

safety, none of the proposed changes would impose any new obligations on small businesses that conform to voluntary standards. Product manufacturing, importing, testing, reporting, recordkeeping, and other commercial activities would be unaffected. Accordingly, the proposed amendment to 16 CFR part 1031 on participation and involvement of CPSC employees in voluntary standards would not directly impact any small businesses or other small entities. The proposed amendment, if promulgated on a final basis, would not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The proposed rule does not require any stakeholder to create, maintain, or disclose information. Thus, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not implicated in this proposed rulemaking.

VII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any final rule based on this proposal would become effective 30 days after the final rule is published in the **Federal Register** because the proposed rule solely affects Commission procedure and does not require stakeholders to take any action.

List of Subjects in 16 CFR Part 1031

Business and industry, Consumer protection, Voluntary standards.

For the reasons stated in the preamble, the Commission proposes to amend 16 CFR part 1031 as follows:

PART 1031—COMMISSION PARTICIPATION AND COMMISSION EMPLOYEE INVOLVEMENT IN VOLUNTARY STANDARDS ACTIVITIES

■ 1. The authority citation for part 1031 is revised to read as follows:

Authority: 15 U.S.C. 2051–2083; 15 U.S.C. 1261–1276; 15 U.S.C. 1191–1204; Sec. 3, 104, 106, 223 Pub. L. 110–314, 122 Stat. 3016, 3017 (2008), Sec. 3, 4 Pub. L. 112–28 (2011).

■ 2. In § 1031.10 paragraph (b), revise the third sentence to read: “Employee involvement may include regularly attending meetings of a standards development committee or group, taking an active part in discussions and technical debates, expressing opinions, expending other resources in support of a voluntary standard development activity, and participating as a voting member of, or in a leadership position

on, a voluntary standard development group, when authorized.”

■ 3. In § 1031.11, remove paragraph (f) and revise paragraphs (c), (d), and (e) to read as follows:

§ 1031.11 Procedural safeguards.

* * * * *

(c) Commission officials or employees who are authorized to participate as a voting member of a voluntary standard development group represent the position of CPSC staff. Such votes or opinions do not bind the Commission in any way or necessarily represent the opinions or views of the Commission, but rather, solely represent the views of the CPSC staff.

(d) Commission employees and officials who are involved in the development of voluntary standards may accept leadership positions in voluntary standard development groups (e.g., committee chairman or secretary) or leadership positions with the governing bodies of standard-making entities, when authorized with the prior approval of the Office of the Executive Director.

(e) Attendance of Commission personnel at voluntary standards meetings shall be noted in the public calendar, and meeting summaries shall be submitted to the Office of the Secretary, as required by the Commission’s meetings policy, 16 CFR part 1012.

■ 4. In § 1031.12, revise paragraph (b) to read as follows:

§ 1031.12 Membership criteria.

* * * * *

(b) All other officials and employees not covered under § 1031.12(a) may participate as voting members or accept leadership positions in voluntary standard development groups, when authorized with the prior approval of the Office of the Executive Director.

* * * * *

■ 5. In § 1031.12 paragraph (c), remove the phrase: “Executive Director,” and add in its place “Office of the Executive Director.”

Dated: September 16, 2013.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–22805 Filed 9–19–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2012–0103]

RIN 2126–AB44

Lease and Interchange of Vehicles; Motor Carriers of Passengers

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

ACTION: Notice of proposed rulemaking (NPRM); request for comment.

SUMMARY: FMCSA proposes to adopt regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) to: identify the motor carrier operating a passenger-carrying CMV and responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and all other applicable Federal regulations; ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers; and require motor carriers subject to a prohibition on operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to other carriers. This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. This action will enable the FMCSA, the National Transportation Safety Board (NTSB), and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash studies. It also provides the general public with the means to identify the responsible motor carrier at the time of transportation. While detailed lease and interchange regulations for cargo-carrying vehicles have been in effect since 1950, these proposed rules for passenger-carrying CMVs are focused entirely on operational safety.

DATES: You may submit comments by November 19, 2013.

ADDRESSES: You may submit comments identified by the docket number FMCSA–2012–0103 using any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the

instructions for submitting comments on the Federal electronic docket site.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Barber, (202) 385–2400, wesley.barber@dot.gov. FMCSA office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA invites you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0103), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert “FMCSA–2012–0103” in the “Search” box, and then click the “Search” button to the right of the white box. Click on the top “Comment Now” box which appears next to the notice. Fill in your contact information, as desired and your comment, uploading documents if appropriate. If you submit your comments by mail or hand delivery, submit them in an unbound format, no

larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and insert “FMCSA–2012–0103” in the “Search” box and then click on “Search.” Click on the “Open Docket Folder” link and all the information for the notice, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316).

II. Executive Summary

A. Purpose of the Proposed Rule

FMCSA proposes to adopt regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) to ensure that passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over these operations. The rule is based on the broad authority of the Motor Carrier Safety Act of 1984, as amended (49 U.S.C. 31136) and the Motor Carrier Act of 1935 (49 U.S.C. 31502(b)).

B. Summary of the Major Provisions

The rule would (1) identify the motor carrier operating a passenger-carrying CMV and responsible for compliance with the Federal Motor Carrier Safety

Regulations (FMCSRs) and all other applicable Federal regulations; (2) ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers; and (3) require motor carriers subject to a prohibition on operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to other carriers.

C. Costs and Benefits

FMCSA estimated the costs of the rule for 3 levels of leasing activity (low, medium, and high) and 3 regulatory options. The Agency believes that the medium level of leasing activity is the most realistic, and is proposing to adopt regulatory Option Two. Under Option Two at medium leasing frequency, the ten-year discounted cost of the rule is \$44.7 million at 7 percent or \$4.4 million per year, or \$53.1 million (at 3 percent), or \$5.3 million per year. The numbers of fatal passenger carrier crashes that would have to be prevented under this option (at \$19.9 million per crash) to equal the estimated 10-year costs of the rule—discounted at 7 percent and assuming medium frequency—is 2.25. Although the Agency lacks definitive data on the safety benefits of this NPRM, FMCSA believes that it is reasonable to assume that, if the proposed rule could prevent less than one fatal motorcoach CMV crash per year, or prevent the loss of less than one life per year (or 5.8 lives over ten years) under the preferred option (and under the most likely leasing frequency scenario), it would justify the cost of the rule.

III. Legal Basis for the Rulemaking

This rule is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act), as amended, and the Motor Carrier Act of 1935 (1935 Act).

The 1984 Act confers on the Department of Transportation (DOT) authority to regulate drivers, motor carriers, and vehicle equipment. “At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . . ; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators” (49 U.S.C. 31136(a)). Sec. 32911 of the Moving Ahead for Progress in the 21st Century

Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, July 6, 2012] recently enacted a fifth requirement, i.e., to ensure that “(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title” [49 U.S.C. 31136(a)(5)].

The 1984 Act also includes more general authority to “(8) prescribe recordkeeping . . . requirements; . . . and (10) perform other acts the Secretary considers appropriate” (49 U.S.C. 31133(a)).

The 1935 Act authorizes DOT to “prescribe requirements for—(1) QUALIFICATIONS and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operations” (49 U.S.C. 31502(b)).

This rule would impose legal and recordkeeping requirements consistent with the 1984 and 1935 Acts on for-hire and private passenger carriers that operate CMVs, in order to enable the general public and investigators to identify the passenger carrier responsible for safety. Currently, passenger-carrying CMVs and drivers are frequently rented, loaned, leased, interchanged, assigned, and reassigned with few records and little formality, thus obscuring the operational safety responsibility of many industry participants. Because this rule would have only indirect and minimal application to drivers of passenger-carrying CMVs—at most, their employers might require them to pick up a lease document and place it on the vehicle, though that task could also be assigned to other employees—FMCSA believes that coercion of drivers to violate the rule, in contravention of 49 U.S.C. 31136(a)(5), will not occur.

