Mariners and Broadcast Notice to Mariners.

Dated: April 8, 2010.

B.J. Downey, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Sector Northern New England Acting.

[FR Doc. 2010–9680 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0223]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during multiple periods beginning on May 29, 2010 and ending on June 30, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This action will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced on May 29, 2010 from 10 p.m. through 10:30 p.m.; on June 05, 2010 from 10 p.m. through 10:30 p.m.; on June 12, 2010 from 10 p.m. through 10:30 p.m.; on June 16, 2010 from 9:15 p.m. through 10:45 p.m.; on June 19, 2010 from 10 p.m. through 10:30 p.m.; on June 23, 2010 from 9:15 p.m. through 9:45 p.m.; on June 26, 2010 from 10 p.m. through 10:30 p.m.; on June 30, 2010 from 9:15 p.m. through 9:45 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on May 29, 2010 from 10 p.m. through 10:30 p.m.; on June 05, 2010 from 10 p.m. through 10:30 p.m.; on June 12, 2010 from 10 p.m. through 10:30 p.m.; on June 16, 2010 from 9:15 p.m. through 10:45 p.m.; on June 19, 2010 from 10 p.m. through 10:30 p.m.; on June 23, 2010 from 9:15 p.m. through 9:45 p.m.; on June 26, 2010 from 10 p.m. through 10:30 p.m.; on June 30, 2010 from 9:15 p.m. through 9:45 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: April 8, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–9681 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

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: Final rule.

SUMMARY: This rule establishes annual registration fees and a fee bracket structure for the Unified Carrier Registration (UCR) Agreement for the calendar year beginning 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: *Effective Date:* April 27, 2010.

ADDRESSES: Copies or abstracts of all comments and background documents referenced in this document are in Docket No. FMCSA–2009–0231. For access to the docket, go to:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Go to the "Help" section of *regulations.gov* to find electronic retrieval help and guidelines. *Regulations.gov* is generally available 24 hours each day, 365 days each year.
- *DOT Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Docket Management Facility hours are between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476), or you may visit *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366–0710, 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:

Table of Contents

I. List of Abbreviations

The following is a list of abbreviations used in this document:

Alabama PSC Alabama Public Service Commission
AMSA American Moving and Storage Association
ATA American Trucking Associations
Board Unified Carrier Registration Board of Directors
California DMV California Department of Motor Vehicles
CMV Commercial Motor Vehicle
CTA California Trucking Association
CVSA Commercial Vehicle Safety Alliance
FMCSA Federal Motor Carrier Safety Administration
IFTA International Fuel Tax Agreement
IRP International Registration Plan
MCMIS Motor Carrier Management Information System
Missouri DOT Missouri Department of Transportation
NAICS North American Industry Classification System
NCSTS National Conference of State Transportation Specialists
NPTC National Private Truck Council
Pennsylvania PUC Pennsylvania Public Utility Commission
RPR Registration Percentage Reasonableness
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SSRS Single State Registration System
TCA Truckload Carriers Association
TIA Transportation Intermediaries Association
TRLA Truck Renting and Leasing Association
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UPS United Parcel Service

II. Legal Basis for the Rulemaking

This 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 from the motor carrier industry, of whom at least one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket. The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). On July 19, 2007, FMCSA published a notice announcing the reappointment to the Board of the five Board members from the State agencies nominated by NCSTS (72 FR 39660). On June 30, 2008, FMCSA published a notice announcing the reappointment of the members from the four FMCSA service areas to the Board (73 FR 36956). On January 28, 2010, (75 FR 4521) FMCSA published a request for public comments along with recommendations for appointment of the five members from the motor carrier industry.[3]

Among its responsibilities, the Board is required to submit to the Secretary of Transportation[4] 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 adjustments to the fees and fee brackets must be adopted following the same timelines and procedures (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.

III. 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:

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

[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, Public Law 110–53, 121 Stat. 266, 467 (Aug. 3, 2007).

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

[3] The terms of the current members from the motor carrier industry have expired, but all but one continue to serve until either they are reappointed or successors are appointed (49 U.S.C. 14504a(d)(1)(D)(iii) and (iv)).

[4] 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).

Subsection (f)(1) provides that the 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)(B) of the Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848, 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 [of title 49, United States Code]" (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.

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 that 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.

Participating states are required by statute to use UCR revenue "for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement" (49 U.S.C. 14504a(e)(1)(B)). In addition, as permitted by statute, at least one-third of the participating states use the revenue produced by the UCR program to provide their share of the costs of the Motor Carrier Safety Assistance Program (MSCAP) that is not provided by a grant from FMCSA. The purpose of the MCSAP grant program is "to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders * * *" (49 U.S.C. 31102(a)). The UCR revenues that contribute to the MCSAP are used primarily for driver/vehicle inspections, traffic enforcement, compliance reviews, public education and awareness, and data collection. A great deal of the funding is used to pay state employee salaries to conduct these activities.

Statutory Requirements for the Fees

The FMCSA acknowledges stakeholders' concerns regarding all the factors under the statute that should have been considered when determining the fees. For example, in response to the September 3, 2009, notice of proposed rulemaking (NPRM) the American Trucking Associations, Inc. (ATA) and a number of other industry members and associations assert that FMCSA has not considered all of the relevant factors under the statute in considering the fees that should be set for 2010 for the UCR Plan and Agreement. Specifically, ATA asserts that the Agency should have considered: (1) The state of the economy; (2) the effect of the fee increase on the trucking industry; (3) the continuing failure of the States to audit and enforce UCR Agreement requirements; (4) the effect on future collections of the elimination of towed vehicles from the fleets; (5) the danger of spiraling fee increases; and (6) the creation of a "moral hazard" by FMCSA's acquiescence to an increase in the fees. However, only one of these factors is specified expressly in the statute—the effect of the elimination of trailers. The factors that FMCSA believes to be relevant under the statute are addressed in more detail below. FMCSA will address below several comments regarding the economic significance of the rulemaking and the impact of the fees to industry. The Agency has chosen to discuss these issues in the most relevant sections of the rule, rather than in the section reserved for comments.

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

The legislative history accompanying the enactment of the statute in 2005 confirms this primary focus on the need to provide the States the revenue levels set in accordance with the statute:

> States that currently participate in the SSRS and choose to participate in UCRS [sic] would be *guaranteed* the revenues they derived from SSRS during the last fiscal year ending prior to the enactment of this Act. States that did not participate in SSRS but opt to join UCRS [sic] would be *entitled* to annual revenues of not more than $500,000. (H.R. Rep. 109–203 at 1019 (2005) (Conf. Rep.) (emphasis added))

The emphasized words support FMCSA's interpretation of the statute, which gives primacy to providing the revenue entitlements to the participating States in each year.

Section 14504a(h)(4) gives additional support for this interpretation. As noted in the comments by the Commercial Vehicle Safety Alliance (CVSA), this provision explicitly requires FMCSA to reduce the fees for all motor carrier entities in the year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs. No analogous provision in the statute requires an increase in the fees in the following year to make up for any shortfall in the revenues provided by the fees.

In light of this context, FMCSA has interpreted the statutory text that directs that any annual adjustment be "within a reasonable range" to mean that the determination of what is reasonable must be made in light of the statutory objective. *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457, 466 (2001) ("Words that can have more than one meaning are given context, however, by their surroundings.") and *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132 (2000) ("[T]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.") Therefore, if consideration of a factor frustrates the statutory objective of providing the participating States sufficient revenues, the statute does not permit FMCSA to consider it as a relevant factor.

IV. Background

The initial UCR fees and fee structure were 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 for 2009 as for 2007 and 2008. 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 TO 2009

Bracket	Number of CMVs 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. The participating 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.

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. The recommendation is available in the docket.

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. However, both options received an equal number of votes; the Board was unable to reach consensus on either proposal. 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 letter from the Board dated July 15, 2009, is available in the docket.

A. FMCSA Analysis of Board Recommendation

The Agency conducted its own analysis of the Board's formal recommendation, as well as alternative fee proposals considered by the Revenue and Fee Subcommittee of the Board. FMCSA concluded that it could not base its fee determination on the Board's recommendation, and made an independent analysis of two issues in particular: (1) "bracket shifting," *i.e.,* motor carriers registering in a fee bracket that is different from that based on the fleet size 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. FMCSA carefully examined the Board's entire fee recommendation, including its methodology and specific findings. FMCSA also 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. Based on its independent analysis, FMCSA published an NPRM on September 3, 2009 (74 FR 45583), containing its own fee proposal.

FMCSA's NPRM described several alternative fee structures for 2010. First, it noted a proposal informally supported by industry representatives on the Board as the basis for fees in 2010 (described in Table 4 in the NPRM (74 FR 45587)). This fee structure, like the other fee structure evaluated by FMCSA, reflected the revised definition of CMV consisting only of power units. However, it did not incorporate any adjustments for bracket shifting and assumed full compliance by active motor carriers based on an assumption that all 433,535 apparently active entities, as identified in MCMIS and considered by the Board to be active, would register to pay fees in 2010.

FMCSA noted that experience over the 3 years of UCR's existence, 2007–2009, had shown that a significant proportion of motor carriers were paying fees based on fleet sizes different from (and usually smaller than) what would have been expected from the fleet sizes reported to FMCSA. The net effect of this bracket shifting has been a significant reduction in expected revenue (25.04 percent in 2008). FMCSA concluded that bracket shifting, which can be appropriate under the statute as explained in the NPRM, occurs because the available data sources used to develop UCR fees and fee structure do not always accurately predict actual registrations (74 FR 45589).

FMCSA also noted in the NPRM that States participating in the UCR program sometimes have difficulty registering all of the motor carriers that appear in the MCMIS database, even after certain filters have been applied to identify motor carriers that have had recent activity and are still most likely to be active. As FMCSA noted, the reasons for and solutions to the level-of-compliance issues are matters of significant disagreement between the States and industry representatives on the Board. The States have taken the position that low compliance is due to limitations in the MCMIS data that prevent identification of the appropriate active population, even with the use of data filters, combined with the reluctance of some industry members to register. Industry representatives have taken the position that insufficient State enforcement activities are to blame (74 FR 45591). FMCSA asked in particular for public comment on the reasons for the low level of compliance and on potential solutions to determining the reasonableness of the compliance and enforcement activities by the States, including how they would support a reasonable adjustment in the current fees (74 FR 45591).

