

(f) If the contractor enters into an administrative agreement with the Government in order to resolve a debarment proceeding, the debarment official shall access the website at _____ and enter the requested information.

8. Amend section 9.407-3 by adding paragraph (e) to read as follows:

9.407-3 Procedures.

* * * * *

(e) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension proceeding, the suspension official shall access the website at _____ and enter the requested information.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

9. Amend section 12.301 by adding paragraph (d)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the provision at 52.209-XX, Information Regarding Responsibility Matters, as prescribed in 9.104-7(b).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.209-5 by removing from the introductory paragraph the phrase “9.104-6” and adding “9.104-7(a)” in its place; and by revising the date of the provision and paragraph (a)(1)(B) to read as follows:

52.209-5 Certification Regarding Responsibility Matters.

* * * * *

CERTIFICATION REGARDING RESPONSIBILITY MATTERS (DATE)

(a) * * *

(1) * * *

(B)(i) Have [] have not [], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (If offeror checks “have”, the offeror shall also see 52.209-XX).

* * * * *

11. Add section 52.209-XX to read as follows:

52.209-XX Information Regarding Responsibility Matters.

As prescribed at 9.104-7(b), insert the following provision:

INFORMATION REGARDING RESPONSIBILITY MATTERS (DATE)

(a) *Definition.*

Principal, as used in this provision, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

Federal contracts and grants with total value (including any options) greater than \$10,000,000 means—

(1) The value, at the time of their award, of the current, active contracts and grants, including all priced options; and

(2) The total value, at the time of their award, of all current, active orders under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award schedules).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value (including any options) greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this proposal, that its information in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this proposal with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, been involved in civil or criminal proceeding, or any administrative proceeding, in connection with the award to or performance by the offeror of a Federal or State contract or grant, to the extent that such proceeding resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this section, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror, if awarded a contract as a result of this solicitation, shall update the information in the FAPIS on a semi-annual basis, throughout the life of the contract.

(End of provision)

[FR Doc. E9-21174 Filed 9-2-09; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA-2009-0231]

RIN 2126-AB19

Fees for the Unified Carrier Registration Plan and Agreement

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would establish annual registration fees and a fee bracket structure for the Unified Carrier Registration (UCR) Agreement for the calendar year beginning on January 1, 2010, as required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of Title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended.

DATES: You must submit comments on or before September 18, 2009.

ADDRESSES: You may submit comments, identified by docket number FMCSA-2009-0231 and/or RIN 2126-AB19, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

Federal eRulemaking Portal: Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the “Comment” or “Submission” section, type Docket ID Number “FMCSA-2009-0231”, select “Go”, and then click on “Send a Comment or Submission.” You will receive a tracking number when you submit a comment.

Fax: 1-202-493-2251.

Mail, Courier, or Hand-Deliver: U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA-2009-0231, and are available for inspection and copying on the Internet at <http://www.regulations.gov>. You may also

view and copy documents at the U.S. Department of Transportation's Docket Operations Unit, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

Privacy Act: All comments will be posted without change including any personal information provided to the FDMS at <http://www.regulations.gov>. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). The Department of Transportation's (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at <http://docketsinfo.dot.gov>. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366-0701, FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590 or by e-mail at: FMCSAregs@dot.gov.

SUPPLEMENTARY INFORMATION: The preamble is organized as follows:

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I. Legal Basis for the Rulemaking

This proposed rule involves an adjustment in the annual registration fees for the Unified Carrier Registration Agreement (UCR Agreement) established by 49 U.S.C. 14504a,

enacted by section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (119 Stat. 1144, 1764 (2005)). Section 14504a states that the "Unified Carrier Registration Plan * * * mean[s] the organization * * * responsible for developing, implementing, and administering the unified carrier registration agreement" (49 U.S.C. 14504a(a)(9)) (UCR Plan). The UCR Agreement developed by the UCR Plan is the "interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies * * *." (49 U.S.C. 14504a(a)(8)).

Congress in SAFETEA-LU also repealed 49 U.S.C. 14504 governing the Single State Registration System (SSRS) (SAFETEA-LU section 4305(a)).¹ The legislative history indicates that the purpose of the UCR Plan and Agreement is both to "replace the existing outdated system [SSRS]" for registration of interstate motor carrier entities with the States and to "ensure that States don't lose current revenues derived from SSRS" (S. Rep. 109-120, at 2 (2005)).²

The statute provides for a 15-member Board of Directors for the UCR Plan and Agreement (Board) to be appointed by the Secretary of Transportation. The statute specifies that the Board should consist of one individual (either the Federal Motor Carrier Safety Administration (FMCSA) Deputy Administrator or another Presidential appointee) from the Department of Transportation; four directors (one from each of the four FMCSA service areas), selected from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement; five directors from among the professional staffs of State agencies responsible for administering the UCR Agreement, to be nominated by the National Conference of State Transportation Specialists (NCSTS); and five directors representing the motor carrier industry, of whom at least one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket. The

¹ This repeal became effective on January 1, 2008, in accordance with section 4305(a) of SAFETEA-LU and section 1537(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53, 121 Stat. 266, 467 (Aug. 3, 2007).

² The Senate bill's provisions were enacted "with modifications." H. Conf. Rep. No. 109-203, at 1020 (2005).

establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). On July 19, 2007 (72 FR 39660), FMCSA published a notice announcing the reappointment to the Board of the five Board members from the State agencies nominated by NCSTS. On June 30 2008, (73 FR 36956) FMCSA published a notice announcing the reappointment of the members from the four FMCSA service areas to the Board.

Among its responsibilities, the Board is required to submit to the Secretary of Transportation³ a recommendation for the initial annual fees to be assessed motor carriers, motor private carriers, freight forwarders, brokers and leasing companies (49 U.S.C. 14504a(d)(7)(A)). FMCSA is directed to set the fees within 90 days after receiving the Board's recommendation and after notice and opportunity for public comment (49 U.S.C. 14504a(d)(7)(B)). Subsequent adjustment to the fees and fee brackets must be adopted following the same timelines and procedures of recommendation by the Board and review and adoption by FMCSA after notice and an opportunity for public comment (*Id.*). As provided in 49 U.S.C. 14504a(f)(1)(B): "The fees shall be determined by [FMCSA] based upon the recommendations of the [UCR] Board * * *." The statute also directs both the Board and FMCSA to consider several relevant factors in their respective roles of recommending and setting the fees [49 U.S.C. 14504a(d)(7)(A), (f)(1) and (g)]. Thus, FMCSA has an obligation to consider independently the Board's recommendation in light of the statutory requirements, and to make its own determination of the appropriate fees and fee bracket structure, including modifying the Board's recommendation, if necessary.

II. Statutory Requirements for the UCR Fees

The statute specifies that fees are to be determined by FMCSA based upon the recommendation of the Board. In recommending the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and FMCSA shall consider the following factors:

1. Administrative costs associated with the UCR Plan and Agreement.
2. Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable

³ The Secretary's functions under section 14504a have been delegated to the Administrator of the Federal Motor Carrier Safety Administration. 49 CFR 1.73(a)(7), as amended (71 FR 30833 May 31, 2006).

the participating States to achieve the revenue levels set by the Board.