Before prescribing any regulations, FMCSA must also consider their “costs and benefits” (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are also discussed in this proposed rule.

IV. History of Past Actions

A. History of Leasing Rules

In 1940, the former Interstate Commerce Commission (ICC) began an investigation of vehicle leasing and interchange practices. In 1950, the Commission adopted regulations governing the lease and interchange of trucks and trailers which are now

codified in 49 CFR part 376 [See 51 M.C.C. 461 (June 26, 1950) and 15 FR 4338, July 8, 1950]. Although these regulations served safety purposes, as indicated below, they were designed mainly to improve the enforcement of the comprehensive economic regulations of the trucking industry then in effect.

The ICC discussed the safety implications of motor carrier lease agreements in its landmark 1948 decision, *Performance of Motor Common Carrier Service by Riss & Co.*, 48 M.C.C. 327, 360:

In any case of a person claiming to be a motor carrier through the use of the vehicles of others, it is of the utmost importance to regulation that it have and exercise direction and control of the operation and of the persons engaged therein. For otherwise an unworkable situation is created, that is, one, for example, in which neither the Commission nor the person claiming to be the carrier would have any immediate and direct control over safety, hours of service of employees, and other matters pertaining to safe, adequate, and efficient service, and the safe operation of vehicles on the highways, all of which were intended by the [Motor Carrier Act of 1935]. In other words, as to these important features of motor carrier operation, our regulation thereof, as required by the act, would be negated to an inoperative degree, as the actual operator would not be subject to our regulations or to the direction and control of the person claiming to be the carrier and subject to our jurisdiction.

The importance which Congress attached to the safety provisions * * * of the act is plainly shown by the fact that while “Section 203(b) listed many types of [for-hire] motor carriers which were exempted in general from the act [now codified at 49 U.S.C. 13506] * * * that section significantly applied to all of them the provisions of Section 204 as to qualifications, maximum hours of service, safety of operation and equipment.” *Levinson v. Spector Motor Co.*, 330 U.S. 649, 650.

Since 2008, FMCSA and NTSB have discovered many instances of motor carriers renting or leasing passenger-carrying CMVs without written documentation. Many of these cases reveal exactly the problems the ICC discussed in its 1948 decision. The lease or rental agreements are often made so casually that the parties themselves have no clear understanding of who is responsible for operational safety and regulatory compliance on a given trip with a particular passenger-carrying CMV. As a result, the general public and enforcement officials struggle to clarify these relationships and to assign regulatory violations to the correct party. Without the ability to reliably make such determinations, FMCSA is unable to apply its safety standards

consistently and effectively during inspections, compliance investigations, and crash studies, and, when necessary, place high-risk operators out of service (OOS).

In recent years, FMCSA and NTSB have discovered leasing practices that undermined enforcement of many regulations based on the 1984 Act. For example, passengers, and even the drivers, often do not know which FMCSA-authorized motor carrier is operating the vehicle and responsible for safety. The owner of a passenger-carrying CMV may place its USDOT number on the vehicle, as required by 49 CFR 390.21, but that motor carrier may not have actual control of, and responsibility for, the vehicle at the time of an inspection, investigation, or crash.

The FMCSA uses the USDOT number to track carrier performance, primarily via its management information systems. These systems contain motor carrier data from a variety of sources: roadside inspections, crash reports, safety and compliance investigations, and enforcement actions. Using the USDOT number, the public can also access critical information about a passenger-carrying CMV operator’s safety and compliance record. This information is provided both on the FMCSA Web site and through the Agency’s free SaferBus application available to Google Android users and Apple iPhone and iPad users from the respective App Stores, or by going to the FMCSA’s “Look Before You Book” Web site at www.fmcsa.dot.gov/saferbus.

The Agency’s various management information systems are the linchpins of a number of the FMCSA’s programs. Federal and State field personnel use these systems to initiate actions as varied as enforcement and educational outreach. By using the data, potentially unsafe carriers can be targeted for attention, including compliance investigations. Carriers could be flagged as unsafe if a high percentage of their vehicles were placed OOS during roadside safety inspections, or if they experience an above-average number of crashes. FMCSA staff use the databases for analysis purposes, including monitoring overall trends and evaluating general program effectiveness.

The delivery of FMCSA’s safety program can be impacted by the similarity of many carrier names (legal, trade, and doing-business-as (DBA) names), the lack of consistency in the display of those names on vehicles, and even more so by the wrong name or USDOT number on the passenger-carrying CMV. These identification problems could result in attributing a

crash or roadside inspection to the wrong motor carrier. This means that FMCSA is not fully aware of some carriers' safety performance, especially those that lease vehicles from other carriers. These carriers may not receive the remedial attention their records warrant, whether it be educational assistance or a compliance investigation. If the Agency had better performance data on marginal carriers, some crashes associated with these operations might be prevented.

In order to aggregate information about a single motor carrier from disparate sources, a unique identifier is required. That is the function of the USDOT number. Without this number, there is no reliable way to assign crashes, inspections, and other events to the correct motor carrier.

B. NTSB Crash Investigations

Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008¹

On January 2, 2008, a fully-loaded 47-passenger CMV was heading north on U.S. 59 about 5 miles south of Victoria, Texas, when it drifted off the right edge of the roadway. The driver over-corrected and the passenger-carrying CMV rolled onto its right side, killing one passenger and injuring 46.

The NTSB crash investigation identified a number of safety issues, including the lack of Federal oversight of passenger motor carrier leasing agreements and the registration and use of passenger-carrying CMVs that do not comply with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS). The NTSB report noted that "[t]he owner of the motor carrier in this accident [Capricorn Bus Lines, Inc. (Capricorn)], unable to obtain the insurance that would have enabled him to receive [FMCSA operating] authority to transport passengers as a motor carrier, entered into a lease with another authorized motor carrier [International Charter Services, Inc. (International)] in order to continue to operate his business under the other carrier's authority. [The NTSB investigation] explore[d] how this process worked and how the process shielded the accident motor carrier from effective safety oversight."

The NTSB report also noted that "Capricorn's lease with International constituted an arrangement enabling

Capricorn to operate virtually independently, without operational control from International. Based on information obtained during this [crash] investigation, Capricorn was never required to demonstrate to the FMCSA that it was capable of safety fitness as required of a motor carrier; the lease agreement effectively kept Capricorn's operations at arm's length from International and shielded Capricorn from appropriate FMCSA oversight. In examining the FMCSA's definitions of a motor carrier and the companies' roles as outlined in the lease agreement, it is evident Capricorn was operating independently from International as a motor carrier. The owner of International had certified on the application for operating authority it would have in place a system for the safe operation of commercial vehicles, specifically 'policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including driver's hours of service and vehicle inspection and repair and maintenance.' Multiple critical and acute safety violations were found during International's compliance review when the FMCSA examined Capricorn's vehicles and drivers, showing that International was not ensuring that the FMCSRs were being followed and that International did not have a system in place for making sure Capricorn's operations followed the FMCSRs. The NTSB therefore concludes that International failed to maintain operational control and safety oversight of Capricorn's operations, including its drivers and vehicles, as required by the safety certification completed by International in its operating authority application (Form OP-1[P], section 4)." See page 26.

The NTSB issued a total of ten safety recommendations to FMCSA as a result of the Victoria, TX, crash, of which, the following are related to this NPRM:

H-09-33: Revise 49 CFR part 376 to require that passenger motor carriers be subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo.

H-09-36: "Establish a requirement to review all passenger carrier lease agreements during new entrant safety audits and compliance reviews to identify and take action against carriers that have lease agreements that result in a loss of operational control by the certificate holder."

Motorcoach Run-Off-the-Bridge and Rollover Near Sherman, Texas, August 8, 2008²

On August 8, 2008, a 56-passenger CMV was traveling northbound on U.S. 75 when the CMV's right front tire failed in Sherman, Texas. The vehicle slid off a bridge, killing 17 passengers and injuring 38.

