or purchasers for the alteration of nonconforming vehicles to conform with the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency 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 implication, 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.

The 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal 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

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the cost, 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. Because a final rule based on this proposal would not have an effect of this magnitude, no Unfunded Mandates assessment has been prepared.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposed rule clearly stated?
- Does the proposed rule contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?

—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 document.

Request for Comments

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 (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 at the address given at the beginning of this document, under **ADDRESSES**.

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.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the

close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

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 at the beginning of this document under **ADDRESSES**. You may also read the comments on the internet. To read the comments on the internet, take the following steps:

- (1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov>).
- (2) On that page, click on "search."
- (3) On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA-2000-1234," you would type "1234."
- (4) After typing the docket number, click on "search."
- (5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. 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.

List of Subjects in 49 CFR part 594

Imports, Motor vehicle safety, Motor vehicles.

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

In consideration of the foregoing, 49 CFR part 594 would be amended as follows:

1. The authority citation for part 594 would continue to read as follows:

Authority: 49 U.S.C. 30141, 30166; delegation of authority at 49 CFR 1.50.

2. Section 594.6 would be amended by:

A. revising the introductory text of paragraph (a),
B. revising paragraph (b),
C. changing the year "2000" in paragraph (d) to read "2002,"
D. revising paragraph (h); and
E. revising paragraph (i).
The revised text reads as follows:

§ 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, 2002, must pay an annual fee of \$655, as calculated below, based upon the direct and indirect costs attributable to: *

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2002, is \$395. The sum of \$395, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is \$14.85 per man-hour for the period beginning October 1, 2002.

(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, covering the period beginning October 1, 2002, is \$260. When added to the costs of registration of \$395, as set forth in paragraph (b) of this section, the

costs per applicant to be recovered through the annual fee are \$655. The annual renewal registration fee for the period beginning October 1, 2002, is \$455.

3. Section 594.7 would be amended 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, 2002, the fee payable for seeking a determination under paragraph (a)(1) of this section is \$175. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is \$800. If the petitioner requests an inspection of a vehicle, the sum of \$550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

4. Section 594.8 is amended by revising the first sentence of paragraph (c) to read as follows:

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

* * * * *

(c) If a determination has been made on or after October 1, 2002, pursuant to the Administrator's initiative, the fee for each vehicle is \$125. *

5. Section 594.9 would be amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2002, for which a certificate of conformity is furnished, is \$6.20.

6. Section 594.10 would be amended 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, 2002 is \$18. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is \$6, 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 \$18. If the importer electronically corrects the incorrect information, the processing fee shall be \$12.

Issued on: August 13, 2002.

L. Robert Shelton,
Executive Director.

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