3. Provisions governing fees in 49 U.S.C. 14504a(f)(1).

Subsection (f)(1) provides that the fees charged must satisfy the following criteria:

Fees charged to a motor carrier, motor private carrier, or freight forwarder under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. The statute initially defined "commercial motor vehicles" (CMVs) for this purpose as including both self-propelled and towed vehicles [former 49 U.S.C. 14504a(a)(1)(A) and 31101(1)]. The fees set in 2007, and applied as well in 2008 and 2009, were determined on that basis. However, section 701(d)(1)(A) of Public Law 110-432, Div. A, 122 Stat. 4906 (Oct. 16, 2008) amended the definition of CMV for the purpose of setting UCR fees for years beginning after December 31, 2009, to mean a "self-propelled vehicle described in section 31101" (49 U.S.C. 14504a(a)(1)(A)(ii)).

Fees charged to a broker or leasing company under the UCR Agreement shall be equal to the smallest fee charged to a motor carrier, motor private carrier, and freight forwarder, or to the smallest fee charged under the UCR Agreement.

Section 14504a(f)(1) also stipulates that for the purpose of charging fees the Board shall develop no more than 6 and

no fewer than 4 brackets of carriers (including motor private carriers) based on the size of the fleet, *i.e.*, the number of CMVs owned or operated. The fee scale is required to be progressive in the amount of the fee. The registration fees for the UCR Agreement may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees assessed under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Plan. That section provides that a participating State, which participated in SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 (*i.e.*, the 2004 registration year), is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in 2004. Participating States that also collected intrastate registration fees from interstate motor carrier entities (whether or not they participated in SSRS) are also entitled to receive revenues of this type under the UCR Agreement, in an amount equivalent to the amount received in the 2004 registration year. The section also requires that States which did not participate in SSRS in 2004, but which

choose to participate in the UCR Plan, may receive revenues not to exceed \$500,000 per year.

III. Background of UCR Fees 2007 to Present

The initial UCR fees and fee structure was published by FMCSA on August 24, 2007 (72 FR 48585), which allowed the Board to begin collecting fees (49 U.S.C. 14504a). On February 1, 2008, the Board submitted the 2008 recommendation to FMCSA indicating that it was "too early to ascertain whether the revenues collected in 2007 will equal or approximate the total revenue" to which the States are entitled. A copy of this recommendation is provided in this docket. As a result, on February 26, 2008 (73 FR 10157), FMCSA published correcting amendments to the 2007 final rule, clarifying that the fees and fee structure were established for every registration year unless (and until) the Board recommended an adjustment to the annual fees (73 FR 10157). On July 11, 2008, the Board sent a letter to FMCSA stating that the fees would remain the same as 2007. The Board stated that "additional time to register entities, check that carriers registered in the correct bracket, and establish effective roadside enforcement" would result in better collection of revenue. A copy of this letter is provided in this docket. The table below shows the fees and fee structure in place from 2007 to 2009.

TABLE 1—UCR FEES AND FEE STRUCTURE 2007–2009

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$39	\$39
B2	3–5	116	.....
B3	6–20	231	.....
B4	21–100	806	.....
B5	101–1,000	3,840	.....
B6	1,001 and above	37,500	.....

From collection years 2007 to the present, some participating States have achieved their revenue entitlement while others have exceeded it. In the latter case, the excess amount is forwarded to a depository established by the Board for distribution to those States

that have not collected enough fees to reach their entitlement (49 U.S.C. 14504a(h)(2) and (3)). However, overall, revenue collections in 2009, like the previous years, have fallen short. The following table shows the amount of revenue shortfall for each registration

year, based on information provided by the Board. Figures to date show that States are approximately 28 percent short of collecting their revenue entitlement.

TABLE 2—UCR REGISTRATION SUMMARY 2007 TO 2009 *

Registration year	State revenue entitlement	Entities registered	Revenue received	Revenue shortfall
2007	\$101,772,400	237,157	\$73,937,310	\$27,835,090
2008	107,777,060	270,794	76,617,155	31,159,905
2009	107,777,060	282,483	77,148,988	30,628,072

* Does not include estimated administrative expenses and revenue reserve that are included in the overall revenue target.

Beginning in early 2009, the Board began discussions to address the shortfall in the 2010 fee recommendation. On February 12, 2009, the Board held a public meeting by telephone conference call to discuss the 2010 fees and fee structure. At that meeting, a motion was made to recommend a proposal that passed with a vote of 10 to 3 with one abstention. On April 3, 2009, the Board submitted a recommendation based on this proposal to the Secretary.

Upon review by FMCSA, several fundamental issues were identified in the assumptions of the April 3 recommendation. To clarify the issues and assist the Board, FMCSA hosted a conference call on April 23, 2009, with the Board's chair and the chair of the Revenue and Fees Subcommittee. After this discussion, the Subcommittee met and discussed several options at the May 14, 2009, Board meeting. No consensus was reached. At the June 16, 2009, meeting, the Board discussed informal options developed by a member of both the Board and the Revenue and Fees Subcommittee. The Board voted to reconsider the April 3

recommendation upon hearing these new options and the matter was referred back to the Subcommittee for further action. At the July 9, 2009, meeting, a vote was taken on two new options but the Board was unable to reach consensus on either proposal with both options receiving an equal number of votes. On July 15, 2009, the Board sent a letter to the Secretary noting this fact and asked FMCSA to proceed with the rulemaking process using the April 3 recommendation.

The following sections in this notice of proposed rulemaking (NPRM) discuss the Board recommendation and other proposals in greater detail and outline the areas where FMCSA encouraged the Board to address the issues of greatest concern. Section V details the FMCSA-recommended 2010 UCR fees and fee structure. The NPRM concludes with the regulatory analysis and notices.

IV. UCR Fee Proposals for Calendar Year 2010

In the course of developing its fee recommendation for 2010, the Board considered several different proposals, both before and after submitting a

recommendation on April 3, 2009. Some of these proposals, in addition to the proposal formally recommended, were either supported by different interests on the Board or were considered for possible substitution for the recommended proposal. Each proposal is set out in this NPRM for public comment; however, FMCSA does not believe that each proposal satisfies the statutory requirements. After setting out and assessing each proposal, FMCSA proposes a fee and fee bracket structure that is based on one of the proposals with modifications to meet the statutory requirements.

A. The UCR Plan Recommendation

The first proposal is the UCR Plan formal recommendation. The Board's fee recommendation was approved by a vote of a majority of the members of the Board on February 12, 2009, and was submitted to the Secretary on April 3, 2009. It is available at <http://www.regulations.gov> under the docket number shown above. It recommends establishing the fee and fee bracket structure shown in the following table:

TABLE 3—UCR BOARD FORMAL FEE AND BRACKET RECOMMENDATION FOR 2010 TRANSMITTED ON APRIL 3, 2009

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-1	\$83	\$83
B2	2-5	166	.....
B3	6-20	497	.....
B4	21-100	1,741	.....
B5	101-1,000	8,373	.....
B6	1,001 and above	82,983	.....

The Board assigned its Revenue and Fees Subcommittee responsibility for calculating the overall revenue requirement and recommending fees and the fee bracket structure.⁴ The Board then reviewed the analysis conducted by the Revenue and Fees

Subcommittee and selected the fees and fee bracket structure that it recommended to FMCSA.⁵

⁵ The FMCSA designated representative abstained from the Board's vote regarding the fee recommendation to prevent any real or potential conflict of interest due to his position within FMCSA in reviewing the Board's recommendation and setting the fees under the statute.

During the course of the Subcommittee and Board consideration of various proposals, industry representatives on the Board⁶ took the position that they would not support any recommendation that adjusted the

⁶ Under 49 U.S.C. 14504a(d)(1)(B)(iii), five of the fifteen members of the board are "from the motor carrier industry."