The NTSB investigation found that Igualea BusMex, Inc. was operating the passenger-carrying CMV that crashed. The owner of Igualea BusMex also owned Angel Tours, Inc., a motor carrier that operated from the same address. Angel Tours had received operating authority in 1994.

Three months before the crash, FMCSA conducted a compliance review of Angel Tours on May 1, 2008, which resulted in a proposed unsatisfactory safety rating. Three critical violations were found, as well as several other violations. Angel Tours had 45 days to submit a corrective action plan to the FMCSA to change its proposed unsatisfactory safety rating as allowed by 49 U.S.C. 31144(c)(2) and 49 CFR 385.11 and 385.17. FMCSA placed Angel Tours out of service on June 23, 2008, because it had not submitted a corrective action plan to the FMCSA to change its proposed unsatisfactory safety rating.³

Just over a month later, on July 27, 2008, the owner of these companies applied to the FMCSA for motor carrier operating authority for Igualea BusMex, Inc. On the date of the crash, the FMCSA had not granted operating authority to Igualea BusMex because its application was incomplete. The owner of Igualea BusMex had an unsigned lease arrangement with Liberty Charters and Tours (Liberty) to provide drivers and passenger-carrying CMVs to Liberty. The FMCSA's post-crash compliance review found that Igualea BusMex used Liberty's operating authority and USDOT number to engage in the for-hire transportation of passengers in interstate commerce during the Sherman, TX, crash.

FMCSA also found that Angel Tours' continuity of operation through Igualea BusMex demonstrated a blatant disregard for previous FMCSA out-of-service orders, which were issued based

² National Transportation Safety Board. 2009. *Motorcoach Run-Off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008*. Highway Accident Report NTSB/HAR-09/02. Washington, DC.

³ Angel Tours submitted an action plan on June 24, 2008, but FMCSA denied its request to change its rating due to the lateness of the submission and the inadequacy of the response. A review of the Angel Tours driver logbook records revealed several trips in interstate travel after the FMCSA had placed the motor carrier out of service.

¹ National Transportation Safety Board. 2009. *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008*. Highway Accident Summary Report. NTSB/HAR-09/03/SUM. Washington, DC.

upon the company's substandard safety record. The FMCSA conducted a compliance review of Liberty on August 11, 2008, and found an unsigned vehicle lease agreement between Liberty and Angel Tours, covering the period from June 28 through September 28, 2008. The compliance review also stated that the owner of Liberty had agreed to let the owner of Iguala BusMex and Angel Tours use Liberty's operating authority to engage in interstate commerce.

Although no specific NTSB Safety Recommendation to FMCSA relevant to leases was made as a part of this crash investigation, similar leasing problems were discovered that suggested that Iguala BusMex used Liberty's operating authority and USDOT number to engage in the for-hire transportation of passengers in interstate commerce during the Sherman, TX, crash. In this regard NTSB Safety Recommendation H-09-36, made as a result of the Victoria, TX, crash also addresses the situation where a carrier, like Iguala BusMex/Angel Tours, that nominally leases its vehicles and drivers to another carrier, in fact maintains full control of both in order to evade oversight or sanctions by FMCSA.

V. Proposal

In order to eliminate the problems discussed above and improve the safety of the traveling public, FMCSA proposes to amend its safety regulations in part 390 to:

(1) Require interstate carriers of passengers by CMV that enter into rental or lease agreements (except leases in the nature of a purchase), or that borrow or temporarily exchange CMVs with or without compensation, to execute a written lease similar to those required of for-hire interstate carriers of property;

(2) require that lessors relinquish all control of a passenger-carrying CMV for the full term of the lease;

(3) require that a copy of the signed agreement or other documents specified in the proposal be carried on all leased passenger-carrying CMVs for the duration of the agreement;

(4) require lessee and lessors to give receipts when they exchange possession and retain the receipts for one year after the end of the lease or other agreement;

(5) require passenger-carrying CMVs operated under a lease or other agreement to display the operating motor carrier's name and USDOT number;

(6) require the lease or other agreement to specify that the lessee is responsible for compliance with the bodily injury and property damage insurance requirements of part 387, and to specify the party responsible for any

additional insurance coverage that may be required by the parties;

(7) require that the parties to the agreement retain a copy of each lease or other agreement for one year after the end of the agreement; and

(8) require motor carriers of passengers prohibited from operating in interstate commerce to notify FMCSA in writing before leasing or otherwise transferring control of their vehicles to any other motor carriers.

Although NTSB recommended that FMCSA amend its 49 CFR part 376 regulations applicable to motor carriers of property to include passenger-carrying CMVs, those regulations are based on 49 U.S.C. 14102(a), which authorizes leasing regulations applicable to property-carrying vehicles, but not to passenger vehicles.

The passenger-carrying CMV leasing and marking issues discussed in this proposal demonstrate a clear nexus between safety and the identification of a motor carrier operating any passenger-carrying CMV, whether or not the motor carrier operates for compensation. Thus, FMCSA proposes to amend part 390 of the FMCSRs, not part 376. Placing the proposed rules in part 390 would also require the Agency's State partners to adopt them pursuant to the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR part 350). State and local agencies participating in MCSAP would be required to include the passenger-carrying CMV lease and marking requirements of this proposed rule in their annual enforcement plans. Our MCSAP partners have never been required to enforce the CMV leasing regulations in part 376; this NPRM would not change that. However, the focus of the current proposal is safety, and FMCSA believes that States should be required to adopt and enforce compatible leasing and marking regulations for all motor carriers operating passenger-carrying CMVs in interstate commerce.

The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control

occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays.

FMCSA invites you to participate in this rulemaking by submitting comments on any aspect of this proposal.

VI. Section-By-Section Description of NPRM

Section 390.5 is amended to add definitions for *lease*, *lessee*, and *lessor*, all of which are based (with changes) on the same definitions in part 376—Lease and Interchange of Vehicles. Since both parties to the lease required by subpart F of part 390 are motor carriers of passengers, rather than owners of equipment (as in part 376), the terms *lease*, *lessee*, and *lessor* here apply specifically to motor carriers of passengers. All three terms are amended to include *interchange* of passenger-carrying CMVs. In § 390.5, *interchange* is currently defined as the tendering of intermodal chassis to a motor carrier; that meaning is retained as paragraph (1), and paragraph (2) is added to describe the exchange of passenger-carrying CMVs between motor carriers continuing a through movement on a particular route. We have also included a cross-reference to § 376.2, where the same terms are defined for purposes of the lease and interchange of property-carrying vehicles.

Section 390.21(e), dealing with the marking of *Rented CMVs*, is amended to limit its application to "property-carrying CMVs," and § 390.21(f) is added to cover the marking of *Leased and interchanged passenger-carrying CMVs*. The marking must meet the requirements of § 390.21(b) *Nature of marking*, (c) *Size, shape, location, and color of marking*, except that marking is required only on the right (curb) side of the vehicle on or near the front passenger door, and (d) *Construction and durability*. Carriers operating leased or interchanged passenger-carrying CMVs as defined in proposed § 390.5 would be required to also display a placard, sign, or other permanent or removable device on the right (curb) side of the passenger-carrying CMV on or near the front passenger door. The device must show the name and USDOT number of the carrier operating the vehicle, preceded by the words "operated by," e.g., "Operated by ABC Motorcoach, Inc., USDOT 1234567890."

The NPRM adds to part 390 a new subpart F entitled, "Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles." The "Applicability" statement in

§ 390.301(a) makes clear that the subpart applies to every short- and mid-term lease or interchange of passenger-carrying CMVs between motor carriers, no matter how brief. Paragraph (b), however, explains that the rule does not cover leases between carriers and vehicle manufacturers or dealers that run 5 years or more because these contracts are almost certainly in the nature of purchase agreements, unlike the routine or casual transfers of vehicles between passenger carriers to meet temporary fluctuations in demand.