B. Compliance and Enforcement

FMCSA concluded that a compliance rate of 100 percent is not feasible. However, the Agency did agree with the concept of setting fees based on an assumption of significantly improved compliance and enforcement activities by the States. Thus, the fees proposed in the NPRM were set assuming that participating States would achieve a compliance rate of 90 percent. Because ten non-participating States do not receive revenues from the UCR Plan, FMCSA assumed that they would have less incentive to exert effort on enforcement. However, in FMCSA's opinion, improved roadside enforcement by participating States, to capture potential registrants from non-participating States when they cross borders into participating States, would improve compliance rates among carriers from non-participating States to approximately 59 percent. The Agency therefore based its fee proposal on a weighted average projected compliance rate of 86.42 percent.[5]

C. Bracket Shift

FMCSA estimated the effects of bracket shifting and, in doing so, recognized that carriers with different fleet sizes pay different fees and that compliance rates vary by carrier size. The Agency's proposal takes into account the effect of increased registration rates, due to anticipated improvements in compliance and enforcement, on revenue collection. This adjustment assumed that the carriers that remain non-compliant despite increased enforcement efforts would have somewhat smaller fleet sizes and the new registrants registering as a result of increased enforcement efforts would have larger fleet sizes.

Finally, FMCSA noted that, without any other changes, each fee would need to be adjusted to take into account the elimination of trailers from the definition of CMV, which reduces many carriers' fleets. As the Agency noted, "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" (74 FR 45592). Therefore, after factoring in compliance improvements and bracket shifting, FMCSA concluded that the 2009 fees must be increased by a factor of 2.22 to establish the fees for 2010 proposed in the NPRM. FMCSA concluded that those fees would provide the revenues to which the participating States are entitled. The Agency found that the proposed fees were based on a reasonable estimate of the number of active motor carriers subject to the UCR fees; reflected the statutory change in the definition of CMV; addressed bracket shifting; and set reasonable targets for compliance by the motor carrier industry to encourage enhanced enforcement efforts by the participating States (74 FR 45595). The proposed 2010 fees as shown in the NPRM are presented in Table 3.

[5] This weighted average projected compliance rate has been slightly adjusted for this final rule.

TABLE 3—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT PROPOSED FOR REGISTRATION YEAR 2010

Bracket	Number of CMVs 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	

V. Discussion of Comments on the NPRM

The statute established a 90-day time period for FMCSA to set UCR fees and fee structure following receipt of a recommendation from the Board. Because of this statutory limit, FMCSA initially set the time period for public comment at 15 days, concluding on September 18, 2009. On September 18, the Agency published a notice extending the comment period for an additional 10 days, to September 28, 2009 (74 FR 47912).

A. Number and Description of Commenters

FMCSA received over 150 comments on the proposed rule from a wide variety of sources. Comments (including some filed late) were received from 114 industry members, nearly all of whom registered opposition to the proposed fees. In addition, 22 industry associations submitted comments. In general, they also opposed the fees proposed by FMCSA. Sixteen State agencies and two State associations commented, nearly all in support of the fee proposal.

B. Comments Favoring the Proposal

Comments

Fifteen State agencies, including the Alabama Public Service Commission, Colorado Public Utilities Commission, Illinois Commerce Commission, Kansas Corporation Commission, Kentucky Transportation Cabinet, Massachusetts Department of Public Utilities, Michigan Public Service Commission, Missouri Department of Transportation, New Mexico Public Regulation Commission, New York State Department of Transportation, North Dakota Department of Transportation, Oklahoma Corporation Commission, Pennsylvania Public Utility Commission, Washington Utilities and Transportation Commission, and the West Virginia Public Service Corporation, expressed strong support for the fee proposal in the NPRM. Many of the public agencies submitted essentially identical comments, stating that FMCSA had taken into account the three key points that needed to be addressed for a new fee structure: (1) The removal of towed units for purposes of determining fleet size, which by itself would require a fee increase by a factor of 1.61; (2) bracket shift, resulting in an approximately 26 percent decrease in revenues; and (3) the level of State enforcement efforts to address non-compliance. These commenters argued that "the net effect of 'bracket shift' and the exclusion of trailers have had a much greater impact on the need for a fee increase than has non-compliance." In addition, the Alabama Public Service Commission (Alabama PSC) commented that UCR collections and revenue had increased each year and, considering that the UCR program was only celebrating its second anniversary in September 2009, its progress to date had been "commendable."

Two associations, the National Conference of State Transportation Specialists (NCSTS) and the Commercial Vehicle Safety Alliance (CVSA), also supported the proposed fee structure. CVSA stated that the proposal represents the best method for reaching the goal of revenues equal to those received under the SSRS. CVSA noted that, despite the fee increase, the carriers in the top bracket would still pay far less than they would have paid under SSRS. CVSA also commented that the UCR program does not allow for a "revenue windfall," meaning that if revenues exceed the target, FMCSA would be obligated to adjust the fees downward for the following year. CVSA stressed that the new fee structure needed to be issued effective no later than November 15, 2009, to preclude additional shortfalls. Finally, CVSA commented that the fee structure for Registration Years 2008 and 2009 worked to the industry's benefit because the Board did not recommend a fee increase despite revenue shortfalls.

One motor carrier approved of the fee proposal because it would benefit owner-operators and small trucking companies, largely due to the statutory change in the CMV definition removing trailers for UCR registration and by applying a fee from a lower bracket, even with the increased fee from that bracket. Although they did not support the fee proposal, the American Trucking Associations (ATA) and the Transportation Intermediaries Association (TIA) both supported the State revenue entitlement submitted for FMCSA approval with the Board's recommendation. ATA also described FMCSA's use of MCMIS data to determine the overall motor carrier population as "unobjectionable" and added, "The underlying data may not be all it should be, but anyone working in this area must begin with it."

Response

FMCSA continues to agree that the statutory change in the definition of motor vehicle (a part of the population factor), bracket shifting, and the registration compliance rate (the enforcement factor) are essential factors to consider in the fee calculation methodology. FMCSA also agrees with ATA's comment that MCMIS data is the starting point for determining the appropriate carrier population. However, the Agency also understands the limitations to using MCMIS, which is a self-reporting system that was not designed for UCR purposes. (*See* Section V (C)(4) below for additional discussion.)

Finally, FMCSA also recognizes that those carriers that were subject to the SSRS program will generally pay less under the 2010 fee structure than they did under SSRS. More importantly, the UCR Plan cannot over-collect the fees. To the extent that it collects more than its target revenue amount, the fees would be required to be reduced for 2011 to reflect the over-collection.

Consideration of Three Key Factors

Removal of Trailers From Fee Calculation

Comments

Many of the State agencies that supported the proposed fees filed an identically worded comment stating that because towed units are no longer part of the equation for purposes of determining fleet size, this factor alone would result in a need for the fees to increase by a factor of 1.61. The Missouri Department of Transportation (Missouri DOT) said that fee adjustment was necessary to account for the change in definition of CMV, noting that Missouri could expect a 38.7 percent decline in revenue collection from companies dropping into lower brackets as a result of the changed definition.

Many industry members acknowledged that it would be necessary to adjust the fee in response to the statutory change to the definition of CMV, but opposed any further adjustment. State commenters were generally opposed to this limited approach, arguing that it would cause a decrease in revenue.

Response

See Section V(C)(7) below for additional discussion.

Bracket Shift

Comments

State agencies and associations argued that it was necessary to account for bracket shift in developing the UCR fees because the statute allowed motor carriers to exclude from their count of vehicles subject to UCR fees those commercial vehicles not involved in interstate or international commerce and because UCR does not apply to certain vehicles below certain weight ratings. Thus, the net effect of motor carriers shifting upward or downward in brackets was roughly 26 percent less revenue than if the fleet size registered in MCMIS had been used to determine UCR fees. The Pennsylvania PUC said that self-certification by carriers will "inevitably result in bracket shift," and that FMCSA had properly included this factor in its fees calculation.

Response

FMCSA agrees that the net effect of bracket shifting has had a much greater effect on revenues than had been originally anticipated. By statute, motor carriers are allowed to exclude portions of their fleets from UCR registration. The inherent discrepancy between the number of vehicles in MCMIS and the number of CMVs that carriers may lawfully include in their fleet sizes for UCR purposes inevitably results in bracket shift independent of the fee calculation methodology used.

See Section V(C)(4) below for additional discussion.

Improved State Enforcement Efforts

Comments

Some State agencies commented that they have had to identify the universe of entities subject to the program and then to educate thousands of motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers that were not subject to the SSRS but are now subject to UCR fees. The commenters agreed that States will need to do more to improve overall compliance. They noted that, under the NPRM, approximately 66,000 additional entities will have to be registered into the UCR for 2010 to achieve the revenue goal, and that this will require States to improve compliance nationally by about 15 percentage points to reach the compliance goal of 86.42 percent. Several of the States, such as Illinois, Massachusetts, and Michigan also described increased enforcement and educational activities they have undertaken and the results they produced.

Response

FMCSA is encouraged to learn of the States' improved enforcement efforts. However, the Agency encourages more States to register entities for UCR at the same time as they renew registrations (including those for the International Registration Plan (IRP)), obtain International Fuel Tax Agreement (IFTA) credentials, and make excise tax filings. FMCSA urges States to work closely with FMCSA Division Offices to leverage pre-existing targeted enforcement efforts, as well as to improve data integrity issues, to make mass mailings and notifications more effective. Finally, FMCSA believes that the success of the UCR fee program depends on the Board working with States to develop outreach strategies and best practices for educating and registering carriers. (See the additional discussion in section V(C)(2)).