⁴ The membership of the Subcommittee is shown in Appendix BB of the April 3 transmittal.

fees beyond the amount necessary to reflect the statutory amendment changing the definition of commercial

motor vehicle for purposes of calculating fleet size. Such a proposal, which was presented, but not voted on,

at the Board's February 12, 2009, public meeting, is set out in the following table:

TABLE 4—PROPOSED FEE AND FEE STRUCTURE FOR 2010 BASED ON REVISED DEFINITION OF CMV

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–1	\$61	\$61
B2	2–5	122	
B3	6–20	366	
B4	21–100	1,281	
B5	101–1,000	6,163	
B6	1,001 and above	61,081	

These two proposals in Tables 3 and 4 are similar with one major exception. The Board's recommendation (Table 3) was premised on an assumption that only 260,466 motor carrier entities would register with the UCR Plan in 2010, out of the 433,535 motor carrier entities that FMCSA and the Board identified as active. The proposal informally supported by industry representatives (Table 4) assumed that all 433,535 apparently active entities will register in 2010. Because of the similarity between these two proposals, they can be discussed together for the purpose of assessing their compliance with the statutory requirements.

The discussion below of the development of the population will address the difference between the two proposals. The methodology the Board and FMCSA used to derive the 433,535 figure is discussed later in this section. Table 4 is particularly significant in that it sets the new "baseline" for the UCR fee and fee structure based on the statutory change amending the definition of CMV which removed trailers. Before discussing the recommendation and various alternative proposals, FMCSA will discuss the elements common to each proposal.

1. Certification of State Revenues

The first step in certifying State revenue entitlements is to establish the participating jurisdictions for 2010. Section 14504a(e)(1) of the statute established a final deadline of August 10, 2008, for participation by the 51 States eligible to participate in the UCR Plan and Agreement.⁷ Of the 38 States that participated in SSRS in 2006, all but two, California and North Carolina,

agreed to participate in the UCR in registration year 2007. Of the thirteen States that did not participate in SSRS, only Oregon agreed to participate in the UCR for registration year 2007.

Prior to the August 10, 2008, statutory deadline, both California and North Carolina, formerly States participating in SSRS, joined the UCR Plan. Oregon withdrew from participation and Pennsylvania,⁸ Alaska and Delaware, which had not participated in SSRS, agreed to participate in the UCR for registration year 2008 and subsequent years. Therefore, there are now 41 States participating and 10 States (including the District of Columbia) not participating.

To develop a nationwide figure for the replacement revenues needed under the UCR Agreement, the Board asked those States that either had participated in SSRS or had intrastate registration revenues statutorily authorized to be included in the total revenue amount to provide information on the revenues they received for the registration year 2004. This was the year specified in the statute for establishing the amount of revenues they were entitled to receive under the UCR Agreement. The total certified State revenue figure for UCR for 2010 is \$106,777,060. (See Table 5 which is based on Exhibit D to the Board's recommendation.)

SAFETEA—LU caps the maximum revenue figure for other UCR States that did not participate in SSRS at \$500,000 per year (49 U.S.C. 14504a(g)(3)). Because two such non-SSRS States have agreed to participate in the UCR for registration year 2010 (Alaska and

Delaware), the Board added \$1,000,000 to the total entitlement figure, bringing the total State revenue requirement for 2010 to \$107,777,060.

The Board's calculation of the total revenue for 2010 was properly based upon the revenues collected by the participating States (both under SSRS and for intrastate registration of interstate carriers) for the calendar year 2004. These State revenue entitlements are unchanged from the entitlements for 2008 and 2009, which were previously approved by FMCSA orders. In accordance with 49 U.S.C. 14504a(g)(4), FMCSA proposes to approve the amount of revenue under the UCR Agreement to which each State participating in 2010 is entitled, as specified in Table 5.

TABLE 5—STATE UCR REVENUE ENTITLEMENTS

State	Total 2010 UCR revenue entitlements
Alabama	\$2,939,964.00
Arkansas	1,817,360.00
California	2,131,710.00
Colorado	1,801,615.00
Connecticut	3,129,840.00
Georgia	2,660,060.00
Idaho	547,696.68
Illinois	3,516,993.00
Indiana	2,364,879.00
Iowa	474,742.00
Kansas	4,344,290.00
Kentucky	5,365,980.00
Louisiana	4,063,836.00
Maine	1,555,672.00
Massachusetts	2,282,887.00
Michigan	7,520,717.00
Minnesota	1,137,132.30
Missouri	2,342,000.00
Mississippi	4,322,100.00
Montana	1,049,063.00
Nebraska	741,974.00
New Hampshire	2,273,299.00
New Mexico	3,292,233.00
New York	4,414,538.00

⁷ The District of Columbia, which is not participating, is considered a State for this purpose (49 U.S.C. 13102(21)).

⁸ Pennsylvania did not participate in SSRS; however, the statute permits it to collect revenues generated under the UCR Agreement in an amount equivalent to the amount it collected in intrastate registration fees from interstate motor carriers in 2004. 49 U.S.C. 14504a(g)(2).

TABLE 5—STATE UCR REVENUE ENTITLEMENTS—Continued

State	Total 2010 UCR revenue entitlements
North Carolina	372,007.00
North Dakota	2,010,434.00
Ohio	4,813,877.74
Oklahoma	2,457,796.00
Pennsylvania	4,945,527.00
Rhode Island	2,285,486.00
South Carolina	2,420,120.00
South Dakota	855,623.00
Tennessee	4,759,329.00
Texas	2,718,628.06
Utah	2,098,408.00
Virginia	4,852,865.00
Washington	2,467,971.00
West Virginia	1,431,727.03
Wisconsin	2,196,680.00
Sub-Total	106,777,059.81
Alaska	500,000
Delaware	500,000

TABLE 5—STATE UCR REVENUE ENTITLEMENTS—Continued

State	Total 2010 UCR revenue entitlements
Total State Revenue Entitlement	107,777,060

2. Administrative Costs

Under section 14504a(d)(7) of the statute, the costs incurred by the Board to administer the UCR Agreement are eligible for inclusion in the total revenue to be collected. The Board continues to estimate \$5,000,000 for 2010 administrative expenses, and included that amount in the revenue target.

3. Revenue Target

In addition to the 2010 State revenue target (\$107,777,060) and the administrative expenses (\$5,000,000),

the Board also included a reserve in its revenue target recommendation to FMCSA an additional amount of \$563,885, equal to one-half of one percent of the State revenue total and administrative expenses. This calculation methodology is consistent with the 2007 final rule. This brings the overall UCR entitlement to \$113,340,945.

4. Carrier Population

The Board's recommendation is based on a method for determining the carrier population that is different from the one used in 2007. In 2007, the Board assumed that revenues would be generated "from all motor carrier entities involved in interstate commerce." Each of the five categories of motor carrier entities is defined by statute (in some cases with modifications or additions found in section 14504a) as shown in Table 6 below.

TABLE 6—CATEGORIES OF MOTOR CARRIER ENTITIES

Category	Definition in 49 U.S.C.
Motor Carrier	13102(14) and 14504a(a)(5).
Motor Private Carrier	13102(15).
Freight Forwarder	13102(8) [Freight forwarders that operate motor vehicles are treated as motor carriers. 13903(b) and 14504a(b)].
Broker	13102(2).
Leasing Company	14504a(a)(4).