Section 390.303 specifies the contents of lease and interchange documents. Paragraph (a) requires a written lease or interchange document, or a written agreement covering some less formal temporary transfer, such as a handshake or other casual form of obtaining a passenger-carrying CMV. Paragraph (b) requires the lease, interchange, or other agreement to be signed by the owner of the passenger-carrying CMV and the motor carrier obtaining the use of the CMV, or by their authorized agents. Under paragraph (c), the lease, interchange, or other document must include the time (hour and minute) and location where the agreement begins and ends. The time and location must match the time and location for giving receipts. Paragraph (d) requires the lessee to give the lessor a receipt for a passenger-carrying CMV when it takes possession, and the lessor to give the lessee a receipt for a passenger-carrying CMV when it recovers possession at the end of the agreement. Receipts may be transmitted electronically. Because the parties to an interline agreement or to a revenue pooling agreement (which must be approved by the Surface Transportation Board; see 49 U.S.C. 14302) interchange vehicles frequently and routinely in the course of providing service on a single route, each party may surrender control of a vehicle to its interline partner for a portion of that trip. As part of these joint operating agreements, receipts are not required for such interchanges. Receipts applicable to a specific lease or other agreement must be maintained for one year after the end of the agreement as required by paragraph (i). Paragraph (e) requires passenger-carrying CMVs operated under a lease, interchange, or other agreement to be marked as required by proposed § 390.21(f) and to carry a copy of the lease, interchange, or other agreement in the vehicle. The lease need not be specific to that vehicle; a copy of a master lease covering several vehicles is acceptable, but must be carried in each leased vehicle. Instead of an interchange agreement, which may be

quite long, a written statement can be carried in the interchanged vehicle if it identifies the carrier operating the passenger-carrying CMV by company name and USDOT number, provides when and where the interchange will occur, and indicates how the CMV will be used (e.g., line service between X and Y). Paragraph (f) requires the lease, interchange, or other agreement to state that the party obtaining the passenger-carrying CMV has exclusive possession and control, and assumes full responsibility for compliance with the FMCSRs and any other applicable Federal regulations for the duration of the lease. Subleasing is allowed, but the requirements of § 390.303 apply to the parties to a sublease. Paragraph (g) requires the lease, interchange, or other agreement to make the lessee responsible for compliance with the insurance requirements of 49 CFR part 387. The lease, interchange, or other agreement must also specify which party is responsible for any additional insurance coverage that may be required by the parties. Paragraph (h) requires the parties to keep an original and two copies of each lease, interchange, or other agreement. One copy of the document must be carried in the passenger-carrying CMV, except as otherwise provided in paragraph (e)(2). Paragraph (i) requires the parties to retain a copy of each lease, interchange, or other agreement, and the corresponding receipts required in paragraph (d), for one year after the end of the agreement.

Section 390.305 requires a motor carrier of passengers that has been prohibited from operating in interstate commerce to notify FMCSA of its intention to transfer control of one or more passenger-carrying vehicles to another passenger carrier. Notification by email must be provided at least 3 business days, and notification by U.S. Mail at least 5 business days, before the transfer of control occurs.

VII. Regulatory Analyses

A. Regulatory Planning and Review

FMCSA has preliminarily determined that this action is a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). Although the estimated economic costs of the rule do not exceed the \$100 million annual threshold, the Agency expects the rule to have substantial Congressional and public interest based on recent crashes and the recommendation from the NTSB

that the Agency regulate passenger-carrier leasing. This rule has been reviewed by the Office of Management and Budget (OMB).

Due to the lack of data that would allow FMCSA to quantify the safety benefits of this NPRM, the regulatory evaluation develops a threshold analysis. There are no statistical or empirical studies that directly link the written documentation of a vehicle lease agreement to increased motor carrier safety. And though the Agency has described above the many practical, informational, and administrative benefits of this NPRM, it is unable to quantify its safety benefits, typically measured in terms of avoided crashes. In accordance with OMB guidance (Circular A-4),⁴ a Federal regulatory agency has the option to conduct a threshold analysis in lieu of a cost-benefit analysis in cases in which either benefits (as in this case) or the costs are unquantifiable, or difficult to quantify. A threshold analysis states the estimated quantified costs of a rule in terms of the non-quantified benefits (the number of fatalities prevented in motorcoach crashes) that would have to be realized to equal the costs. The proposed rule is expected to provide safety benefits that are not directly or easily quantifiable. Hence, the estimated costs of the various regulatory options in this NPRM are compared to the number of passenger-carrier fatal crashes that would have to be avoided to make the rule cost-neutral. FMCSA estimates the societal cost of each fatal motorcoach crash at \$19.9 million.⁵

Additionally, the NPRM is expected to provide many practical benefits to the public and to FMCSA. These benefits include proper identification of passenger carriers and the proper documentation of their lease agreements—both of which ensure accurate identification of the carrier responsible and liable for operation of the vehicle—as well as efficient oversight and more effective enforcement. Additionally, proper marking of vehicles provides beneficial information to the traveling public, and State and Federal enforcement personnel.

⁴ www.whitehouse.gov/omb/circulars_a004_a-4.

⁵ FMCSA estimation (2012 dollars). The estimated cost is a five-year average (2007–2011) which consists of the costs of fatalities and injuries (associated with fatal crashes), plus medical, emergency services, property damage, congestion and pollution. See Appendix A—Motorcoach Crash Cost Estimation Methodology at the end of the Preliminary Regulatory Evaluation for this proceeding for a detailed analysis of this estimate. The Preliminary Regulatory Evaluation for this proceeding may be found in the docket.

Passenger Carriers Subject to This Proposal

FMCSA estimates that 6,328 passenger carriers will be affected by this rule.

The threshold analysis considers three scenarios⁶ intended to capture the possible variations in leasing frequency. The scenarios are based on the frequency with which a hypothetical passenger carrier with 10 power units leases other passenger-carrying power

units. The rates are: (1) Low frequency, (2) medium frequency, and (3) high frequency. The frequency assumptions are listed below in Table 1. FMCSA welcomes public comments on these assumptions.

TABLE 1—LEASING FREQUENCY ASSUMPTIONS

Lease/Trip Frequency	Number of leases per month and year				
	Low Frequency	6 leases per month ... 3 leases per month ...	Peak months Off peak months	May–August Other months	24 leases 24 leases.
Medium Frequency ...	12 leases per month 6 leases per month ...	Peak months Off peak months	May–August Other months	48 leases 48 leases.	Total/year = 96.
High Frequency	24 leases per month 12 leases per month	Peak months Off peak months	May–August Other months	96 leases 96 leases.	Total/year = 192.

Source: FMCSA Commercial Passenger Carrier Safety division staff experience.

Estimated Costs

The cost components of the Agency’s proposal (Option Two in the regulatory evaluation below) consist of the following: (1) Lease negotiation and documentation, (2) Lease copying, (3) Receipt documentation, and (4) Vehicle marking. The analysis also provides a cost estimate of the impact on passenger carriers that have been placed OOS and would be required to notify the Agency of vehicle rentals and leases they intend to make to others. The analysis considers different rates of leasing frequency to allow for the variation in passenger carrier operations. Lease negotiation, for the purpose of this analysis, consists of a one-time negotiation cost reflective of the value of a half hour of a manager’s time, plus the recurring cost of preparing the written documentation of the requisite information and signature of the lease

agreement undertaken in five minutes. These tasks are assumed to be undertaken by a manager, supervisor, or a designated company employee who can make a contract on behalf of the carrier. The analysis applies a median hourly supervisory wage rate of \$25.45, plus 50 percent mark-up to account for fringe benefits (for a total hourly wage of \$38.18). The negotiation cost per contract in terms of the value of time per contract amounts to \$19.09 (50 percent of the wage rate). The lease documentation assumes a time burden of five minutes, which would amount to one twelfth (1/12) of the hourly wage rate which equals \$3.18. This cost is applied to both the lessee and the lessor. The estimated unit-cost of copying one lease agreement double-sided (i.e., a two page agreement) is at \$0.15. The estimated unit-cost corresponding to the lease receipts is \$0.30. This assumes two transactions, and hence two

receipts: One for the delivery (or surrender) of the vehicle and one for the return of the vehicle. The fourth cost component is the marking cost, which is estimated using a paper sign, the cheapest possible option, costs the lessee \$0.02. This is calculated as follows: (1) Letter-size paper costs \$4.74 per ream of 400 sheets,⁷ and the cost of 2 sheets is therefore \$0.024; (2) Legal-size paper costs \$6.49 per ream of 500 sheets, and the cost per sheet is therefore \$0.013. The per-unit average cost of the two options is \$0.018, which is then rounded up to \$0.02 to account for the cost of adhesive. The total per unit cost of all four components is therefore \$7.28,⁸ which is the sum of \$3.18 (× 2) + \$0.30 + \$0.60 + \$0.02. Following, in Table 2, is an example of the calculation of total costs for Year 1 for one scenario: Medium leasing frequency.