C. Comments Opposing the Proposal

Comments

Motor carriers and associations representing carriers submitted several comments that expressed general opposition to the fee proposal, based on a wide variety of arguments. The American Moving & Storage Association (AMSA) strongly opposed the fee proposal as "excessive, inappropriate [and] unwarranted." United Parcel Service (UPS) said the proposed fees represented an "unreasonable rate of increase." The Truckload Carriers Association (TCA) opposed the proposal because it would "negatively affect the motor carrier industry in order to subsidize both non-compliant motor carriers and the states that will not put forth the effort to increase UCRA [UCR Agreement] compliance." TIA called FMCSA's analysis flawed. ATA and TIA both faulted the NPRM for giving an impression of "illusory precision." They argued that "the unwarranted show of accuracy covers much guesswork and some arbitrary assumptions."

Response

As discussed in Section III above, the Agency has to recognize and implement its primary statutory mandate to enable States to achieve their revenue entitlement. Unfortunately, many of the comments expressing general opposition to the fee adjustment did not address the important issues. General statements of opposition do not present compelling arguments about the Agency's statutory mandate. Similarly, specific objections do not address the relevant statutory factors the Agency must consider. A more detailed discussion of those contentions and FMCSA's responses, follows below.

1. Increase Too Large Under Current Economic Conditions

Comments

One of the most common arguments against the proposed fees, made by over one hundred commenters, including many carriers, was that fees should not be increased because the trucking industry is suffering from the current economic downturn. Industry members commented that fee increases might force them to lay off drivers, sell trucks, or even go out of business. A number of associations and individual carriers complained that FMCSA failed to consider the condition of the economy and the "devastating effect" the fees increase would have on the trucking industry, trucking employment and services and even the survival of some trucking companies. AMSA commented that FMCSA had not appropriately considered the fact that household goods movers have faced a decline in both demand and revenue, forcing many such carriers to go out of business. Commenters also complained that shipping rates have declined significantly, putting additional economic pressure on the industry.

ATA and TIA commented that the recession has hit the trucking industry far worse than many other industries. ATA stated that for-hire truckload revenue has plummeted and that for-hire trucking employment is at its lowest level in 14 years. The California Trucking Association (CTA) also opposed the fee proposal, citing declining freight volumes, a number of recently adopted regulations affecting carriers in the State, higher diesel prices, and pressures to increase fuel taxes.

Response

FMCSA does not agree with the numerous commenters who asserted that the proposed rule represents too large an increase to be considered reasonable under current economic conditions. As discussed in Section III above, the statute does not permit FMCSA to consider as relevant in determining whether an adjustment in the UCR fees is "within a reasonable range," any factor that frustrates the primary purpose of providing sufficient revenues for the participating States. Current economic conditions are one such factor.

Nonetheless, FMCSA does not believe that the 2010 fees will have a significant economic impact on affected carriers.[6] In 2007, for example, the trucking industry generated revenue of $228,907 million. With an estimated inventory of 1,183,000 vehicles generating revenue, that total represents average revenue of $193,000 each.[7] Under the fees for Registration Years 2007–2009, in which the maximum fee per motor vehicle was $39, the fee accounted for no more than 0.02 percent (that is, 1/50th of 1%) of revenue. The 2010 fees (a maximum of $76 per power unit) represent less than about 0.04 percent (1/25th of 1%) of revenue per power unit. The increase in fees is thus only 0.02 percent of revenues—about a fifth of a tenth of 1 percent. This increase is very small even relative to the revenues of extremely small carriers.

Data on receipts for individual proprietorships in the North American Industry Classification System (NAICS 484—Truck Transportation)—which are assumed to represent the smallest carriers—show yearly revenue averaging $82,269.[8] The increase of $37 in the fee for one motor vehicle from $39 under the 2007–2009 fees to $76 for 2010 is an increase of only 0.045 percent, or little less than half of a tenth of one percent of the average individual proprietorship carriers' revenue. Moreover, the $37 difference between the 2009 and 2010 fees comes to less than 15 cents per day for a truck used 5 days a week for 50 weeks per year. Even if current revenue levels have been reduced by current economic conditions, the fee increase is very small in relation to such revenues.

A critical point that many commenters ignore is that a significant portion of the $37 fee increase in the first bracket is due solely to the change in the definition of a CMV. That change alone requires an increase of about 62 percent, or $24. The remainder, which is only $13, is less than a hundredth of 1 percent of industry average revenue per power unit, two-hundredth of 1 percent of the average revenues of an individual proprietorship, or 5 cents per power unit per day. For the largest carriers this increase has an even lower per-unit effect.

2. State Compliance and Enforcement

a. Responses to NPRM Questions on Compliance

Question One: FMCSA requested public comment on the reasons for the low level of compliance.

Comments

The Alaska Trucking Association noted that, according to FMCSA, only 28 out of 41 participating States actively engage in roadside enforcement. The commenter expressed doubt that there is any enforcement in the 10 non-participating States. Since there is no incentive for non-participating States to conduct UCR enforcement, the commenter concluded there is unlikely to be any enforcement in the future in those States. Therefore, the reason for the current low level of compliance is that "if there is no reasonable expectation of getting caught, there is no incentive to comply."

The Alabama PSC supported the 90 percent registration compliance factor and noted that ATA had erroneously stated it in its comments as 80 percent. It said that it had made progress working with FMCSA to improve the data on potential registrants, but work still remained to be done. It is unreasonable, Alabama PSC argued, to expect the States to achieve 100 percent compliance when the Federal data upon which they rely are not 100 percent reliable. Alabama PSC would support a higher registration compliance factor for non-participating States than the 59 percent proposed by FMCSA, noting that four of the nine non-participating jurisdictions in the continental U.S. had already achieved this level of registration for 2009 (VT, NJ, OR, and AZ). Alabama PSC suggested a factor of 65 to 75 percent.

The Pennsylvania PUC stated that it believes the current compliance rate is a reflection of various factors, including a potentially inaccurate carrier population number, the ability of property carriers to omit vehicles used solely in intrastate commerce, as well as available enforcement and compliance tools. Pennsylvania agreed with FMCSA that the compliance rate is higher for larger carriers.

California Department of Motor Vehicles (California DMV) noted that UCR does not require State participation. Participating States retain only that amount of the collected UCR fees that equals what they previously collected under SSRS. Thus, California collected its entitlements in both 2008 and 2009 and sent $300,000 each year to the UCR repository for distribution to other States. Because, according to California DMV, UCR prohibits the States from collecting any intrastate fees from a carrier that pays UCR fees, California would lose over $7 million in intrastate revenues if California pursued all UCR-defined interstate carriers. This dynamic occurs for any State that exceeds its UCR revenue cap or collects intrastate fees. Another reason for non-compliance, California DMV explained, is that "carriers do not know they are non-compliant because they think they are *intra*state. A massive compliance effort would be required to pursue and convince these carriers to pay with little incentive for the States to do so because of their capped revenue amounts and their loss of intrastate fees when the carriers do pay UCR."

California DMV also noted that before UCR was enacted carriers could enter information into MCMIS without fear of consequences, since no credentials or payments were linked to MCMIS filing with respect to numbers of vehicles and whether or not a carrier was interstate. Finally, California DMV pointed to the weak compliance efforts of non-participating States, which may enforce on carriers crossing into their States, but do little to enforce on any of their own intrastate carriers who meet the UCR definition of interstate.

The Missouri DOT also said it had identified a number of companies within the non-compliant group that were operating only within the State borders in intrastate commerce, out of business, not currently operating, non-compliant in one or more State motor

[6] In the Regulatory Analysis and Notices section below, FMCSA complies with applicable regulatory policies to determine that this final rule is not economically significant. That determination rests on a different standard than the statutory factors discussed in this section.

[7] *http://www.census.gov/svsd/www/services/sas/sas_data/48/2007_NAICS48.xls.*

[8] *http://www.census.gov/econ/nonemployer/index.html.*

programs (IFTA, IRP, Over Size/Over Weight (OSOW), Operating Authority), or placed out-of-service. However, getting these changes into the MCMIS system is difficult and sometimes impossible. If Missouri could exclude these companies the State's compliance rate would be 87.5 percent.

CVSA cited two reasons for the expected revenue shortfall, the prospective change in definition of CMV and bracket shift, and argued that lack of enforcement by the States was not a major cause of the shortfall. CVSA contended that the States have stepped up efforts to enforce the program; and, as of September 2009, the compliance rate had reached 72 percent. CVSA noted that early in the program's life an outreach effort was necessary to inform carriers that were not required to pay under SSRS that they were covered by UCR. In addition, CVSA said it was important to note that UCR does not have an enforcement mandate and as a result no nationwide enforcement standard has been promulgated in rulemaking. In addition, there is no statutory requirement for a UCR credential to be carried on board trucks. CVSA also noted that inaccurate information in the carrier population database had impeded collection efforts. Lists of carriers obtained from MCMIS were not current and in some cases led to a 25 percent or greater return rate for registration fee notices. States have had to purge the lists of carriers that no longer exist.

Several other comments addressed compliance and how to improve it. One pointed out that Connecticut and New Hampshire are requiring proof of UCR compliance to renew a registration or obtain IFTA credentials.

Response

FMCSA specifically takes issue with California DMV's assertion that it has a net loss of $5 million because UCR prohibits the States from collecting any intrastate fees from a carrier that pays UCR fees. In FMCSA's view, this loss of revenue occurs because of the stand-alone preemption provisions of 49 U.S.C. 14504a(c) that are not linked to registration and payment of fees to the UCR Plan and Agreement. In other words, section 14504a(c)(1) precludes any State requirement for payment by interstate motor carriers and interstate motor private carriers (as defined there) of any of the fees there specified. It seems that California would lose these revenues regardless of the payment by those carriers of UCR fees; otherwise, California could rectify this situation by withdrawing from the UCR Plan under 49 U.S.C. 14504a(e)(3) and (4), which it obviously has not done. Other issues raised by the commenters are addressed in sections V(C)(4), V(C)(5), V(C)(6) and V(C)(7).

Question Two: FMCSA requested public comment on determining the reasonableness of the States' enforcement efforts.

Comments

The Alaska Trucking Association stated that "at the least" a participating State should demonstrate an ongoing effort to register and collect fees, both administratively and through enforcement. The commenter also said that non-participating States need to have some incentive to perform enforcement.