To estimate the number of 2007 UCR entities, the Board (using the SafetyNet system) filtered data from the FMCSA Motor Carrier Management Information System (MCMIS) to capture carriers that had updated their MCS-150 census file⁹, had an inspection, crash, safety audit, or compliance review recorded within the past 12 months (March 1, 2006, through February 26, 2007). Applying this criteria (or filter) to identify recent activity to approximately 730,000 carriers listed in the database, the Board filtered out almost 380,000 carriers, leaving an estimated total number of active interstate carriers of 350,698. The Board then considered freight forwarders and brokers listed in the FMCSA Licensing and Insurance (L&I) System. The number, as provided

by FMCSA, was approximately 19,000. After freight forwarders that also operate CMVs were excluded to avoid double counting, the Board estimated the total number of freight forwarders and brokers as 14,575. Summing the 350,698 active interstate carriers and 14,575 freight forwarders and brokers, the Board arrived at a total affected population of 365,273.

To establish its carrier population estimate for 2010, the Board began with the MCMIS database for February 4, 2009, and applied the same filters used in 2007 with the minor change of extending the activity period to 15 months. The Board also included in the set of filters whether the carrier had registered under UCR. In addition, the Board took L&I data on September 10, 2008, and, as before, filtered it to avoid

double counting. For 2010, this process yielded an estimate of 433,535 for the full universe of carriers, brokers and freight forwarders.

The Board then adjusted the estimated full universe by the percentage of entities that had actually registered in each of the six brackets specified in the fee structure, compared to the number of entities that the Board had determined were potential registrants in each bracket. This approach yielded a total estimated population of 260,466 carriers, brokers and freight forwarders, as illustrated by the following table. This table contains the information in Figures 13 and 14¹⁰ from the Board's recommendation and provides the percentages used by the Board to adjust its population estimates.

⁹Pursuant to 49 CFR 390.19 Motor carrier identification report, a motor carrier must file its update of the MC-150 form every 24 months.

¹⁰See figures 13 and 14 as shown on page 8 of the April 3, transmittal.

TABLE 7—SUMMARY OF BOARD POPULATION ESTIMATE FOR 2010

Bracket		2008 Full universe	2008 Registered	2008 Percent (%) registered	2010 Full universe	2010 Population
		(A)	(B)	(C) = B/A	(D)	(E) = D x C
1	Brokers & Freight Forwarders	16,457	2,630	16.0	16,457	2,630
1	0-1	202,415	116,163	57.4	194,425	111,578
2	2-5	89,773	56,489	62.9	145,266	91,408
3	6-20	85,015	57,946	68.2	65,155	38,275
4	21-100	30,716	23,566	76.7	17,350	13,311
5	101-1,000	8,118	6,800	83.8	3,590	3,007
6	1,001-More	785	690	87.9	292	257
Totals		433,279	264,284		433,535	260,466

The Board's position in adopting this approach was that it was unreasonable to expect the States to register and collect fees from all potential registrants. Based on the historical registration experience, the Board also believed that this approach increased the likelihood of collecting the target revenues, although the approach was potentially vulnerable to under-collection if carriers registered in brackets different from those to which they would be expected to belong to, based on MCMIS. Industry representatives voiced concern over this approach, contending it benefited potential registrants who had been and continued to be noncompliant, while it increased the burden on compliant registrants.

5. Number of Fee Brackets

The Board recommended the same number of brackets for 2010 that it had recommended in 2007. The Board decided to use the maximum number of brackets allowed by statute, thereby reducing the range of fleet sizes within individual brackets. The Board revised the first bracket for 2010 from 0-2 to 0-1, to reflect the elimination of towed units (trailers) and similarly, the second bracket was changed from 3-5 to 2-5. The Board retained brackets 3 through 6 as they had been established in 2007.

6. Fee Levels for Each Bracket

As discussed above under Section IV.A.3. Revenue Target, the Board's target revenue figure with administrative costs and reserve for 2010 is \$113,340,945. To determine how to allocate the total entitlement figure of \$113,340,945 across the six brackets, the Board used a model that calculated (1) the number of entities in each bracket; (2) the revenues generated by each bracket at different fee amounts; (3) total revenues; and (4) any surplus or deficit from the \$113,340,945 target figure. The Board also considered fairness in terms

of fees per motor vehicle while assigning the fees for each bracket. This model is consistent with the one used in 2007, it ensures that the maximum fee per commercial motor vehicle in any given bracket would be no higher than the maximum fee per commercial motor vehicle in the next smaller bracket. The fees recommended by the Board range from a low of \$83 for carriers in the lowest bracket (0 to 1 CMVs) to a high of \$82,983 (the 1001-or-greater CMVs bracket). (See Table 3.) The Board estimated that this fee structure would generate \$113,338,310 in revenues. This amount is slightly below the target figure, with a projected deficit of \$2,635 for the UCR registration year 2010.¹¹

B. The FMCSA Analysis

FMCSA's primary issues with the April 3 Board recommendation involve: (1) The need to recognize the revenue shortfalls caused by "bracket shifting," *i.e.*, motor carriers registering in a fee bracket that is different from that reflected in MCMIS and (2) the number of motor carrier entities that could be expected to comply with the statute and register and the related issue of the States' level of enforcement.

1. Bracket Shifting

The UCR registration fees and fee brackets have been based on the assumption that motor carrier entities subject to UCR registration requirements will pay fees based on the number of vehicles (fleet size) reported in the motor carrier identification report (Form MCS-150). Under 49 CFR 390.19, this report is required to be filed with FMCSA and updated at least biennially. However, experience over three years has shown that a significant proportion of motor carriers are paying fees based on fleet sizes that are different than what would be expected from the fleet

sizes reported to FMCSA. Empirical analyses prepared by or on behalf of a member of the Board have shown that the overall net effect of this bracket shifting by registering motor carriers has been a significant reduction in expected revenue (25.04 percent in 2008). Bracket shifting, which can be appropriate under the statute, occurs because available data sources used to develop the UCR fees and fee structures do not always accurately predict actual registrations.

On Form MCS-150, motor carriers are required to report separately the number of self-propelled vehicles (*i.e.*, power units) of various types and the number of towed vehicles (*i.e.*, trailers), if any, that are owned or leased by the carrier, and then total "the number of each type of CMV that [it] uses in its U.S. operations." See instructions for item 26, Form MCS-150 at <http://www.fmcsa.dot.gov/documents/forms/r-1/MCS-150-Instructions-and-Form.pdf>. That information is compiled in MCMIS. The data, including the number of self-propelled and towed CMVs operated by motor carriers, was and is made available to the Board to enable it to develop its fees and fee bracket structure. The fees for the registration years 2007, 2008 and 2009 were developed by the Board on the assumption that each motor carrier that registered would pay a fee according to the bracket that is indicated by the number of vehicles owned and operated (both self-propelled and towed) reported in the MCMIS database. For 2010, because of the change in the applicable definition for CMV, the fleet sizes and applicable fees will be determined only by the number of self-propelled CMVs.

There are several ways that a motor carrier entity can determine its fleet size. Fees charged to a registering motor carrier or freight forwarder "shall be based on the number of commercial motor vehicles owned or operated * * *" (49 U.S.C. 14504a(f)(1)(A)(i)). A

¹¹ A deficit arises when rounding is not applied to the fees, otherwise the total revenue equals \$113,354,360, which leads to a surplus of \$13,415.

CMV is “owned or operated” by the motor carrier or freight forwarder if, during the registration year, it is either registered under Federal or State law (or both) or controlled under a “long term lease” (49 U.S.C. 14504a(f)(2)). The UCR Plan has determined that a lease of a CMV must be for more than 30 days to be considered a long term lease. See <http://www.ucr.in.gov/MCS/2009%20UCR%20Instruction%20Sheet.doc>. However, FMCSA requires that all leased vehicles, long term or otherwise, be reported on the MCS-150.