TABLE 2—EXAMPLE—YEAR 1 ESTIMATED COST [Option two, medium leasing frequency scenario—at 3%]

Passenger carriers	Number of leases	Lease documentation	Lease copy	Receipt documentation	Marking cost	Total recurring costs (A)
6,328	607,488	\$3,863,624	\$182,246	\$364,493	\$12,150	\$4,422,513.
6,328	607,488	Lease Negotiation (B)	Total Cost (A+B).
		\$23,193,892	\$27,616,405.

$$\begin{aligned} \text{Total Cost} &= (607,488 \times \$3.18 \times 2) + \\ & (607,488 \times 2 \times \$0.15) + (607,488 \times \\ & 2 \times \$0.30) + (607,488 \times \$0.02) = \\ & \$3,863,624 + \$182,246 + \$364,493 + \\ & \$12,150 = \$4,422,513 + \$23,193,892 \\ & = \$27,616,405. \end{aligned}$$

The results of the threshold analysis for Options Two and Three are summarized below in Table 3. Under Option Two (the Agency’s preferred option), the ten-year discounted cost, at medium leasing frequency, is \$53.1

million (at 3%), which amounts to approximately \$5.3 million per year (\$44.7 million at 7% or \$4.4 million per year). The numbers of fatal passenger carrier crashes⁹ that would have to be prevented under this option (at \$19.9

⁶ FMCSA and contacts with industry.

⁷ Reams of letter-sized paper typically come in 500 sheets. The analysis is based on a ream of 400 sheets of heavier paper (better suited for marking purposes).

⁸ This per-unit cost may be less assuming that a durable marking sign could be re-used multiple times, a receipt could be combined with a lease copy, and preparation time for a lease could be reduced through the use of generic or master-type lease forms.

⁹ FMCSA has also determined costs for average injury and PDO crashes. Any combination of crashes prevented equaling \$5.3 million annually would produce a break-even cost.

million per crash)¹⁰ to equal the estimated 10-year costs of the rule—discounted at 3% and assuming low, medium, and high leasing frequencies—are 1.33, 2.67 (or 5.8 lives over ten years),¹¹ and 5.34, respectively. The comparable numbers of fatal crashes that would have to be prevented under Option Three, assuming the same

leasing frequencies and discount rate, would be 2.15, 4.30, and 8.60. Table 3 also provides 10-year cost estimates (and the related number of fatal crashes) with a 7% discount rate. Although the Agency lacks definitive data on the safety impacts of this rule, the Agency believes it is reasonable to assume that if the proposed rule could prevent less

than one fatal motorcoach crash per year, or prevent the loss of less than one life per year (or 5.8 lives over ten years) under the preferred option (and under the most likely leasing frequency scenario), it would justify the cost of the rule.

TABLE 3—THRESHOLD ANALYSIS—SUMMARY OF RESULTS

	Estimated 10-year discounted costs* 3%	Number of fatal passenger carrier crashes** to be prevented	Estimated 10-year discounted costs* 7%	Number of fatal passenger carrier crashes** to be prevented
Option Two (Agency's Preferred Option)				
Low Leasing Frequency	\$26,564,644	1.33	\$22,364,121	1.12
Medium Leasing Frequency	53,116,130	2.67	44,728,241	2.25
High Leasing Frequency	106,258,577	5.34	89,456,483	4.50
Option Three				
Low Leasing Frequency	\$42,788,991	2.15	\$34,035,279	1.71
Medium Leasing Frequency	85,577,989	4.30	68,226,250	3.43
High Leasing Frequency	171,155,971	8.60	136,452,492	6.86

* Costs include a one-time lease negotiation cost applied to Year 1.

** The estimated value of a passenger-carrier fatal crash is \$19.9 million (2012 dollars).

Please review the Preliminary Regulatory Evaluation in docket FMCSA–2012–0103 for a thorough discussion of the assumptions the Agency made, the options/alternatives considered in developing this proposed rule, the analysis conducted, and the details for the estimates presented here. FMCSA welcomes public comments on any aspect of the Preliminary Regulatory Evaluation for this proposal.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996), requires FMCSA to perform a detailed analysis of the potential impact of the proposed rule on small entities. Accordingly, DOT policy requires that agencies shall strive to lessen any adverse effects on these businesses and other entities. Each initial regulatory flexibility analysis required under this section must contain the following:

Initial Regulatory Flexibility Analysis (IRFA)

(1) A description of the reasons why action by the agency is being considered.

Passenger carriers lease, rent, interchange, and loan passenger-carrying CMVs to each other with great frequency, on short notice, and often for short periods of time and with minimal legal formality. As a result, it is difficult for the general public and enforcement personnel to determine which carrier is actually operating the passenger-carrying CMV and responsible for compliance with safety regulations. The written lease required by this NPRM for all transactions involving the renting, leasing, interchanging, and loaning of passenger-carrying CMVs would eliminate any confusion about who is responsible for crashes and enable the Agency to identify the appropriate motor carrier operating the vehicle and thus responsible for its safe operation.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

This rule is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act), as amended, and the Motor Carrier Act of 1935 (1935 Act). This

action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Generally, motor carriers are not required to report their annual revenue to the Agency, but all carriers 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 Small Business Administration's (SBA) prescribed revenue threshold. In order to produce this estimate, it is necessary to determine the average annual revenue generated by a single power unit.

With regard to passenger-carrying vehicles, the Agency conducted a preliminary analysis to estimate the average number of power units for a small entity earning \$14 million

¹⁰ The estimated cost is a five-year average (2007–2011) which consists of the costs of fatalities and injuries (associated with fatal crashes), plus medical, emergency services, property damage, congestion and pollution. For more information see

Appendix A of the Lease and Interchange of Vehicles; Motor Carriers of Passengers, Preliminary Regulatory Evaluation, FMCSA, July 2013, in the docket.

¹¹ Medium leasing frequency 10-year cost of \$53.1 million divided by the value of a statistical life (VSL) of \$9.1 million results in 5.8 lives prevented over ten years.

annually, based on an assumption that passenger carriers generate annual revenues of \$150,000 per power unit. 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 passenger-carrying CMVs generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks,¹² and it is therefore assumed that they would generate less revenue per power unit on average. The analysis concluded that passenger carriers with 93 power units or fewer (\$14,000,000 divided by \$150,000/power unit = 93.3 power units) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 power units. The results show that over 99 percent of active passenger carriers have 93 power units or less.¹³ Therefore, the overwhelming majority of passenger carriers would be considered small entities to which this NPRM would apply.