Several States described their current efforts to improve enforcement. They included assisting each other to reach the collective registration compliance goals by developing a communication system to alert each State of new concerns and sharing "best practices." The Illinois Commerce Commission noted that the State had fulfilled its commitments in the UCR State Participation Agreement, registering 17,523 carriers and achieving a 90 percent registration percentage of all "UCR universe" carriers in Federal database records, and issuing over 1,000 citations in the past 12 months. Massachusetts reported that for the past 3 years it had conducted focused enforcement events with the Massachusetts State Police, and had worked with FMCSA on data integrity issues. The Pennsylvania PUC argued that any attempt to increase the compliance rate should recognize the economic realities of enforcement among the small fleet carrier population.

California DMV recommended three actions that would require a legislative change to the UCR Agreement. It also suggested a fourth, altering the definition of "interstate carrier" to match the IRP definition (which it believed would not require a statutory change) and using the IRP database to calculate the UCR fee structure.

Missouri argued that using a compliance rate based on the number of companies registered is not the correct compliance tool to use. Missouri's current 79.6 percent compliance rate accomplishes a collection rate of 90.7 percent of the fees that the State believes should be collected under the program in the State. In addition, 54 percent of Missouri's non-filers are in bracket 1 or bracket 2. Without a change in the compliance measure, the State could be required to spend more in resources to collect a small amount of revenue.

Kentucky noted that the State had 82 percent compliance for 2008 and 87.98 percent compliance for 2009. However, over the past 3 years, Kentucky had a shortfall of approximately $11 million due to the new UCR program and the need to educate motor carriers about the new registration program.

Response

FMCSA notes that State agencies generally support the proposed compliance rates. However, some expressed concern that the lower rate of 59 percent compliance for non-participating States would not be adequate and would favor an increase.

FMCSA agrees with State comments that the difficulty in obtaining UCR compliance is a reflection of various factors, such as the ability of carriers to omit CMVs for various reasons, lack of a requirement for States to participate in UCR, the difficulty of obtaining compliance from non-participating States, and the lack of a requirement for the UCR entity to carry a credential. Absent statutory changes that would address these issues, FMCSA believes that compliance by carriers from non-participating States will continue to be problematic and, therefore, the Agency is not increasing its estimate of the non-participating State compliance rate.

b. Comments on Inadequate State Compliance and Enforcement Efforts

Comments

A number of commenters opposed increasing UCR registration fees, alleging that the States have not undertaken adequate enforcement measures to ensure compliance. A number of commenters stated that fees should be raised only after the States have achieved adequate compliance. ATA and TIA commented that neither FMCSA nor NCSTS has recognized how significantly non-compliance has contributed to revenue shortfalls, alleging that 19 participating States have not registered at least three-quarters of the carriers based within their borders. ATA and TIA further commented that non-compliance or evasion is likely a major cause of bracket shift, but because States have not performed any audits, it is unclear. Another commenter said that FMCSA had erred in treating bracket shift and non-compliance as separate subjects. The commenter argued that enforcement of accurate carrier registration would have a significant impact on the amount of fees collected.

ATA and TIA said that FMCSA had set an arbitrary and capricious standard for State enforcement efforts in developing the proposed fees. ATA and TIA said that FMCSA made "a great show" of including a compliance factor, but this must be discounted heavily because the fees proposed by the NPRM are almost exactly the same as those recommended to the Secretary in February, 2009. The TCA argued that, although 100 percent compliance was unlikely, it should be the goal of the program and that there should be no increase until the States make a good faith effort to register non-compliant entities.

One commenter urged greater emphasis on ticketing or fining non-compliant carriers when discovered in roadside or scale inspections. Another said that UCR registration should be made part of the annual vehicle registration, like the Heavy Vehicle Use Tax, and should require proof of compliance before the vehicle can be registered.

The National Private Truck Council (NPTC) and the Truck Renting and Leasing Association (TRALA) faulted the Board and FMCSA for not developing audit procedures. The Louisiana Motor Transport Association (LMTA) complained that States were not required to demonstrate that they could effectively and efficiently administer the program as a condition of participation. LMTA suggested that States must first make all efforts to collect outstanding revenue prior to requesting an increase in fees. The Specialized Carriers & Rigging Association (SC&RA) also commented that the States have not done a good job of enforcement, with 19 of the UCR States and all 12 of the non-participating States failing to require registration and payment of the fees.

Response

FMCSA agrees that State enforcement activities, and the levels of compliance with UCR registration requirements by the motor carrier industry, directly affect the States' revenue, and are therefore relevant factors for consideration. The Agency's proposal, as set out in the NPRM, clearly expects an increase in the level of enforcement in order to produce an increase in compliance (74 FR at 45592–93). The Agency recognizes that participating States have made improvements in collection rates as enforcement activity has increased. Based on the State reports at the Board meetings and data available in MCMIS, FMCSA believes that the States have been making a "good faith effort" to address compliance and enforcement issues. The most recent data from MCMIS show that for the first 10 months of 2009, 42 States have issued 21,223 citations to motor carrier entities for not registering with the UCR Plan. This is a significant improvement over the 7,995 citations issued by 33 States during the entire previous year of 2008. This is clear evidence of an increased level of enforcement activity by the States, and compliance by motor carrier entities has improved accordingly.

However, the data also show some disparity in the level of activity by the various States, including a few participating States that are apparently not issuing roadside citations to unregistered motor carriers and other entities. For that reason, the Agency's fee proposal reflects an expectation that the participating States as a whole will need to register 90 percent (not 80 percent, as incorrectly stated by ATA) of the entities required to register in those States in order for the revenue entitlements to be achieved. To meet that level, FMCSA believes that all of the participating States must, and will, increase enforcement activities. This includes roadside enforcement and audits, as well as outreach activity with the essential support of the industry, to make sure that all motor carrier entities subject to the UCR registration requirements are aware of and comply with them.

The situation in the non-participating States, however, is more complex. As indicated in the NPRM, those 10 States cannot receive revenues from the UCR Plan and thus have no apparent financial incentive to conduct enforcement within their jurisdictions.[9] Several commenters urged the UCR Plan and FMCSA to take steps to improve compliance by motor carrier entities in the non-participating States.

FMCSA has no direct authority to enforce UCR compliance, and participating States are limited in their ability to enforce against carriers based in non-participating jurisdictions.[10] That said, increasing roadside enforcement efforts (as described above) should improve compliance by motor carriers and other entities from non-participating States. Regardless, this only captures those carriers that operate CMVs into participating States. Participating States are very limited in their ability to capture interstate carriers based in non-participating States that do not carry property or passengers into a participating State. As CVSA noted in its comments, industry cooperation, such as publication of information in the trade press about UCR, is vital to the success of the UCR program, and could assist in increasing compliance by entities in the non-participating States. The 2010 fee structure adopted here requires participating States to increase compliance rates for motor carrier entities based in non-participating States in order to achieve the revenue entitlements. Nonetheless, two factors must be addressed (the change in definition of vehicle and bracket shift) that are and will be the primary reasons for UCR Agreement revenue shortfalls, and not lack of compliance.

3. Increased Fees Should Not Fall on Compliant Entities/Fees Unfair

Comments

Many commenters, including numerous individuals and carriers, stated that raising the fees as proposed is unfair because it increases the burden on compliant carriers to the non-compliant carriers' benefit. The Minnesota Trucking Association commented that increasing fees only for the compliant carriers raised basic questions of fairness and not only rewards bad behavior, but also creates a competitive advantage for the offenders in terms of liquidity and cash flow. Some commenters stated that companies that are not complying with the UCR are using the money saved to help maintain positive cash flow, while those in compliance are suffering. The California DMV commented that the fees must apply to all with a reasonable expectation of compliance. ATA and TIA said that the failure of the States to enforce UCR Agreement requirements is the major reason for its opposition to the proposed fee increases. The absence of serious State enforcement efforts, in particular the lack of State audits of UCR Agreement compliance, calls into serious question FMCSA's asserted basis for the increases. The Alaska Trucking Association commented that, by accepting the premise that it was "unreasonable to expect the States to register and collect fees from all potential registrants," both the Board and FMCSA have endorsed a fundamentally unfair fee structure that

[9] Data available to FMCSA from MCMIS, if correct, shows that a few non-participating States are issuing a very small number of citations and, presumably, collecting fines for not registering with the UCR Plan, even though it is not entirely clear that non-participating States have authority to issue them. *Cf.* 49 U.S.C. 14504a(i)(4).

[10] Hawaii is one of the ten non-participating States. However, section 701(d)(1)(C) of the Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848, 4906 (Oct. 16, 2008) amended the statute so that Hawaiian motor carriers not transporting household goods (which number only a few hundred) are not required to register with the UCR Plan. 49 U.S.C. 13504 and 14504a(a)(5)(A)(ii). This will further reduce the number of entities from non-participating States that will register.

will cause more and more potential registrants to become non-compliant. The Alaska Trucking Association recommended no fee increase until the States make a solid commitment to enforce registration and the payment of fees. Similar arguments were made by the Snack Foods Association and AMSA, which expressed concern that the unprecedented large increase in fees will result in increased non-compliance.

Some commenters, in addition to those who stressed the unfairness of assessing fees against the compliant carriers to the benefit of the noncompliant carriers, raised other fairness issues. One truck operator argued he should not be required to pay higher fees because trailers were no longer counted toward the fees assessed other companies. Another said that removing the fees for trailers is not a tradeoff and that smaller carriers will end up paying more than twice as much. The American Bus Association disagreed with FMCSA that the proposal in the NPRM is a compromise fair to all parties. The doubling of fees, by itself, makes the proposal unfair, but the disproportionate effect on the compliant carriers also makes it unjust.

Two California truckers noted that none of California's neighboring States participate in the UCR program and that no agency in those States enforces enrollment by interstate truckers, placing California carriers at a competitive disadvantage. Additional fee increases will only increase this disadvantage, they said. One of these commenters also noted that because California already recoups its UCR Agreement entitlement, all additional fees received are distributed to States with shortfalls and do not benefit California carriers. The CTA echoed comments critical of California's participation in the program, arguing that States meeting revenue goals should not be punished. The CTA commented that California carriers would experience a net loss from the fees proposed due to potential job losses and a decrease in freight movement. Any increase of UCR fees "to account for other states' safety program funding shortfall adds another layer to an already unlevel playing field."