A registering motor carrier or freight forwarder then has the option of basing the number of CMVs owned or operated on either (1) the number reported on its most recently filed MCS-150; or (2) the total number owned or operated for the

12-month period ending on June 30 of the year preceding the registration year (49 U.S.C. 14504a(f)(3)). This number is determined, for either option, after excluding leased vehicles that are under lease terms of 30 days or less. <http://www.ucr.in.gov/MCS/2009%20UCR%20Instruction%20Sheet.doc>. A motor carrier may include in its calculation of fleet size “any commercial motor vehicle” (49 U.S.C. 14504a(f)(3)) and “any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle” (49 U.S.C. 14504a(a)(1)(B)). On the other hand, motor carriers and motor private carriers

may elect not to include any CMV used “exclusively in the intrastate transportation of property, waste, or recyclable material” (49 U.S.C. 14504a(f)(3)).

Tables 8 and 9 below show the effect of bracket shifting in 2008. Table 8 shows the fee brackets that motor carriers selected when registering under the UCR Plan for 2008 and compares that to the brackets in which the carriers would have registered if the fleet size used was derived from MCMIS. Table 9 shows the revenue impacts of the brackets shifting in Table 8. A board member presented these tables to the Board during public meetings in June and July, 2009, and the tables have been placed in the docket.

TABLE 8—2008 UCR REGISTRATION

MCMIS Bracket	Paid bracket						Totals
	1	2	3	4	5	6	
1	107,277	7,109	1,617	94	6	0	116,103
2	18,732	33,518	4,002	108	5	0	56,365
3	6,132	10,390	40,086	1,191	18	2	57,819
4	1,092	1,026	5,968	15,264	174	0	23,524
5	253	112	429	1,714	4,265	21	6,794
6	45	4	19	50	182	388	688
Totals	133,531	52,159	52,121	18,421	4,650	411	261,293
Fees paid	\$5,207,709	\$6,050,444	\$12,039,951	\$14,847,326	\$17,856,000	\$15,412,500	\$71,413,930

TABLE 9—REVENUE IMPACT 2008

MCMIS Bracket	Paid bracket						Totals
	1	2	3	4	5	6	
1		\$(547,393)	\$(310,464)	\$(72,098)	\$(22,806)		\$(952,761)
2	\$1,442,364		(460,230)	(74,520)	(18,620)		888,994
3	1,177,344	1,194,850		(684,825)	(64,962)	\$(74,538)	1,547,869
4	837,564	707,940	3,431,600		(527,916)		4,449,188
5	961,653	417,088	1,548,261	5,200,276		(706,860)	7,420,418
6	1,685,745	149,536	708,111	1,834,700	6,126,120		10,504,212
Revenue change ...	6,104,670	1,922,021	4,917,278	6,203,533	5,491,816	(781,398)	23,857,920

Note: Numbers in parentheses indicate a positive revenue impact whereas numbers not in parentheses indicate a negative revenue impact.

For example, of the 261,293 total number of carriers registered for 2008 (as of the date of the analysis in the above tables), 116,103 appeared to have fleet sizes from the MCMIS data that indicated that they should have registered in the lowest UCR fee bracket. However, almost 9,000 of those carriers registered in a higher bracket, for a net revenue gain of almost \$1 million. On the other hand, 26,254 carriers registered in the lowest bracket (MCMIS Bracket 2-6, under Paid Bracket 1)

although the MCMIS data indicated that they should be registered in a bracket with a higher fee. The net result was a revenue yield that was over \$6.1 million less than expected. Similar patterns appear in the other brackets—some carriers are registering in higher brackets than expected—but significant numbers of carriers registered in lower brackets. For registration year 2008, as Table 9 shows, the net reduction in the expected revenue caused by bracket shifting was \$23,857,920. This

represented about a 25.04 percent shortfall in the expected revenues for 2008.

This amount was a substantial portion of the total revenue shortfall of \$31,159,905 experienced by the UCR Plan for registration year 2008. Shortfalls in 2007 and 2009 were apparently due to a similar phenomenon. In order to fulfill the statutory objective of ensuring that the revenues derived from the fees are sufficient to provide the revenues to

which the participating States are entitled (see 49 U.S.C. 14504a(f)(1)(E)(i)), it appears to FMCSA that an adjustment needs to be applied to the current fees to recognize the occurrence of bracket shifting.

2. Compliance and Enforcement

Another factor affecting the revenues derived from the UCR registration fees is the difficulty that participating States have in registering all of the motor carrier entities that appear in the FMCSA MCMIS database. Filtering that data in order to identify activity, the Board and FMCSA based the initial fees established in 2007 on the expectation that 365,273 motor carrier entities were active and would register (Fees for Unified Carrier Registration Plan and Agreement NPRM, 72 FR 29472, 29475, May 29, 2007). In the April 3 submission, the Board developed an estimated total of 433,535 entities that would be active in 2010 by updating its activity indicia. However, the formal recommendation posited that only 260,466 of those entities would register for 2010, a relatively low level of compliance. The proposal supported by the motor carrier industry representatives, on the other hand, posited that all 433,535 of these entities would register for 2010, even though during the past three years the UCR Plan has never achieved 100 percent compliance. See Table 2.

The reason for and solutions to this level of compliance is a matter of significant disagreement between the States and industry representatives on

the Board. States have taken the position that low compliance is due to limitations in the MCMIS data that prevent identification of the appropriate active population, combined with industry reluctance to register. Industry representatives have taken the position that insufficient State enforcement activities are to blame.

FMCSA believes that, though no realistic level of enforcement would lead to 100 percent compliance, increased enforcement efforts on the part of the participating States will be able to increase compliance rates to a significant degree. FMCSA requests public comment on the reasons for the low level of compliance. FMCSA also requests public comment on potential solutions to determining the reasonableness of the compliance and enforcement efforts by the States, including how they would support a reasonable adjustment in the current fees.

3. The Board's Response to FMCSA Concerns: Alternative Proposals

In response to FMCSA concerns regarding the April 3 fee recommendation, the Board's Revenue and Fee Subcommittee considered two alternative fee proposals taking into account FMCSA's principal areas of concern: Appropriate population definition, compliance rates, and bracket shifting. These proposals relied upon a carrier population of 433,535, and used the current bracket structure. Both proposals included a compliance factor, which indicated that it would be

reasonable to expect 90 percent of motor carrier entities in the participating States to register, and 80 percent of the entities in non-participating States to register. This factor has been named the Registration Percentage Reasonableness, or RPR Factor.

The ten non-participating jurisdictions receive no revenues from the UCR Plan, and thus have little motivation to devote resources to enforcement of the UCR registration. Entities from those States engaged in interstate transportation activities can only be subject to possible enforcement if they conduct operations in a participating State. Data reviewed by FMCSA indicates that only about 40 percent of motor carrier entities in non-participating States are registering with the UCR Plan.

The first alternative proposal (Table 10) assumed that the historical trend of revenue shortfall caused by bracket shifting would continue in 2010 at the 2008 rate. The second proposal (Table 11) assumed that the bracket shifting rate for 2010 would be about half of the 2008 rate. This assumption was based on the fact that, under the new definition of CMV, 2010 fleet sizes are estimated to approximate one-half of the prior years' fleet sizes. The development of these proposals was set out in the presentation made to the Board on July 9, 2009, which has been placed in the docket for this rulemaking.