The total number of motor carriers with active USDOT numbers that identified themselves as carrying "Passengers" and own/lease at least one passenger vehicle is 29,130. This number includes intrastate hazardous material and intrastate-non-hazardous material carriers that operate passenger vehicles. These intrastate carriers are not subject to this NPRM and hence are not included in the final count. The number of interstate passenger carriers with recent activity in 2009 (for the purpose of comparison with the 2009–2010 numbers above) is 13,317. This number however, like the others above, includes carriers operating small vehicles (1–8 passengers). That segment of the population is not subject to this NPRM, and thus is excluded from the final count. The total then becomes 6,088 (2009). The number used in this analysis is 6,328, which is the comparable 2012 number.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The exact regulatory burden of this NPRM is difficult to estimate considering the lack of specific

information on the prevalence and frequency of vehicle leasing among passenger carriers. There is also the added complexity of the wide variation in size, business model, and fleet vehicle configuration. The Agency, however, believes that the practical regulatory burden of this NPRM would be relatively small. Written documentation of business transactions and retention and availability of work documents (i.e., lease agreements and receipts) are hallmarks of professional management. Additionally, businesses are required to prepare, retain, and submit receipts of various business transactions to the Internal Revenue Service (IRS) and other agencies. Furthermore, the practical requirements of the NPRM (i.e., lease and receipt preparation, copying, storage, and vehicle marking) are easily satisfied through a wide array of flexible options. The Agency estimates that the financial burden of the NPRM, per carrier (per leased power unit), is not significant. As stated above, the estimated per unit cost of a lease agreement is \$7.28, which is the sum of 4 cost components: (1) Lease documentation (\$3.18 × 2), (2) Lease copying (\$0.30), (3) Receipt documentation (\$0.60), and (4) Leased vehicle marking (\$0.02). FMCSA does not believe this per-unit cost to be significant. Furthermore, this per-unit cost may effectively be lower, if a durable marking sign were re-used many times, a receipt were combined with a lease, and the preparation time for a lease were reduced through the use of generic or master-type lease forms. In addition, and as stated above, the analysis assumes a one-time lease negotiation cost, which the Agency believes is minimal, considering that several leases can be combined and negotiated as one (master) lease and many lease forms are available online and do not require legal assistance.

The NPRM also includes a notification requirement for motor carriers of passengers that have been prohibited from operating in interstate commerce and which intend to lease, interchange, rent, or otherwise convey the use of some or all of their passenger-carrying commercial motor vehicles to another passenger carrier. This provision would require written notification of a planned transfer of control to the FMCSA Division Administrator for the State in which the carrier has its principal place of business. Written notification by email must occur at least 3 business days, and by U.S. Mail at least 5 business days, before the vehicles are transferred to the control of the other passenger carrier.

The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays. This notification requirement would require up to 8 hours per OOS carrier per year.

Due to the lack of data concerning the economic impact of this NPRM, the Agency is unable at this time to certify if this NPRM will cause a significant economic impact on a substantial number of small entities (SEISNOSE). FMCSA requests comments on the NPRM's potential impacts to small entities.

(5) Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

FMCSA is unaware of Federal rules which may duplicate, overlap or conflict with the proposed rule. In addition, section 603(c) of the RFA requires an agency to include a description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while accomplishing the agency's objectives. The Agency has concluded that there are no significant alternatives that would achieve the objectives of this proposal.

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The Agency did not identify any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or the Agency's statutory mandate. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA regulations or alternative compliance

¹² FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; <http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx>.

¹³ FMCSA MCMIS snapshot on 2/19/2010.

methodologies is not feasible and not consistent with sound public policy.

C. Federalism (Executive Order 13132)

A rule has federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and has preliminarily determined that it has no federalism implications.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

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

F. Executive Order 13045 (Protection of Children)

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

G. Executive Order 12630 (Taking of Private Property)

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

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This proposed

rule would not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has preliminarily determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

I. 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.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This NPRM would request OMB to approve a new information collection titled "Passenger-Carrying Vehicle Leasing and Marking Regulation Requirements." The annual burden for this new information collection is estimated to be about 103,000 hours (rounded up to the next higher thousand from the 102,547 hour value shown in the PRA Supporting Statement).

Lease Preparation Information Collection Analysis

For lease preparation, the Agency estimates the cost of obtaining and preparing a standard generic template that is freely available on the internet, or through trade organizations or existing passenger carriers. The total number of pages of one such template found on the internet is two pages, which is the number used in the Agency's estimate. The estimated annual number of burden hours depends on the estimated annual frequency of leasing. The Agency assumes that the average passenger carrier (10 power units) will engage in 96 lease agreements per year. This estimate consists of 12 leases per peak month (May through August) and 6 leases per off-peak month. The total annual number of leases would be about 607,488. The Agency assumes 5 minutes of preparation (or documentation) time per lease agreement. This amounts to 8 hours per carrier per year for an industry total of 50,624 [607,488 times 5 minutes divided by 60 minutes per hour = 50,624]. The cost of these burden hours is calculated by applying the U.S.

Department of Labor's Bureau of Labor Statistics median hourly wage rate for First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators (53-103) which is \$25.45, plus 50 percent markup for fringe benefits (for a total hourly wage of \$38.18).¹⁴ This lease documentation cost is further multiplied by two, since it applies to both lessees and lessors. The total annual cost of lease documentation is therefore estimated to be \$3,863,624.

Regarding preparation of receipts, the Agency estimates the cost of their transcription, but does not assign burden hours to the task. The receipts do not have to adhere to a certain format, length, or complexity, as long as they meet the requirements of the NPRM. The receipts are sometimes replicas or a portion of "master leases," which make for easy and quick preparation.

FMCSA estimates the annual cost of transcribing lease agreements and vehicle exchange receipts at \$273,000. This estimate consists of \$91,000 for lease agreements and \$182,000 for receipts for an annual total number of leases of 607,488. Transcription of lease agreements assumes \$0.15 per page (double-sided two page standard agreement). Transcription of vehicle exchange receipts assumes \$0.30 per exchange (one page for each receipt) for each event (surrender of leased vehicle by lessor and return of vehicle to the lessor).

The NPRM requires the retention of lease agreements and receipts for one year. The Agency finds that the cost of lease and receipt storage is negligible. The storage of work documents is a requisite part of doing business, the accommodation for which is assumed to pre-exist. Thus, the proposed requirement to retain a copy of the written lease agreement and its receipts for one year does not impose a significant cost or burden on the affected carriers. A two-inch stack of 8½ x 11-inch sheets of 200-pound paper (a ream) could amount to 500 double-sided copies of lease agreements. This would exceed more than one lease per day in a given year. A single-sided stack of the same number would amount to a mere four inches on an existing office shelf or cabinet.

Passenger-Carrying CMV Marking Information Collection Analysis

The NPRM requires every leased passenger vehicle to be properly marked

¹⁴ Occupational Employment and Wages, May 2011, at <http://www.bls.gov/oes/current/oes531031.htm>.

with the name of the carrier prefaced with “operated by” and the carrier’s USDOT number. The proposed rule requires a marking which would be affixed on one side of the passenger vehicle. The markings are presumed to be temporary and removable, though some may be permanent or re-usable, depending on the preferences of the carrier. The Agency assumed that carriers will use a paper marking option, i.e., two letter-size sheets or one legal-size sheet affixed with adhesive tape to the vehicle. The burden hours of writing the signage and affixing it are negligible. Therefore, none are attributed to this rulemaking.

The Agency estimates the annual cost of vehicle marking using removable paper devices for about 6,328 passenger carriers, assuming a medium frequency rate of leasing, would be about \$12,150. This estimate assumes \$0.02 per page (including the cost of adhesive) for a two-page temporary and removable sign. The Agency assumes one marking sign per lease agreement or leased trip (i.e., 607,488 lease agreements, as explained above).

Out-of-Service Passenger Carrier Notification of Intended Leases Information Collection Analysis

The NPRM requires passenger carriers that have been placed OOS to notify FMCSA before leasing their vehicles to other passenger carriers. The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary.

The estimated annual number of passenger carriers placed OOS is 163. It is assumed that virtually all of those carriers will elect to use the electronic notification option, since it is the most convenient, quickest, and least costly. The average number of notifications per year is 15,648 (163 × 96), which is the product of the number of OOS carriers and the average number of leases per year. This amounts to up to 8 hours per

OOS carrier per year for the 163 OOS carrier industry total of 1,299 [163 × 96 × 0.083 (5 min. divided by 60) = 1,299 hours].