The comments from the States indicated that compliance has been increasing as enforcement activity has increased. NCSTS, joined by several participating States, reported that registration for 2009 had increased to 307,767 carriers. Alabama PSC claimed that 2009 registrations had increased to "over 310,000." In addition, the Pennsylvania PUC and Missouri DOT both noted that FMCSA was correct that the compliance rate (calculated as the number of carriers registered under the UCR plan divided by the total number of carriers that should potentially register) is not synonymous with the actual revenue collection rate (calculated as the actual revenue collected divided by the targeted revenue amount). The FMCSA's Registration Percentage Reasonableness (RPR) factor is a reasonable compliance target, Pennsylvania stated; and FMCSA "reasonably approximated the effect of the increased compliance goal on targeted revenue."

Response

FMCSA does not agree that the 2010 fee structure unfairly burdens compliant carriers. In developing the fees proposed in the NPRM, FMCSA determined that the levels of both State enforcement and carrier compliance are relevant factors to consider because they directly affect States' ability to achieve their revenue entitlement. Although the Board's recommended fees were based on the population of previously compliant carriers, FMCSA specifically rejected this approach. Under the 2010 fee structure FMCSA proposed, the Plan will not reach the overall revenue target unless the States improve compliance by increasing enforcement efforts and registering a significantly greater number of unregistered carriers.

Furthermore, the data show that compliance has improved with each year that the UCR Agreement has been in effect, as shown in Table 2 in the NPRM (74 FR 45586). New data made available to the Agency since the NRPM was published show that registrations have increased to 276,286 carriers for 2007, 299,908 carriers for 2008, and 314,456 carriers for 2009, all improvements over the registration levels shown in Table 2 of the NPRM. Recent enforcement activity has apparently captured entities that should have registered in previous years as well as the current year. More recent data also show a clear improvement in compliance rates. Compliance rates for 2008 registrations in both participating and nonparticipating States, as of March and September 2009, are shown in the table below.

TABLE 4—UCR REGISTRATION COMPLIANCE RATES—2008 REGISTRATION YEAR

	As of March 2009	As of September 2009
Non-Participating States	40.45%	42.22%
Participating States	66.28%	74.14%
All States	62.51%	69.48%

Registration totals for both categories of all States and all participating States include registrations by Canadian and Mexican carriers.

Although these data show a continued increase in compliance with UCR registration requirements by the motor carrier industry, further improvement is essential to address the fairness concerns of the commenters. As proposed in the NPRM, the 2010 fee structure depends on the States registering 374,200 motor carrier entities to achieve the required revenue levels under the statute (see Table 13, 74 FR 45593). As adjusted below, the States will need to register 370,664 entities or a weighted average of 85.50 percent in all States (including Canadian and Mexican carriers) in order to achieve the revenue levels expected. In FMCSA's view, a fee structure based on compliance rates of 90 percent in the participating States and 59 percent in the non-participating States is aggressive but fair and balanced.

In any case, lack of enforcement is not the sole reason the participating States have failed to achieve their revenue entitlements. As explained in the NPRM, the Agency believes that the most significant cause of past revenue shortfalls is bracket shifting. This means that even if the States achieved 100 percent compliance at 2009 fee levels, they would nonetheless experience a revenue shortfall warranting a fee adjustment.

4. FMCSA's Analysis of Bracket Shifting Inadequate

Comments

Many industry commenters disagreed with FMCSA's treatment of bracket shifting. Most of the comments echoed objections ATA articulated in its comments. ATA identified what it believed are the five causes of bracket shifting:

1. The MCMIS data on a carrier may be erroneous, and the carrier legitimately pays fees at a level different than the recorded data would predict;

2. The carrier chooses under the Act to base its fee calculation on the actual number of vehicles it operated during the preceding year instead of the

number it reported to FMCSA, and therefore falls into a different bracket;

3. The carrier operates some of its vehicles solely in intrastate commerce, excludes these from its fleet count, as is permitted by the Act, and pays less than expected;

4. The carrier is legitimately confused about the requirements of the Act, and excludes trailing equipment or equipment operated in interstate commerce but solely within a single state; and

5. The carrier cheats, and knowingly pays less than it owes.

According to ATA, the fourth and fifth causes of bracket shift listed above reflect noncompliance and are very likely major causes of the States' revenue shortfalls. However, ATA acknowledges that it is currently impossible to know what proportion of the reported 25 percent revenue loss constitutes non-compliance, because no States have yet performed any audits. ATA also criticized FMCSA's "unquestioning acceptance" of the analysis of bracket shift made available to the Board and said that the Agency should not accept this "superficial" analysis without some verification.

ATA also pointed out that inclusion of trailers and other towed vehicles in the UCR program led to a great deal of confusion on the part of motor carriers when they had to calculate the size of their fleets, and led many to underpay by mistake what they owed. ATA stated that this aspect of the administration of the program should not be ignored.

Several commenters agreed with FMCSA that bracket shifting is a significant contributor to revenue shortfalls, but disagreed that it was appropriate to adjust the fees to compensate for it. The Snack Food Association commented that MCMIS data do not always predict actual registrations and that a large number of carriers are intentionally under-reporting their fleet sizes.

UPS expressed concern at "the almost total absence of any type of review of the appropriateness of" bracket shifting. UPS also commented that bracket shifting may be due to the fact that many industry members do not understand that the definition of interstate transportation for UCR registration purposes is "significantly different than the interpretation in most states which hold that the vehicle not the cargo or passengers must cross state lines." As a result, UPS strongly disagrees with FMCSA's (and most States') acceptance of self-reported figures.

Alabama PSC challenged ATA's suggestion that bracket shift could be the result of mistake or fraud, stating that Alabama's initial efforts at auditing carriers had uncovered "no evidence of fraud or mistake." Alabama PSC also challenged ATA's claim that the States had not yet performed any audits of bracket shifting, noting that ATA and other industry representatives voted against a recent Board resolution requiring carriers that remove vehicles from their fleet count to maintain a vehicle-specific list so that States may conduct accurate audits of bracket shifting. Alabama PSC concluded that the vast majority of bracket shifting appears to be legitimate and that it would be unreasonable not to include it as a factor in the 2010 fees, with a reasonable adjustment to the factor to account for mistake or fraud.

Some commenters criticized the use of FMCSA's MCMIS data base as the source of the carrier population, stating that faulty data are one potential cause of bracket shifting. The TRLA and the NPTC both said that MCMIS is "fundamentally flawed" because there is no mechanism for purging the system of entities that have gone out of business, merged, consolidated, filed bankruptcy, or simply disappeared from regulatory oversight. They, along with other commenters, also faulted FMCSA for having no systematic mechanism for verifying and correcting the data submitted by the registrants, although they acknowledged the efforts of some States to clean up MCMIS data. RTLA and NPTC said that data quality issues have made it "problematic at best" to determine an appropriate fee schedule that would generate the amount of revenue allowed by the UCR Act. The California DMV commented "the MCMIS data is not a good benchmark to calculate the UCR fees." Finally, a carrier commented that the States should be provided accurate information of the number of interstate carriers from their State and then be required to obtain compliance of at least 90 percent if they are to participate.

Response

FMCSA believes that bracket shifting has been a significant factor in causing the overall revenue shortfall. As explained in the NPRM, bracket shifting has caused a significant portion of the revenue shortfall in Registration Years 2007–2009. The shortfalls have occurred because motor carriers are not always required to use the number of CMVs reported to FMCSA and incorporated into MCMIS as the number of CMVs used to determine the applicable fee for UCR registration (74 FR 45589–90).

Only the participating States have access to the underlying data on revenue yields by bracket used to develop the analysis presented to the Board and utilized by FMCSA in developing the fees; FMCSA does not. No industry representative on the Board challenged the accuracy of the data on the revenue effect of bracket shifting shown in Table 8 in the NPRM when it was presented at Board meetings earlier this year.

The data from MCMIS, despite apparent inadequacies, are the only data source available for developing the UCR fees and fee structure. As even ATA acknowledged: "The agency's analysis of the overall motor carrier population is unobjectionable. The underlying data may not be all it should be, but anyone working in this area must begin with it." The MCMIS data base was not designed for and was not intended for use as a source for designing and then collecting the fees for the UCR Plan and Agreement. Nonetheless, FMCSA has made the data available for use by the UCR Plan and the participating States, at their request, because, as ATA points out, it is probably the best source that is available. The implementation of the UCR Plan and Agreement has had the benefit (along with other considerations) of leading FMCSA to implement procedures to improve the accuracy, reliability and timeliness of the motor carrier data in MCMIS. A few commenters also noted that the reliability of the MCMIS data used in the implementation and administration of the UCR Plan's registration has improved over time.

Nonetheless, the motor carrier information contained in MCMIS, as self-reported by carriers filing and updating information on a form MCS–150, is not the sole basis under the statute for determining the appropriate fees to be paid by a carrier registering with the UCR Plan. As explained in detail in the NPRM, the statute permits carriers to register under a different fleet size than that which is reported in MCMIS (74 FR 45589–90).

Generally FMCSA agrees with ATA and other commenters that there are a number of reasons for bracket shifting, some lawful and some not. However, ATA did not identify all of the legitimate reasons for which a motor carrier may shift to a bracket different than that indicated by the MCMIS database. For example, motor carriers may also exclude from their fleets vehicles under lease for terms of 30 days or less. Moreover, motor carriers may add CMVs to their fleets for the purpose of UCR registration, and, as indicated in the NPRM, hundreds of carriers apparently did so.

FMCSA agrees that many motor carriers subject to the UCR Plan and Agreement do not fully understand their rights and responsibilities with respect to fees. Comments indicate that some motor carriers may not understand that there are legitimate reasons for adjusting the number of vehicles in their fleets for the purpose of registering with the UCR Plan. One motor carrier, for example, complained about having to pay a fee based on 148 power units when only 28 were used in interstate movements, while the rest were used to transport seasonal agricultural products within California. By statute, this carrier "may elect not to include commercial motor vehicles used exclusively in the intrastate transportation of property * * *" (49 U.S.C. 14504a(f)(3)). This commenter did not explain why it would not make such an election, which would reduce its fee from $8,541 to $1,793 under the proposal in the NPRM. Nevertheless, this is but one example of the many legitimate opportunities for a carrier to shift to a different UCR fee bracket.