Applying these adjustments produced fees shown in the following two tables:

TABLE 10—ALTERNATIVE FEE PROPOSAL FOR 2010 (NO. 1)

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-2	\$99	\$99
B2	3-5	295	.....
B3	6-20	587	.....
B4	21-100	2,047	.....
B5	101-1,000	9,754	.....
B6	1,001 and above	95,250	.....

TABLE 11—ALTERNATIVE FEE PROPOSAL FOR 2010 (No. 2)

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$83	\$83
B2	3–5	246	
B3	6–20	490	
B4	21–100	1,709	
B5	101–1,000	8,141	
B6	1,001 and above	79,500	

The FMCSA fee proposal described below in Section V is derived from the fee and fee bracket structure set forth in Table 10.

V. The FMCSA Fee Proposal

FMCSA and the Board are required to consider the factors established by statute and laid out in detail in Section II, Statutory Requirements for UCR Fees, above. In addition, FMCSA is required to base its fee determination on the Board’s recommendation. This requirement does not, however, obligate FMCSA to adopt the Board’s recommendation without modification. To the contrary, FMCSA has an independent responsibility to ensure that any fees it sets meet the statutory requirements set forth at 49 U.S.C. 14504a.

In discharging its statutory duty, FMCSA carefully examined the Board’s entire fee recommendation, including the methodology and specific findings of the Board. FMCSA also independently considered the factors specified in SAFETEA–LU, and utilized

data and analysis provided by the Board in its fee recommendation, as well as data from other sources. FMCSA does not propose to set the fee contained in the Board’s April 3 recommendation because FMCSA believes that it does not meet the statutory requirements. FMCSA has developed a proposal based on the alternative proposal shown in Table 10, above.

A. Adjustment for Change in CMV Definition

The alternative proposals started with the revenue requirement, calculated (as described above) to be \$113,340,945, and then estimated the maximum revenue that would be collected, taking into account the change to the definition of CMV that includes power units only. Table 12, below, shows this calculation for a population close to, but not exactly the same as, the full population. Multiplying the number of motor carrier entities in each bracket by the fees per entity yields the total revenues for each bracket, as shown in the third column

from the left. Summing across all six brackets yields the maximum total revenue that could be collected in 2010 (assuming full compliance and no bracket shifting). This amount would be just over \$70 million, well short of the \$113 million revenue requirement.

The elimination of trailers from the definition of CMV reduces many carriers’ fleet sizes, causing some of them to drop into a lower bracket and, consequently pay less. Thus, even with full compliance and no bracket shift, existing fees would be inadequate and would have to be increased to meet each State’s revenue requirement.

According to the alternative proposals, increasing each fee by a factor of 1.617905 would raise revenues to \$113 million after the change in the CMV definition, all other things being unchanged. This adjustment is shown in the final two columns on the right—the fees have been increased by a factor of almost 1.618, and the totals for the brackets are shown to total the \$113 million revenue requirement.

TABLE 12—DERIVATION OF FEES NEEDED TO GENERATE THE FULL REVENUE REQUIREMENT WITH 100% COMPLIANCE AND NO BRACKET SHIFT

Bracket	Current fee	Carriers	Revenue	Current fees times 1.618	Revenue
0–2	\$39	267,144	\$10,418,616	\$63	\$16,830,072
3–5	116	76,499	8,873,884	188	14,381,812
6–20	231	56,321	13,010,151	374	21,064,054
21–100	806	17,260	13,911,560	1,304	22,507,040
101–1000	3,840	3,513	13,489,920	6,213	21,826,269
1001+	37,500	276	10,350,000	60,671	16,745,196
Total		421,013	70,054,131		113,354,443

Because these calculations exclude any consideration of the effect of either compliance or bracket shift, they show an unrealistically high collection of revenue. The fees would have to be set higher in order to overcome these additional factors affecting overall

revenue. However, it is also clear, as even the motor carrier industry interests recognize, that an increase of more than 61 percent is necessary just to account for the statutory change.

B. Registration Percentage Reasonableness (RPR) Factor

In response to FMCSA concern that the Board’s recommendation did not take into account improved enforcement activities, the alternative proposals included a goal of 90 percent

compliance by motor carrier entities based in participating States. For entities in the non-participating States, however, the alternative proposals did not consider a compliance target of 90 percent to be feasible. Because those States do not receive revenues through the UCR system, they do not have the incentive to exert effort on enforcement; and compliance rates could well remain low. For this reason, the alternative proposals used a lower goal of 80 percent compliance for registration by entities in the non-participating States.

While FMCSA acknowledges that 100 percent compliance may not be feasible, it agrees with the concept of setting fees based on an assumption of significantly improved compliance and enforcement activities. This concept represents a reasonable compromise between fairness to compliant carriers, giving incentives to States to improve enforcement, and maximizing the chance of meeting the States' revenue requirements.

FMCSA, however, believes that the compliance target included in the alternative proposals for carriers in non-participating States is unrealistically high in light of the limited leverage that the participating States have over enforcement beyond their borders. Recent data compiled by FMCSA shows compliance rates of approximately 40 percent among carriers based in non-participating States. FMCSA considers a target of 59 percent in non-participating States to be more reasonable. FMCSA believes that if participating States improve their roadside enforcement activities, they will be able to capture potential registrants from non-participating States when they cross borders into participating States. Based on data provided by the Board, FMCSA has determined that currently, only 28 of the 41 participating States, or just over two-thirds, actively engage in roadside enforcement. If all 41 participating States actively conducted roadside UCR enforcement at the same

level conducted by the 28 participating States, FMCSA believes that such increased use of this enforcement tool would improve compliance rates among carriers from the non-participating States. FMCSA estimates that the current 40 percent compliance rate by carriers in non-participating States might reasonably be expected to improve to $(41/28) * 40$ percent, or 59 percent.

As shown in Table 13, the alternative proposals combined the assumptions of 90 and 80 percent compliance in participating and non-participating States respectively, to generate a weighted average projected compliance rate of 88.85 percent. This table also shows the effects of FMCSA's adjusted compliance rate of 59 percent in the non-participating States. The FMCSA proposal produces a weighted average projected compliance rate of 86.42 percent.

TABLE 13—REGISTRATION PERCENTAGE REASONABLENESS (RPR) FACTOR

	Approximate recent population	Board's estimated RPR	Board's projected registrations	FMCSA's estimated RPR	FMCSA's projected registrations
Participating States	383,000	90%	344,700	90%	344,700
Non-Participating States	50,000	80%	40,000	59%	29,500
Total	433,000	88.85%	384,700	86.42%	374,200

C. Shortfall Adjustment Factor

Factoring in both the change in definition of CMV and the RPR, the first alternative proposal calculated the maximum revenue to be only 88.85 percent of \$70,054,131, or \$62,239,770, a loss of \$7,814,351 and considerably less than the \$113,340,945 revenue requirement. The effect of bracket shift, calculated at its 2008 rate, would be to

reduce the maximum \$70,054,131 revenue by 25.04 percent for a loss of \$17,541,552. Subtracting both the RPR and bracket shift factors from the maximum anticipated revenue of \$70,054,131 yields a reduced maximum anticipated revenue totaling \$44,698,218.

To determine an appropriate fee increase that would remedy the

shortfall, the alternative proposal then divided the maximum adjusted anticipated revenue (\$44,698,218) into the revenue requirement (\$113,340,945). This produced a shortfall adjustment factor of about 2.54. Multiplying this factor by the current fees for each bracket yielded a set of fees with a maximum of \$99 per CMV.