In summary, lease negotiation and preparation amounts to about 8 hours per carrier per year for an industry total of 101,248 hours information collection burden, plus an additional 8 hours per OOS carrier per year for the 163 OOS carrier industry for a total of 1,299 hours burden. Thus, 101,248 hours plus 1,299 hours results in a total burden for this proposal of 102,547 hours annually.

Information Collection Request Summary

Annual Number of Respondents for this Information Collection: 6,328.

Annual Number of Responses for this Information Collection: 623,136.

Annual Information Collection Burden Hours: 102,547.

*Annual Information Collection Burden Cost:*¹⁵ \$4,422,513.

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of this proposed rule to inform the traveling public and Federal, State, and local law enforcement officers to identify the passenger carrier responsible for safety, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. You may submit comments on the information collection burden addressed by this proposed rule to OMB. The OMB must receive your comments by November 19, 2013. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street NW., Washington, DC 20503. Please also provide a copy of your comments on the information collection burden addressed by this proposed rule to docket FMCSA–2012–0103 in www.regulations.gov by one of the four ways shown above under the **ADDRESSES** heading.

¹⁵ As shown above \$3,863,624 + \$182,246 + \$364,493 + \$12,150 = \$4,422,513.

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has preliminarily determined under its environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, Paragraphs y(2) and y(7) of the Order (69 FR 9702). These categorical exclusions relate to:

- y (2) Regulations implementing motor carrier identification and registration reports; and
- y (7) Regulations implementing prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record required by FMCSA.

Thus, the proposed action would not require an environmental assessment or an environmental impact statement.

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

L. 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. The Agency has preliminarily determined that it is not a “significant energy action” under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

The NPRM

For the reasons stated in the preamble, FMCSA proposes to amend 49 CFR part 390 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 144, 1745; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 2. Amend § 390.5 by revising the definition of “Interchange” and adding definitions of “Lease,” “Lessee,” and “Lessor” in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Interchange means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see § 376.2 of this subchapter.

* * * * *

Lease means a contract or arrangement in which a motor carrier grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, in exchange for compensation. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

Lessee means the motor carrier obtains the use of a passenger-carrying commercial motor vehicle, with or

without the driver, from another party. The term *lessee* includes a party obtaining the use of a passenger-carrying commercial motor vehicle from another under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

Lessor means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without a driver, to another party. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle to another party under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

* * * * *

■ 3. Amend § 390.21 by revising the heading and introductory language of paragraph (e); redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and adding paragraph (f) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

* * * * *

(e) *Rented property-carrying commercial motor vehicles.* A motor carrier operating a self-propelled property-carrying commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days meets the requirements of this section if:

* * * * *

(f) *Leased and interchanged passenger-carrying commercial motor vehicles.* A motor carrier operating a leased or interchanged passenger-carrying commercial motor vehicle meets the requirements of this section if:

(1) The passenger-carrying CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section, except that marking is required only on the right (curb) side of the vehicle; and

(2) The passenger-carrying CMV is marked with a single placard, sign, or other device affixed to the right (curb) side of the vehicle on or near the front passenger door. The device must display the legal name or a single trade name of the motor carrier operating the CMV and the motor carrier’s USDOT number, preceded by the words “Operated by.”

* * * * *

■ 4. Add a new subpart F, consisting of §§ 390.301 through 390.305, to part 390 to read as follows:

Subpart F—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

Sec.

390.301 Applicability.

390.303 Written lease and interchange requirements.

390.305 Notifications.

Subpart F—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

§ 390.301 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following actions, irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers:

(1) The lease of passenger-carrying commercial motor vehicles with which to perform such transportation; and

(2) The interchange or loan of passenger-carrying commercial motor vehicles or drivers between motor carriers performing such transportation.

(b) This subpart does not apply to a contract (however designated, e.g., lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, etc.) between a motor carrier and a manufacturer or dealer of passenger-carrying commercial motor vehicles allowing the motor carrier to use the passenger-carrying commercial motor vehicle, for compensation, for a period of 5 years or longer.

§ 390.303 Written lease and interchange requirements.

A motor carrier may transport passengers in a leased or interchanged commercial motor vehicle only under the following conditions:

(a) *Lease, interchange, or other agreement.* There shall be either:

(1) A written lease granting the use of the passenger-carrying commercial motor vehicle and meeting the conditions of paragraphs (b) through (i) of this section. The provisions of the lease shall be adhered to and performed by the motor carrier lessee;

(2) A written agreement meeting the conditions of paragraphs (b) through (i) of this section and governing the interchange of passenger-carrying commercial motor vehicles between motor carriers of passengers conducting through service on a route or series of routes. The provisions of the interchange agreement shall be adhered to and performed by the motor carrier lessee; or

(3) A written agreement meeting the conditions of paragraphs (b) through (i) of this section and governing the renting, borrowing, or loaning, etc., of a

passenger-carrying commercial motor vehicle from another party. The provisions of the agreement shall be adhered to and performed by the motor carrier lessee.

(b) *Parties.* The lease, interchange, or other agreement shall be made between the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the motor carrier that owns the equipment (lessor). The lease, interchange, or other agreement shall be signed by these parties or by their authorized representatives.

(c) *Duration to be specific.* The lease, interchange, or other agreement shall specify the time and date when, and the location where, the lease, interchange, or other agreement begins and ends. These times and locations shall coincide with the times for the providing of receipts required by paragraph (d) of this section, unless the parties wish to end the lease, interchange, or other agreement prematurely; in that case, the receipt required by paragraph (d) of this section showing the date, time of day, and location where the lessor recovers possession of the passenger-carrying commercial motor vehicle shall supersede the date and location for termination specified by the lease, interchange, or other agreement.

(d) *Receipts for passenger-carrying commercial motor vehicle.* Except as indicated in paragraph (d)(4) of this section, receipts specifically identifying the passenger-carrying commercial motor vehicle to be leased or otherwise temporarily transferred and stating the date, time of day, and location where possession is transferred, shall be given as follows:

(1) When the lessee takes possession of the passenger-carrying commercial motor vehicle, it shall give the lessor a receipt. The receipt may be transmitted by email, mail, facsimile, or other physical or electronic means of communication.

(2) When the lessor recovers possession of the passenger-carrying commercial motor vehicle, it shall give the lessee a receipt. The receipt may be transmitted by email, mail, facsimile, or other physical or electronic means of communication.

(3) Authorized representatives of the lessee and the lessor may take possession of leased equipment and give and receive the receipts required under this section.

(4) Exception. Receipts shall not be required when passenger-carrying commercial motor vehicles are interchanged between parties to either an interline agreement or a revenue pooling agreement approved by the Surface Transportation Board.

(e) *Identification of equipment.* The motor carrier lessee shall identify the commercial motor vehicle as being in its service as follows:

(1) During the period of the lease, interchange, or other agreement, the lessee shall mark the passenger-carrying commercial motor vehicle in accordance with the requirements of § 390.21(f) (Leased and interchanged passenger-carrying commercial motor vehicles).

(2) Except as indicated in paragraphs (e)(2)(i) and (ii) of this section, a copy of the lease, interchange agreement, or other agreement shall be carried on the passenger-carrying commercial motor vehicle. This includes:

(i) A copy of a master lease applicable to more than one vehicle that is carried on the passenger-carrying commercial motor vehicle meets the requirements of this paragraph provided it complies with all other requirements of this section.

(ii) In lieu of a copy of the interchange agreement, a written statement signed by the parties to the interchange agreement or their authorized representatives and carried on the passenger-carrying commercial motor vehicle meets the requirements of this paragraph provided it:

(A) Certifies under penalty of perjury pursuant to 28 U.S.C. 1746 that the lessee is operating the equipment;

(B) Identifies the passenger-carrying commercial motor vehicle by company and USDOT number;

(C) Shows the specific point, date, and time of interchange; and

(D) Indicates the use to be made of the passenger-carrying commercial motor vehicle.