ATA does not support with any evidence its statement that registrations with improper bracket shifting "are very likely major causes of the states' revenue shortfalls." On the other hand, the Alabama PSC reports in its comments that: "Alabama's initial efforts at auditing carriers have uncovered no evidence of fraud or mistake." ATA also implies that the change removing towed vehicles from the CMV definition will reduce the amount of bracket shifting.

On the other hand, as the example discussed above shows, there are still numerous situations that would allow a motor carrier to adjust its fleet size for UCR registration purposes, even when only power units are considered. FMCSA agrees that the removal of trailers and other towed vehicles from the definition of commercial motor vehicles for the purpose of determining the number of such vehicles owned and operated may lessen, but will not eliminate, bracket shifting. As indicated in the NPRM, and in the discussion above, there are numerous legitimate grounds for a registering motor carrier or freight forwarder to rely on in making such adjustments. Therefore, in the Agency's judgment, it would be reasonable to incorporate into the adjustment of the fees for 2010 an estimate that bracket shifting will produce a reduction of 15% in the revenues that would be expected from the number of CMVs reflected in the MCMIS data base. This is a change from the estimated revenue reduction of approximately 25% used in the NPRM. If industry's supposition that bracket shifting will diminish with the removal of towed CMVs from the fleets proves to be true to such an extent that revenues collected under the UCR Plan and Agreement, despite FMCSA's estimate that revenue loss due to bracket shifting will fall to 15%, the statute requires the Board and FMCSA to reduce the fees accordingly in the following year (49 U.S.C. 14504a(h)(4)).

5. Compliance Rates Likely To Decline

Comments

Some commenters, including ATA and TIA, argued that sharply increased UCR Agreement fees would increase noncompliance, creating a future spiral of State revenue shortfalls and requests for yet higher fees. The Snack Food Association said that placing almost the entire burden of a solution on compliant carriers was unfair and that it was likely that a fee increase of this magnitude would decrease compliance rates.

Response

FMCSA has no evidence to conclude that this final rule will increase non-compliance and create future spirals of revenue shortfalls and increased fees. State revenue collection for Registration Year 2010 will depend not only on the fees published in this final rule, but also on States increasing their enforcement efforts. Given the incentive for greater enforcement built into this rule, there is no basis to conclude that higher fees will result in greater non-compliance. In fact, the opposite is true. States have every incentive to improve enforcement so that they can achieve the full amounts to which they are entitled. Finally, the Agency will be observing the Board's and the States' enforcement and audit activities closely. Future State revenue shortfalls do not in and of themselves guarantee fee increases.

6. Problem of Moral Hazard/Self-Fulfilling Prophecy

Comments

ATA, TIA, and YRC Worldwide commented that, by mirroring the Board's proposal, FMCSA's proposal would create a moral hazard by signaling to States that they do not need to exert any enforcement efforts. UPS disagreed with FMCSA's division of the discussion of enforcement into participating and non-participating States. According to UPS, because UCR is a safety program, enforcement should not be optional for States. UPS also commented that revenue should not be the incentive for safety enforcement. UPS has very serious concerns about allowing any State or group of States the option of selectively enforcing Federal law. According to UPS, non-participating States should not be allowed to use the lack of revenue as an excuse for not enforcing the program.

UPS argued in favor of using the total population, without any reductions, as the basis for the fee calculation. That a significant number have not registered "is not a justification for accepting this non-compliance," in UPS' opinion, and "is evidence of the lack of effective enforcement of the UCR by the states."

Response

FMCSA disagrees that the final rule will create a moral hazard or other incentive for States not to enforce the UCR program against eligible entities.

Despite characterizations to the contrary, FMCSA's proposal does not mirror or substantially adopt the Board's proposal. FMCSA did not believe that the Board's proposal took into account the need for increased State enforcement efforts, among other things. As a result, FMCSA proposed a different fee structure that factored in an average compliance rate of 86.4 percent, which has been slightly adjusted to 85.5 percent in this final rule. This is a significant increase over the compliance rate for registration years 2007—2009, as well as the compliance rate incorporated into the Board's April 3, 2009, proposal. FMCSA believes that the fee structure incorporated in this final rule sets realistic compliance goals that require States to improve their enforcement efforts in order to reach the statutory entitlement amounts.

As explained above, the statute only authorizes FMCSA to set fees. Clearly, FMCSA can create incentives for enforcement, as it has in this final rule, by setting fees that require increased enforcement efforts in order for participating States to reach their entitlement levels.

FMCSA believes that participating States can improve the number of registrations by targeting carriers through roadside enforcement efforts, especially at State border crossings, and mailing campaigns. Still, FMCSA recognizes that participating States' opportunities for extra-jurisdictional enforcement are inherently limited. A number of carriers transporting goods or people in interstate commerce might never leave their home States. There is very little that participating States can do in these circumstances, except undertaking outreach efforts. FMCSA has attempted to balance the realities of these limitations with its statutory directive to set fees so that States receive their entitlement revenue amounts.

7. Fee Increase in Response to Change to CMV Definition

Comments

A minority of commenters from industry and a few industry associations opposed any increase in the fees, even that portion of the increase required to reflect the change in the statute defining "commercial motor vehicle" for UCR purposes beginning in 2010. However, a substantial proportion of the motor carrier commenters, following the lead of ATA, and all of the comments on behalf of State interests, agreed that some increase in the fees is necessary because of that statutory change. Two commenters stated that the industry understands that a fee adjustment is necessary to accommodate the elimination of trailers from the fee calculation, and that "Table 4 in the NPRM would be acceptable to most in the trucking industry." Several trucking associations also stated that they would accept the fees in Table 4 of the NPRM that reflected only the change in the definition. ATA and TIA also commented that the exclusion of towed units from the definition of CMV should eliminate some confusion among motor carriers and result in some revenue gain.

Response

FMCSA does not agree that the 2010 fee adjustment should take into account only the statutory change to the definition of CMV. As explained previously, the statute requires FMCSA to set the fees at a level that will provide the States their revenue entitlements. In order to discharge its statutory duties, FMCSA must also take into account the realities of bracket shifting and a reasonable compliance rate. These two factors, especially bracket shifting, have been, in FMCSA's view, the cause of the revenue shortfalls, and must be taken into account as well in setting the fees for 2010. A fee level that only takes into account the statutory change would not enable the participating States to reach their statutorily mandated revenues.

8. Other Arguments Against Fee Proposals

a. FMCSA Did Not Balance All Factors Appropriately

Comments

ATA and TIA commented that by not granting the Board sole discretion to set fees, Federal law implies that FMCSA is to exercise some discretion and balance the interests of the participating States with the interests of the industry members. ATA and TIA argued that there is no indication in the NPRM that the Agency has done this.

Response

Although many commenters contend that FMCSA has an implied duty to balance State and industry interests, none have cited legal authority to support this position. In many respects, the specific language of the statute restricts, rather than expands, the Agency's discretion. As explained above, FMCSA may balance State and industry interests only to the extent that doing so does not frustrate its statutory obligation to set fees that enable States to achieve their revenue entitlements. (See Section III, above.)

b. Eliminate Administrative Costs and Reserve From the Calculation

Comments

Alaska Trucking Association objected to including $5 million for administrative expenses under the current economic conditions. An individual trucker echoed this objection. ATA and TIA objected to including both $5 million for administrative expenses and the $563,885 revenue reserve. ATA said that the reserve fund request is unsupported by statute, and the concept "belies the assumed precision that underlies the rest of the fee proposal." Minnesota Trucking Association commented that there is no economic justification for including administrative expenses and a revenue reserve.

Response

FMCSA disagrees with the commenters who contend that including administrative costs in the fee calculation is inappropriate. In setting the fees, the statute directs FMCSA to consider administrative costs associated with the UCR Plan and Agreement (49 U.S.C. 14504a(d)(7)(A)(i)). Considering this statutory obligation, FMCSA believes it is not only reasonable, but imperative, to include these costs in the fee calculation. The amount of the estimated administrative costs was approved by the UCR Plan's board of directors, and FMCSA does not see any basis for rejecting that recommendation.

Although FMCSA is not statutorily obligated to include a revenue reserve in the fee calculation, the Agency nonetheless believes it is within its discretion to include this amount if it is necessary to fulfill its statutory obligations. This amount was designed to account for any uncertainties involved in the fee calculation to ensure that the States are able to achieve their entitlement revenue levels. In fact, FMCSA included a 0.5 percent revenue reserve as a component of the fees for Registration Years 2007–2009 without receiving any negative comments.

Nonetheless, FMCSA has decided to remove the revenue reserve component from the fee calculations in the final rule. After 3 years of experience administering the fees, FMCSA believes that the initial uncertainties prompting inclusion of a revenue reserve have diminished. Both FMCSA and the Plan have a greater understanding of the factors that have caused under-collection (such as population definition, compliance rates and bracket shifting) and have adjusted the final rule accordingly. As a result, the Plan should face significantly less uncertainty, negating the need for the revenue reserve. This final rule removes the revenue reserve from the amount of the total revenue entitlement, which has been adjusted to $112,777,060 from the $113,340,945 proposed in the NPRM (74 FR 45588).

c. "Reasonable" Fee Required by Statute

Comments

Several trucking associations and carriers, citing 49 U.S.C. 14504a(f)(1)(E), argued that the law requires UCR fees to be adjusted "within a reasonable range" and that the proposed increase is not "reasonable." These commenters included ATA, TIA, UPS, the American Bus Association, the Snack Food Association, the United Motorcoach Association, and National Tank Truck Carriers. Some asserted that, given the state of the economy, the increase proposed by the NPRM is not reasonable; others pointed to the size of the proposed increase as unreasonable. The TRLA and the NPTC also opposed the proposed fees as unreasonable and in violation of § 14504a(e)(1)(B). In addition, they argued that the State recipients of UCR fee revenues have not demonstrated that they are in compliance with the requirement in the UCR Act that they use an amount equivalent to the UCR revenues on motor carrier safety programs, enforcement, or administration of the UCR program, citing § 14504a(e)(1)(B). The NPTC added that private motor carriers did not pay into the SSRS, but they agreed to pay UCR fees on the grounds that the revenue would be used solely for motor carrier safety enforcement. NPTC said that, without an audit of the use of UCR revenue by the States, any increase in fees above that necessary to meet the changed definition of CMV is inherently unreasonable. The Snack Food Association also argued that the doubling of fees did not meet the "reasonable range" test, especially given the "extreme economic pressures" facing the for-hire carrier industry. The American Bus Association also commented that FMCSA had merely "rubber-stamped" the Board's request "in the mistaken belief that it must approve any request," and questioned whether the Agency had fulfilled its duty to determine the reasonableness of a Board adjustment recommendation.