TABLE 14—DERIVATION OF FEE FOR ALTERNATIVE PROPOSAL

Bracket	Number of CMVs	Current fee	Current fee times 2.54
1	0-2	\$39	\$99
2	3-5	116	295
3	6-20	231	587
4	21-100	806	2,047
5	101-1,000	3,840	9,754
6	1,001 and above	37,500	95,250

The second alternative proposal included the same analysis set forth above, but with a 12.52 percent bracket shift factor (instead of 25.04 percent). This was based on the assumption that the bracket shifting rate for 2010 would

be about half of the 2008 rate. This assumption was based on the fact that, under the new definition of CMV, 2010 fleet sizes are estimated to be approximately one-half of the prior years' fleet sizes, leaving out trailers and

the data uncertainties associated with them. However, FMCSA does not believe that the Subcommittee provided convincing support or justification for this assumption.

D. FMCSA Adjustments

FMCSA agrees with the basic principles of this alternative fee proposal, but makes several adjustments. First, as discussed in Section V.B., above, the Agency’s proposal adjusts the RPR factor and resulting compliance rate slightly—from 88.85 percent to 86.42 percent—to reflect the difficulty of increasing compliance in non-participating States.

Second, the Agency’s proposal is based on a reconsideration of the effects of increasing the compliance rate. The alternative proposal’s calculations assume that registering 88.85 percent of carriers would mean bringing in 88.85 percent of revenue. However,

compliance rates measured as a percentage of carriers will not be directly proportional to revenues. This is because carriers with different fleet sizes pay different fees, and compliance rates vary by carrier size. As shown below, increasing revenue collection to 88.85 percent of the maximum available revenue would represent only a small increase from existing levels and would not reflect the effect that projected increased compliance levels of 80 or 90 percent of carriers would have on revenue. To address this issue, FMCSA developed a proposal that calculates the effect of increased registration rates on revenue collection.

The FMCSA proposal starts by estimating the total revenue that the

existing UCR fee structure would bring in if there were (1) 100 percent participation using the 2010 carrier population; (2) no change in the definition of CMVs; and (3) no bracket shift. This estimate is made by multiplying the current fee for each bracket by the total number of active carriers in the MCMIS data base falling into that bracket, based on the previous CMV definition (which included both power units and trailers). Freight forwarders and brokers are included in the first bracket. Summing the products across all six brackets yields \$123,964,113 in revenue, as shown in Table 15.

TABLE 15—CALCULATION OF MAXIMUM REVENUE AT EXISTING FEES

Bracket	Active carriers (MCMIS)*	Current fee per entity	Maximum revenue by bracket
1**	218,829	\$39	8,534,331
2	89,773	116	10,413,668
3	85,058	231	19,648,398
4	30,716	806	24,757,096
5	8,118	3,840	31,173,120
6	785	37,500	29,437,500
Total	433,279	.....	123,964,113

* Population scaled down from 433,322 to the 2008 estimate of 433,279.
 ** Includes brokers and freight forwarders.

This amount represents the most that the UCR Plan could generate if no changes were made to the existing fees. (Note that this total is greater than the revenue target of \$113,340,945, because the bracket and fee structure was originally developed assuming a somewhat smaller active population.)

Starting with this maximum revenue (\$123,964,113), FMCSA then estimated the effects of bracket shifting. Assuming that bracket shifting reduces revenue collection across the spectrum by the same 25.04 percent calculated for registered carriers, FMCSA found that the maximum revenue would be \$123,964,113 * (100 percent – 25.04 percent), which is \$92,923,499. The actual amount of revenue collected in 2008 was \$76,617,155, which is about 82.5 percent of the adjusted maximum revenue after bracket shifting is taken into account. The difference between these two amounts, \$16,306,344, is the estimated loss of revenue resulting from non-compliance. FMCSA believes that some portion of this lost revenue could be recovered by increasing the compliance rate.

The FMCSA proposal estimates the amount that could be recovered by comparing the current compliance rate

to the RPR developed for the alternative proposals and modified by FMCSA. The compliance in 2008 was 270,794 registrants out of a total population of 433,279, for a rate of 62.50 percent. (Note that this rate is considerably lower than the rate of revenue collection which was 82.5 percent of the maximum revenue available after the effect of bracket shift. This difference is due to the greater compliance rate of larger entities, which raises revenue collections disproportionately.) A compliance rate of 62.50 percent leaves 37.50 percent noncompliance. Raising the compliance rate to 86.42 percent assumes that most of the current noncompliant carriers would register. The increase from 62.50 percent compliance to 86.42 percent would mean capturing 63.79 percent of all non-compliant carriers. (The increase in compliance by 23.92 percentage points out of the total of 37.50 percent noncompliant carriers would mean that the improvement in compliance would represent 23.92/37.50 or 63.79 percent of all noncompliant carriers.)

The next step in FMCSA’s approach is to calculate how much of the \$16,306,344 in lost revenues would be brought in by capturing 63.79 percent of

the noncompliant carriers. This calculation is difficult to perform because FMCSA believes there is no data available that can predict with certainty the fleet sizes of the carriers that would be brought in to reach the RPR. Nonetheless, it is likely that, just as with the carrier population as a whole, the carriers that remain non-compliant despite increased enforcement efforts would have somewhat smaller fleet sizes. The new registrants captured as a result of increased enforcement efforts would have larger fleet sizes. Therefore, the percentage of currently uncollected revenues that would continue to remain uncollected even after enforcement efforts are improved would be smaller than the percentage of currently unregistered carriers that would still remain unregistered.

FMCSA does not know of any method to estimate with certainty the extent of this effect. However, it is reasonable to assume that the relationship between the percentage of uncollected revenues and the percentage of unregistered carriers after the increase in compliance will be similar to the relationship between the current percentage of uncollected revenues and current

percentage of unregistered carriers. Currently, (100 percent – 82.5 percent) or 17.5 percent of revenues are not being collected. The ratio of 17.5 percent in uncollected revenues to the 37.5 percent of carriers that are not registered is 0.468. As stated previously, with improved compliance, FMCSA believes that 63.79 percent of non-compliant carriers can be registered, leaving only 36.21 percent non-compliant. Multiplying 0.468 by 36.21 percent yields 17.0 percent, which is FMCSA’s estimate of the percentage of currently uncollected revenues that will remain uncollected even after compliance improves (*i.e.*, even after registering 63.79 percent of currently noncompliant carriers). Thus, (100 percent – 17.0 percent) or 83.0 percent of the currently uncollected revenues are assumed to be recoverable when 63.79 percent of the currently noncompliant carriers are registered. Multiplying the \$16,306,344 in currently uncollected revenues by

83.0 percent yields an increase of \$13,543,247. This increase in revenue, added to the \$76,617,155 that was collected at current compliance rates, would bring collections to \$90,160,402. However, this estimate does not take into account the change in the definition of CMV. Eliminating trailers from the carriers’ fleet sizes caused many of them to drop to lower brackets, where they pay lower amounts. In the absence of a change in fees, revenue would drop significantly. FMCSA estimates the size of this drop by comparing the maximum revenue available from the existing population, as recorded in MCMIS using the new CMV definition, to the maximum revenue available using the old definition. Comparing the maximum revenue derived using the new definition of CMV and the 2010 population (\$70,018,681) with the maximum revenue derived using the old definition (\$123,964,113) produces a ratio of 0.5648. Applying this factor to

the figure we derived earlier by taking into account the RPR and bracket shifting (\$90,160,402) results in estimated revenues of only \$50,925,322 if the current fees were not increased. This revenue estimate, based on the 2008 population, would rise very slightly to \$50,955,411 after scaling up by 433,535/433,279 to account for the slightly larger 2010 population. In other words, after factoring in the RPR and bracket shifting, FMCSA estimates that the Plan would only collect \$50,955,411 if the fees are not adjusted.