(f) *Exclusive possession and responsibilities.* (1) The lease, interchange, or other agreement shall clearly state that the motor carrier obtaining the passenger-carrying commercial motor vehicle (the lessee) shall have exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the lease, interchange, or other agreement. The lease, interchange, or other agreement shall further provide that the lessee shall assume complete responsibility for operation of the passenger-carrying commercial motor vehicle and compliance with all applicable Federal regulations for the duration of the lease, interchange, or other agreement.

(2) Provision may be made in the lease, interchange, or other agreement for considering the lessee as the owner of the equipment for the purpose of subleasing it to other motor carriers of passengers during the period of the lease, interchange, or other agreement.

In the event of a sublease, all of the requirements of this section shall apply to the parties to the sublease.

(3) Nothing in the provisions required by this paragraph is intended to affect whether the lessor of the passenger-carrying commercial motor vehicle or a driver provided by the lessor is an independent contractor or an employee of the motor carrier lessee.

(g) *Insurance.* The lease, interchange, or other agreement shall clearly specify the legal obligation of the lessee to maintain insurance coverage for the protection of the public pursuant to 49 CFR part 387. The lease, interchange, or other agreement shall further specify who is responsible for providing any other insurance coverage for the operation of the leased, interchanged, or otherwise procured equipment.

(h) *Copies of the lease.* An original and two copies of each lease, interchange, or other agreement shall be signed by the parties. The lessee shall keep the original and, except as otherwise permitted by paragraph (e)(2) of this section, shall place a copy of the lease, interchange, or other agreement on the passenger-carrying commercial motor vehicle during the period of the lease, interchange, or other agreement. The lessor shall keep the other copy of the lease.

(i) *Record retention.* Copies of each lease, interchange, or other agreement, and the receipts required by paragraph (d) of this section, shall be retained by the lessor and lessee for one year after the expiration date of the lease, interchange, or other agreement.

§ 390.305 Notifications.

A motor carrier of passengers that has been prohibited from operating in interstate commerce for any reason by FMCSA or a State (imminent hazard, failure to pay civil penalty, etc.) and that intends to lease, interchange, rent, or otherwise convey the use of some or all of its passenger-carrying commercial motor vehicles to another passenger carrier must provide written notification of that transfer of control to the FMCSA Division Administrator for the State in which the carrier has its principal place of business. Written notification by email must occur at least 3 business days, and by U.S. Mail at least 5 business days, before the vehicles are transferred to the control of the other passenger carrier. The written notification shall include the name, address, telephone number, and USDOT number of the passenger carrier to which the passenger-carrying commercial motor vehicles are being leased, interchanged, rented, or otherwise conveyed, as well as the

make, model, and vehicle identification number (VIN) of each vehicle so transferred. The lease or interchange of such vehicles shall comply with all applicable provisions of subpart F of this part.

Issued under the authority delegated in 49 CFR 1.87 on: September 12, 2013.

Anne S. Ferro,
Administrator.

[FR Doc. 2013-22782 Filed 9-19-13; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0911231415-3799-03]

RIN 0648-XT12

Endangered and Threatened Wildlife and Plants; Notice of 6-Month Extension of the Final Rulemaking To List 66 Species of Coral as Threatened or Endangered Under the Endangered Species Act and Reclassify *Acropora cervicornis* and *Acropora palmata* From Threatened to Endangered

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

ACTION: Proposed rule; notice of 6-month extension of the deadline for final listing determinations; public review.

SUMMARY: We, the National Marine Fisheries Service (NMFS), published on December 7, 2012, a proposed rule to list 66 species of reef-building corals (59 in the Pacific and seven in the Caribbean) and to re-classify two species already listed under the Endangered Species Act (ESA) from threatened to endangered and requesting information related to the proposed action. We are announcing a 6-month extension of the deadline for final determinations for all of the 68 proposed corals. Based on comments received during the public comment period, we find that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses relevant to the 68 proposed listing determinations. Accordingly, we are extending the deadline for the final listing decisions for 6 months to solicit additional data. We believe that allowing an additional 6 months to evaluate and assess the best scientific and commercial data available would better inform our final listing determinations.

DATES: We are required to publish a final rule implementing the proposed listings and reclassifications or, if we find there is insufficient evidence to justify any of the proposed listings or reclassifications, a notice of withdrawal, no later than June 7, 2014.

ADDRESSES: The proposed rule, supporting documents, and other materials related to the proposed listing determinations can be found on the NMFS Pacific Island Regional Office Web site: http://www.fpir.noaa.gov/PRD/PRD_coral.html; NMFS Southeast Regional Office Web site: <http://sero.nmfs.noaa.gov/pr/esa/82CoralSpecies.htm>; NMFS HQ Web site: <http://www.nmfs.noaa.gov/stories/2012/11/82corals.html>; or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, Attn: 66 coral species.

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; Chelsey Young, NMFS, Pacific Islands Regional Office, (808) 944-2137, Jennifer Moore, NMFS, Southeast Regional Office, (727) 824-5312, or Marta Nammack, NMFS, Office of Protected Resources (301) 427-8469.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, we published a proposed rule in the **Federal Register** (77 FR 73219) in response to a petition from the Center of Biological Diversity to list 83 species of reef-building corals as threatened or endangered under the ESA. We determined that 12 of the petitioned coral species warrant listing as endangered (five Caribbean and seven Indo-Pacific), 54 coral species warrant listing as threatened (two Caribbean and 52 Indo-Pacific), and 16 coral species (all Indo-Pacific) do not warrant listing as threatened or endangered under the ESA. We also determined that two Caribbean corals (*Acropora cervicornis* and *Acropora palmata*) currently listed warrant reclassification from threatened to endangered. Via a 90-day comment period, we solicited comments from the public, other concerned governmental agencies, the scientific community, industry, foreign nations in which the species occur, and any other interested parties. We subsequently extended the public comment period by 30 days, making the full comment period 120 days to allow adequate time for the public to thoroughly review and comment on the proposed rule. We received comments through electronic

submissions, letters, and oral testimony from public hearings held in Dania Beach, Florida; Key Largo, Florida; Key West, Florida; Rio Piedras, Puerto Rico; Mayaguez, Puerto Rico; Christiansted, St. Croix, U.S. Virgin Islands; Charlotte Amalie, St. Thomas, U.S. Virgin Islands; Hilo, Hawaii, Hawaii; Kailua Kona, Hawaii, Hawaii; Kaunakakai, Molokai, Hawaii; Wailuku, Maui, Hawaii; Lihue, Kauai, Hawaii; Honolulu, Oahu, Hawaii; Hagatna, Guam; Saipan, Commonwealth of the Northern Marianas Islands (CNMI); Tinian, CNMI; Rota, CNMI; and Tutuila, American Samoa.

During the public comment period, we received numerous comments on the proposed listing and the sufficiency or accuracy of the available data used to support the proposed listing determinations. In particular, commenters raised questions and provided varied, often conflicting, information regarding the following topics:

(1) Interpretation of the data relating to extinction risk and proposed species' listing statuses.

(2) The sufficiency and quality, or lack thereof, of the species-specific information used for each species' proposed listing determination.

(3) The accuracy of the methods used to analyze the available information to assess extinction risk (including NMFS's "Determination Tool") and derive listing statuses for each of the proposed species.

(4) The ability of corals to adapt or acclimatize to ocean warming and acidification.

(5) The reliability, certainty, scale, and variability of future modeling and predictions of climate change.

(6) The effect local management efforts have on coral resilience.

We have considered these comments, and we find that substantial disagreement exists over the sufficiency and accuracy of the available data used in support of the proposed determinations.

Extension of Final Listing Determinations

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of publication of a proposed rule to list or reclassify species: (1) Finalize the proposed listing rule; (2) withdraw the proposed listing rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data. As summarized above, we received numerous comments that document