Response

FMCSA does not agree that the 2010 UCR fees are unreasonable. FMCSA has interpreted the statutory text that directs that any annual adjustment be "within a reasonable range" to mean that the determination of what is reasonable must be made in the context of its obligation to enable States to receive their statutorily mandated revenues. As explained in Section III, above, factors that frustrate the statutory objective of providing the participating States their entitled revenues are not consistent with FMCSA's statutory directive.

FMCSA disagrees that it has "rubber-stamped" the Board's recommendation or that the Secretary has not discharged his statutory duties. In fact, FMCSA concluded that the Board's recommendation submitted on April 3, 2009, did not adequately address three factors: carrier population, bracket shifting and enforcement. In the NPRM, FMCSA explained in detail why it believes that the fees should take these factors into account and how the fees should be calculated. In incorporating these factors into its proposed fee, including a detailed explanation of its calculations, FMCSA proposed a methodology very different from that which the Board recommended.

Finally, FMCSA does not agree that the reasonableness of the fees depends on an audit of States' use of UCR registration fees. Although several commenters asserted that FMCSA has a duty to ensure that States are using these revenues for safety enforcement, none identified with any specificity the legal basis for this assertion. FMCSA is not aware of any statutory or other provision that requires it to conduct an audit of State activities prior to adjusting the fees.

d. FMCSA Should Retain Current Fees

Comments

Several owner-operators asked explicitly that the current fees be kept in place while the implicit message from many other commenters was the same. One trucking company said that all fee increases "other than the absolute minimum necessary to support the programs" should be postponed until it is clear the motor carrier industry is moving out of the current recession. California U-Haul commented the fees should remain consistent with prior years, suggesting that an increased emphasis on enforcement would result in increased revenue.

Response

FMCSA does not agree that the 2010 fees should remain the same as the fees set for Registration Years 2007–2009. FMCSA has a statutory duty to enable States to achieve their revenue entitlements and does not believe that setting 2010 fees at current levels is consistent with that duty. As explained above, the Agency believes that the 2010 fees must take into account the change to the definition of CMV, bracket shifting and compliance rates.

e. Partial Increase Associated With Increased Enforcement

Comments

FMCSA received several comments requesting that the Agency modify the timing of the fee and alter the method of enforcement. One commenter requested a partial increase in the fees, with the remaining amount phased in over time. A commenter requested that FMCSA allow roadside enforcement to collect all outstanding UCR fees from that motor carrier for all registration years before allowing the motor carrier to continue its travel.

Response

FMCSA does not agree that these alternatives would present a better fee structure than that proposed in the NPRM. A phased-in fee structure would further complicate enforcement efforts, creating additional expenses and confusion for both participating States and registering entities. The 2010 fee structure is the Agency's best attempt to rectify the shortcomings of previous years' fees, including addressing population, bracket shifting and compliance issues. Finally, as explained above, while FMCSA can encourage States to take enforcement action indirectly by setting compliance goals, it has no authority to require States to take specific enforcement actions. Any effort to make UCR delinquency an out-of-service criterion must be taken up at the State level.

f. Increase Number of Brackets/Revise Bracket Structure

Comments

ATA and TIA approved of using the maximum number of brackets permitted by statute, as FMCSA had done. ATA and TIA also said that FMCSA had properly applied the principle of progressivity required by the Act so that the per-vehicle fees at the bottom of each bracket are substantially equivalent across the fee structure. However, other commenters criticized the bracket structure. One commenter argued that the fees should be assessed on a per-power-unit basis instead of using brackets.

A few commenters addressed the break point between the first two brackets. Both the Minnesota Trucking Association and the Missouri DOT supported changing bracket 1 from 0–2 to 0–1 and bracket 2 from 3–5 to 2–5, as recommended by the Board. This would keep more companies in the same tier category as previously and minimize the revenue loss. Another commenter said FMCSA should reconsider whether the lowest bracket should break at one or two power units. It cited a decision by the Board that a business operating one power unit is significantly different from one that operates two or more. ATA and TIA also addressed the lowest bracket and said that FMCSA should explain the discrepancy between its proposal and the Board's recommendation.

Response

While FMCSA acknowledges commenters' concerns about the bracket structure, the Agency has decided to retain the bracket structure from the current fees in this final rule. Inevitably, because of the limited number of brackets and heterogeneous types of vehicles and operations, either the existing UCR fee structure or a new UCR proposal could prove advantageous to some carriers and disadvantageous to other carriers. The changes proposed by FMCSA actually help to redress some of the disparities in fees per power unit that exist under the current rule. (*See* the Regulatory Flexibility Act section below.) The rule could be adjusted to reduce the impacts on any individual carrier or group of carriers, but given that the same revenue target would have to be met, this would only result in the collection of additional revenues from other carriers. Other changes in the bracket structure (such as increasing the number of brackets) would require a statutory amendment.

Nonetheless, in an effort to respond to comments on the bracket structure, FMCSA will assist the UCR Plan in revisiting the bracket structure when the UCR Plan begins considering any adjustments in fees for future registration years. The Agency can provide technical assistance to support a thorough analysis of alternative bracket structures to reduce the economic impact on small businesses to the greatest extent practicable. While the statute requires the UCR Plan to develop no more than 6 and no fewer than 4 brackets of carriers (including motor private carriers) based on the size of the fleet, the statute does provide flexibility in the number of power units included in each of the brackets and allows the registration fees to be adjusted within a reasonable range on an annual basis if the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or lead to a revenue excess (49 U.S.C. 14504a(f)(1)(E)). Therefore, separate from this rulemaking, the Agency will assist the UCR Plan in revisiting the bracket structure and in considering alternatives to the current structure, to the extent practicable under the current statute, while ensuring the States receive the funds necessary to fulfill the statutory requirement

g. Tie Fees to Other Motor Carrier Programs

Comments

One commenter suggested looking at the IRP as the basis for the UCR fees. State-issued registrations would not be issued until the required fees are paid. This would provide a fee that is more manageable for every power unit subject to submitting Internal Revenue Service Form 2290. Another urged "make it a requirement with a lesser fee to show proof of payment when doing the yearly registration or IFTA renewal same as the 2290." The California DMV argued that because the data in MCMIS are inaccurate due to poor carrier reporting and a confusing "interstate carrier" definition, the UCR fee calculation should be based on the IRP count of interstate carriers. Because the IRP requires a carrier to cross the jurisdictional line to be considered an interstate carrier, use of IRP would ensure an "absolute, accurate count" of interstate carriers, although it would exclude from UCR registration carriers operating in a single State while transporting interstate passengers or property. Fees also could be affixed to the IRP credential process.

Other comments suggested tying UCR funds to existing FMCSA grant programs (*e.g.,* Performance and Registration Information Systems Management [PRISM] or Motor Carrier Safety Assistance Program [MCSAP]). Commenters suggested that linking UCR funding to these programs would provide enforcement incentives to both participating and non-participating States.

Response

FMCSA does not believe that it has the legal authority to adopt the changes these commenters requested. The Board, not FMCSA, has the authority to issue the rules and regulations, including those related to administration of the program (49 U.S.C. 14504a(d)(2)). In the absence of statutory authorization, FMCSA lacks the authority to re-structure or order the re-structuring of the manner in which UCR fees are collected. However, some States have enacted legislation authorizing them to collect UCR fees at the same time they register vehicles and collect IFTA fees. FMCSA encourages all States to engage in this kind of proactive collection effort, but lacks the authority to mandate it.

Some of the program linkages and other suggestions submitted by commenters may have merit. However, all of them would require statutory changes that are clearly beyond FMCSA's power to accomplish in this rulemaking. Such changes may well be appropriate for consideration by Congress during the next reauthorization of motor carrier programs administered by the Department of Transportation but unless and until such changes are enacted, FMCSA must carry out its responsibilities under the current provisions of the statute.

h. Fees for 2010

Comments

ATA contends that the States may not begin assessing and collecting UCR fees for 2010 "until the fee structure is amended to reflect the statutory change [in the definition of CMVs]."

Response

The comment by ATA does not reflect a correct interpretation of the effect of the amendment to 49 U.S.C. 14504a(a)(1)(A) modifying the definition of "commercial motor vehicle" that became effective for years beginning after December 31, 2009. The FMCSA recently issued regulatory guidance on the effect of the amendment on the application of the fees established in 49 CFR 367.20 (*Regulatory Guidance Concerning the Applicability of Fees for the Unified Carrier Registration Plan and Agreement,* 75 FR 9487 (March 2, 2010). The statutory amendment of the applicable definition of commercial motor vehicles in 49 U.S.C. 14504a that applies beginning after December 31, 2009, also governs the application of the fees established by § 367.20 so that it applies to registration years beginning after December 31, 2009 until superseded by an adjusted set of fees. Therefore, the States participating in the UCR Plan and Agreement may assess and collect fees pursuant to the fee schedule set forth in 49 CFR 367.20 until the fees adopted in this final rule become effective. A technical change in the heading of 49 CFR 367.20 is necessary to reflect the regulatory guidance.

VI. The Final Rule

After considering the comments received on the proposed rule, FMCSA is adopting the final rule as proposed with changes.