This is far less than the revenue amount the States are entitled to receive by statute. Consequently, the FMCSA proposal includes an adjustment factor to remedy this shortfall. Dividing the revenue target (\$113,340,945) by the estimated revenue based on current fees (\$50,954,411) produces a shortfall adjustment factor of 2.22432. Applying this factor to the current fees yields FMCSA’s proposed fee structure, as shown in Table 16.

TABLE 16—DERIVATION OF FEE FOR FMCSA PROPOSAL

Bracket	Number of CMVs	Current fee	2009 fee times 2.22432
1	0–2	\$39	\$87
2	3–5	116	258
3	6–20	231	514
4	21–100	806	1,793
5	101–1,000	3,840	8,541
6	1,001 and above	37,500	83,412

FMCSA believes that this proposal meets the statutory objective of ensuring that the fees are sufficient to provide the revenues to which the participating States are entitled. It is based on a reasonable estimate of the number of active motor carrier entities subject to the UCR fees. It adjusts the fees to reflect the statutory change in the applicable definition of commercial motor vehicle. It further adjusts the fees to recognize the historical occurrence of revenue shortfalls caused by bracket shifting. Finally, it establishes reasonable targets for compliance by the motor carrier industry to encourage enhanced enforcement efforts by the participating States.

VI. Regulatory Changes

In view of the foregoing, FMCSA is proposing to revise 49 CFR part 367 in several respects. First, current subpart A, which contains regulations implementing the provisions of now-repealed 49 U.S.C. 14504, would be removed in its entirety. Second, the heading of 49 CFR 367.20 would be

changed to specify that the fees established would be applicable to registration years 2007, 2008 and 2009. Third, a new 49 U.S.C. 367.30 would establish the fees applicable to registration years beginning on January 1, 2010. A technical change is also being proposed in the headings to the fee tables to make clear that the fees are applicable to all entities that are required to register and pay fees to the UCR Plan.

VII. Regulatory Analyses and Notices

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

FMCSA has determined this proposed rule is a nonsignificant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation’s regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). The costs of this NPRM would not exceed the \$100 million annual threshold as defined in Executive Order 12866. This rule is not

economically significant based on the size of the additional fees to be collected under the UCR. The costs of the rule are required pursuant to an explicit Congressional mandate in SAFETEA–LU. Because a majority of the fees under the proposed rule are already being collected under the UCR system, the total cost of the proposed rule will be substantially less than \$100 million per year. A major intent of the proposed rule is to eliminate the revenue shortfalls that the UCR system has experienced over the past several years; that shortfall was \$38 million in 2008, for instance, and of similar magnitude in 2007 and 2009. This increase, though, will clearly be less than the \$100 million threshold for a significant impact on the economy. The Agency has prepared a preliminary regulatory analysis analyzing the rule. A copy of the preliminary analysis document is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), (5 U.S.C. 601–612), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA has determined that the fees being proposed in this rule would affect large numbers of small entities because the proposed rule sets fees for hundreds of thousands of carriers of all sizes, and small entities are defined to include all entities that are not dominant in their industries. In previous rulemakings, FMCSA identified for-hire carriers with fewer than 145 power units (*i.e.*, trucks or tractors) as small. Thus, all of the for-hire carriers in Brackets 1 through 4 would be considered small, as would many of those in Bracket 5.

After careful consideration, however, FMCSA has determined that, in every case involving a viable small entity, the recommended UCR fee will be well below the threshold level of one percent of revenues used for determining significant impacts. This conclusion is based on the observation that the maximum fee per vehicle is \$87, which is less than one percent of the \$14,500 annual salary of even a single employee working 40 hours per week for 50 weeks per year and earning the current Federal minimum wage of \$7.25.¹² Because an entity without sufficient revenues to pay even one employee per vehicle would not be viable, it is clear that the recommended UCR fees will not reach the threshold of one percent of revenues. Thus, FMCSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government, or by the private sector of \$136.1 million or more in any one year, must prepare a

¹² The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. <http://www.dol.gov/esa/whd/flsa/>

written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has preliminarily determined that this proposal would not have an impact of \$136.1 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not create an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has preliminarily determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this proposal would preempt any State law or regulation. As detailed above, the UCR Board of Directors includes substantial State representation. The States have already had notice of this action and opportunity for input through their representatives. FMCSA also requests comments on any substantial direct effect on the States as outlined in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current new information collection requirements by FMCSA associated with this proposed rule.

National Environmental Policy Act

The agency analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.h of the Order from further environmental documentation. The CE under Appendix 2, paragraph 6.h relates to establishing regulations and actions taken pursuant to the regulations implementing procedures to collect fees that will be charged for motor carrier registrations and insurance.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined preliminarily that it would not be a "significant energy action" under that Executive Order because it would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 367

Commercial motor vehicle, Financial responsibility, Motor carriers, Motor vehicle safety, Registration, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration proposes to amend title 49 CFR chapter III, subchapter B, part 367 as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

1. Revise the authority citation for part 367 to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.73.

Subpart A—[Removed and Reserved]

2. Remove and reserve subpart A, consisting of §§ 367.1 through 367.7 and Appendix A to subpart A.

Subpart B—Fees Under the Unified Carrier Registration Plan and Agreement

3. Amend subpart B by revising the heading of § 367.20 to read as follows:

§ 367.20 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Years 2007, 2008 and 2009.

* * * * *

4. Add § 367.30 to subpart B to read as follows:

§ 367.30 Fees under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2010.

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

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	\$87	\$87
B2	3–5	258	.....
B3	6–20	514	.....
B4	21–100	1,793	.....
B5	101–1,000	8,541	.....
B6	1,001 and above	83,412	.....

Issued on: August 28, 2009.
Rose A. McMurray,
Acting Deputy Administrator.
 [FR Doc. E9–21232 Filed 9–2–09; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907021105–91234–02]

RIN 0648–AY00

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 10 was developed by the Mid-Atlantic Fishery Management Council (Council) to bring the FMP into compliance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by establishing a rebuilding program that allows the butterfish stock to rebuild and permanently protects the long-term health and stability of the stock; and by minimizing bycatch and

the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries. Amendment 10 would increase the minimum codend mesh size requirement for the *Loligo* squid (*Loligo*) fishery; establish a butterfish rebuilding program with a butterfish mortality cap for the *Loligo* fishery; establish a 72-hr trip notification requirement for the *Loligo* fishery; and require an annual assessment of the butterfish rebuilding program by the Council’s Scientific and Statistical Committee (SSC). This proposed rule would also make minor, technical corrections to existing regulations.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on October 19, 2009.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 10 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 10, including the FSEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The FSEIS/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

You may submit comments on this proposed rule, identified by RIN 0648–AY00, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal e-Rulemaking portal <http://www.regulations.gov>;

- Fax: (978) 281–9135, Attn: Carrie Nordeen;

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on MSB Amendment 10.”

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northeast Regional Office and to David Rostker by e-mail

David_Rostker@omb.eop.gov or fax (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This amendment is needed to bring the MSB FMP into compliance with