In accordance with 49 U.S.C. 14504a(g)(4), FMCSA proposed in the NPRM to approve the amount of revenue under the UCR Agreement to which each State participating in 2010 is entitled. The FMCSA included in its proposed revenue estimate administrative expenses of $5 million and a revenue reserve of 0.5 percent. After evaluating comments that opposed inclusion of the administrative expenses and the revenue reserve, FMCSA has concluded that it is statutorily required to include the administrative expenses, but has decided to remove the revenue reserve component from the fee calculations in the final rule. FMCSA is, therefore, approving the amount of revenue under the UCR Agreement to which each State participating in 2010 is entitled, and the final 2010 revenue target, as specified in the following table.

TABLE 5—STATE UCR REVENUE ENTITLEMENTS AND FINAL 2010 REVENUE TARGET

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

TABLE 5—STATE UCR REVENUE ENTITLEMENTS AND FINAL 2010 REVENUE TARGET—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
Total State Revenue Entitlement	107,777,060
Administrative Expenses	5,000,000
Total 2010 Revenue Target	112,777,060

FMCSA is also revising the RPR factor set out in Table 13 of the NPRM. Because of time constraints, an approximate recent population was used to develop the weighted average projected compliance rate of 86.42 percent. Data for 2008 are now available that provide the actual number of motor carrier entities allocated between the participating and non-participating States. As a result, a slight adjustment in the calculations in Table 13 has been made. The revised table is set out below:

TABLE 6 (TABLE 13 REVISED)—REGISTRATION PERCENTAGE REASONABLENESS (RPR) FACTOR

	Recent population (2008)	Board's projected registrations	FMCSA's estimated RPR	FMCSA's projected registrations
Participating States	370,575	333,518	90%	333,518
Non-Participating States	62,960	50,368	59%	37,146
Total	433,535	383,886	85.50%	370,664

The one substantial change made in this final rule involves the appropriate adjustment to recognize bracket shifting. In the NPRM, FMCSA considered empirical data reflecting the participating States' actual experience with bracket shifting during the years 2007–2009. The analysis indicated that the States experienced a reduction of expected revenues of approximately 25% as a result of bracket shifting during those registration years. The proposed fees in the NPRM were based on an expectation that a similar amount of revenue loss from bracket shifting would occur in 2010. The adjustment was made because motor carriers would register in a different bracket than the bracket predicted from the number of CMVs reported to FMCSA and reflected in the MCMIS data. As previously explained, there are several provisions that permit motor carriers to adjust the number of commercial motor vehicles reported to FMCSA when registering and determining the applicable fee. In addition, as suggested in the comments, some carriers may not have included towed CMVs in the number of CMVs used to determine the applicable fee because of confusion or an unclear understanding of the applicable requirements.[11] Now that the statutory amendment means trailers and other towed vehicles are not to be considered in determining the number of commercial motor vehicles, the possibility of confusion or uncertainty is reduced. Because of the many other legitimate reasons that bracket shifting can occur, FMCSA finds that it is appropriate, in setting the fees in this final rule, to incorporate a smaller factor of 15% (instead of the 25% proposed in the NPRM) for the revenue loss expected to occur in 2010 because of bracket shifting.

The table below shows the fees adopted by this rule as a result of the FMCSA's decision to remove the revenue reserve component from the fee calculations, the revision of the RPR factor and the modification of the factor used to adjust for the estimated effect of bracket shifting in 2010.

TABLE 7—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2010

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

[11] Under SSRS, only self-propelled vehicles were ever subject to the payment of the per-vehicle fees charged, which may have created some confusion when the UCR Plan's fees were implemented. *See* 49 CFR 367.1(c).

As indicated previously in this preamble, FMCSA will assist the UCR Plan in revisiting the bracket structure when the Plan begins considering any adjustments in the fees for future registration years. The Agency can provide technical assistance to support a thorough analysis of alternative bracket structures to reduce the economic impact on small businesses to the greatest extent practicable.

FMCSA also received comments supporting its proposal to revise 49 CFR part 367 by eliminating current subpart A, which contains regulations implementing the provisions of now-repealed 49 U.S.C. 14504. Therefore, this final rule removes current 49 CFR part 367 subpart A in its entirety. Second, the heading of 49 CFR 367.20 is changed to specify that the fees established by that section are applicable for each registration year until a subsequent adjustment in the fees becomes effective. Third, a new 49 U.S.C. 367.30 establishes the fees applicable to registration years beginning on January 1, 2010. As described above, the elimination of a revenue reserve from the 2010 revenue target and a revision to the blended estimated compliance rate has caused FMCSA to revise and reduce slightly the 2010 fees proposed in the NPRM. Finally, this final rule makes a technical change 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

Administrative Procedure Act

The Administrative Procedure Act's rulemaking provision in subsection (d)(3) of 5 U.S.C. 553 allows FMCSA to make a final rule effective on its publication date for good cause. Making this final rule effective on the date of publication will allow the participating States to begin registering motor carrier entities and billing and collecting fees for 2010 in accordance with the established procedures. Such immediate effectiveness will not harm any person or regulated entity, but will avoid any confusion caused by departure from those procedures. Any delay in collecting 2010 fees could also have a serious impact on participating States by causing them to lay off State employees and to curtail compliance and enforcement efforts, thereby jeopardizing the statutory objective of ensuring State revenues. FMCSA therefore finds that it is necessary to make this final rule effective immediately upon publication.

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

In the NPRM, FMCSA made a preliminary determination that the proposed rule was not a significant 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). It made this preliminary determination by finding that the costs of the proposed regulatory action would not exceed the $100 million annual threshold as defined in Executive Order 12866.

Comments on the Economic Significance and Other Significance of the Rulemaking

Several commenters said that FMCSA's determination that this is not a significant rulemaking is erroneous and that the regulatory action involved is significant, both economically and otherwise under Executive Order 12866, and therefore deserves a full administrative review.

Response

1. The Final Rule Is Not Economically Significant

FMCSA does not agree with the commenters' contention that this rule is economically significant. Although the total fees collected are projected to be over $100 million annually, the change from the existing situation (*e.g.,* the approximately $77 million collected in 2008 and in 2009 (*see* 74 FR at 45586) is well below $100 million. This situation is similar to previous UCR rulemakings, which were also determined to be not economically significant. Finally, as shown under section V (C)(1) above, the effects on the motor carrier industry would be too small on a per-CMV basis to have a material impact.

Therefore, FMCSA adheres to its preliminary determination that 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. Because a majority of the fees under the final rule are already being collected under the UCR system, the total cost of the final 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 regulatory analysis of the rule. A copy of the analysis document is included in the docket referenced at the beginning of this notice.

2. The Final Rule Is Significant on Other Grounds

FMCSA finds that novel legal or policy issues are raised in this regulatory action, and that the final rule is significant under Executive Order 12866. FMCSA received over 150 comments, a number of which raised novel legal or policy issues that are appropriate for review under the regulatory review provisions of that order.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities. The fees being set in this rule would affect large numbers of small entities because the 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.

Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. With regards to truck power units, the Agency determined in the 2003 Hours of Service Rulemaking RIA [12] that a power unit produces about $172,000 in revenue

[12] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 22456—Published 4/23/2003.

annually (adjusted for inflation).[13] According to the SBA, motor carriers with annual revenue of $25.5 million are considered a small business.[14] This equates to 148 power units (25,500,000/172,000). Thus, FMCSA considers motor carriers with 148 power units or less to be a small business for SBA purposes.

With regards to bus power units, the Agency conducted a preliminary analysis to estimate the average number of power units (PUs) for a small entity earning $7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per power units as trucks,[15] and it is assumed therefore that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or less). The results show that 28,838 [16] (or 99%) of all active registered passenger carriers have 47 PUs or less. Therefore, the overwhelming majority of passenger carriers would be considered small entities.

After careful consideration, however, FMCSA has determined that the recommended UCR fee will, in every case involving a viable small entity, be well below the threshold level of one percent of revenues used for determining significant impacts. This conclusion is based the observation that the maximum fee per vehicle is $76, 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.[17] 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.

Several commenters addressed the impact of the change in the fees on small entities. A carrier with 11 tractors noted that its costs are spread over fewer assets than those of larger companies. The carrier also said that any further cost increases will drive smaller companies out of business. The American Bus Association said that the average bus operator has eight motorcoaches, and described the operator as a small business that would be impacted by the fees. FMCSA cannot validate this and therefore did not include this in the analysis. In contrast, another carrier approved of the proposed fee structure because it would benefit owner-operators and small trucking companies.

Based on this analysis as well as the rule's regulatory evaluation, 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 written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that this rule will not have an impact of $136.1 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA has determined 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 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 rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has 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 and through comments submitted on the NPRM. FMCSA received comments from the States that failure to promulgate this rule would have a 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. FMCSA has determined that there are no current or new information collection requirements by FMCSA associated with this rule.

National Environmental Policy Act

The Agency analyzed this final 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

[13] The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

[14] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. See NAIC subsector 484, Truck Transportation.

[15] FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008Large_TruckandBusCrashFacts.aspx.*

[16] FMCSA MCMIS snapshot on 2/19/2010.

[17] 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/.*

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.

FMCSA has 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined 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 is amending 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 Each Registration Year Until Any Subsequent Adjustment in the Fees Becomes Effective.

* * * * *

■ 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	$76	$76
B2	3–5	227	
B3	6–20	452	
B4	21–100	1,576	
B5	101–1,000	7,511	
B6	1,001 and above	73,346	

Issued on: April 21, 2010.

Alais L.M. Griffin,

Chief Counsel.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2009-0025]
[MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list Susan's purse-making caddisfly (*Ochrotrichia susanae*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing Susan's purse-making caddisfly is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Susan's purse-making caddisfly or its habitat at any time.

DATES: The finding announced in this document was made on April 27, 2010.

ADDRESSES: This finding is available on the internet at *http://www.regulations.gov* at docket number FWS-R6-ES-2009-0025. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Patricia S. Gelatt, Supervisor, Western Colorado Field Office, (see **ADDRESSES**); by telephone (970-243-2778, extension 26); or by facsimile (970-245-6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3)