an attenuated strain of a select biological agent or toxin that does not pose a severe threat to public health and safety may be excluded from the requirements of the select agent regulations. On February 7, 2003, VEEV strain TC–83 was excluded from select agent regulations because mice vaccinated subcutaneously with the VEEV strain TC–83 rapidly developed immunity to subcutaneous or airborne challenge with virulent VEEV (*https://www.selectagents.gov/sat/exclusions/overlap.htm*). As such, CDC determined that the attenuated strain did not have the potential to pose a severe threat to public health and safety.

As set forth under 42 CFR 73.4(e)(2), if an excluded attenuated strain is subjected to any manipulation that restores or enhances its virulence, the resulting select agent will be subject to the requirements of the regulations. Based on review by subject matter experts, CDC has determined that a modification to the excluded attenuated VEEV vaccine strain TC–83 has been shown to increase its virulence and pathogenicity. An adenine (A) at position 3 in TC–83 has been shown to contribute to the attenuation of VEEV. In TC–83(A3G), the A has been changed to a guanine (G), which is found in all wild-type isolates of VEEV. The reversion of this nucleotide mutation to the wildtype nucleotide resulted in increased lethality in mice when compared to mice inoculated with the vaccine strain TC–83. Additional data determined that the pathogenic effects of TC–83(A3G) are more pronounced in young mice. As such, the modification of the excluded, attenuated VEEV vaccine strain TC–83 to create VEEV strain TC–83(A3G) restores the virus's virulence and therefore, VEEV strain TC–83(A3G) is subject to 42 CFR part 73.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–18973 Filed 8–30–22; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2022–0001]

RIN 2126–AC51

Fees for the Unified Carrier Registration Plan and Agreement

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

ACTION: Final rule.

SUMMARY: FMCSA amends the regulations for the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2023 registration year and subsequent registration years. The fees for the 2023 registration year would be reduced below the fees for 2022. The reduction in annual registration fees would be between $18 and $17,688 per entity, depending on the applicable fee bracket that is based on the number of vehicles owned or operated by the affected entity.

DATES: Effective September 1, 2022.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Riddle, Director, Office of Registration and Safety Information, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, *FMCSA-MCRS@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

FMCSA organizes this final rule as follows:

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I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0001/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

Under the UCR Statute, the UCR Plan and the 41 States participating in the UCR Agreement collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors: 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA. Revenues collected are allocated to the participating States and the UCR Plan.

In accordance with 49 U.S.C. 14504a(d)(7) and (f)(1)(E)(ii), fee adjustments must be requested by the UCR Plan when annual revenues exceed the maximum allowed. Also, if there are excess funds after payments to the States and for administrative costs, they are retained in the UCR Plan's depository, and fees in subsequent fee years must be reduced as required by 49 U.S.C. 14504a(h)(4). These two distinct provisions each contribute to the fee adjustment in this final rule, which reduces the annual registration fees established pursuant to the UCR

Agreement for the 2023 registration year and subsequent years.

To determine the fee reduction recommendation for the 2023 registration year, the UCR Plan Board has estimated future period collections using an average of the collections of the past 3 closed years. It also considered that there has been no change to the authorized administrative allowance since 2020 and recommended a modest increase in the allowance.

B. Costs and Benefits

The changes in this final rule will reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier or other covered entity may realize a reduced burden, fees are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Therefore, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

III. Abbreviations

APA Administrative Procedure Act
CE Categorical Exclusion
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
DOT Department of Transportation
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
OOIDA Owner Operator Independent Drivers Association
PTA Privacy Threshold Assessment
RFA Regulatory Flexibility Act
RFI Request for Information
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
Secretary Secretary of Transportation
UCR Unified Carrier Registration
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

This rule adjusts the annual registration fees required by the UCR Agreement established by 49 U.S.C. 14504a. The fee adjustments are authorized by 49 U.S.C. 14504a because the total revenues collected for previous registration years exceed the maximum annual revenue entitlements of $107.78 million distributed to the 41 participating States plus the amount established for the administrative costs associated with the UCR Plan and Agreement. The UCR Plan Board submitted the requested adjustments in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which provides for the UCR Plan Board to request an adjustment by the Secretary of Transportation (the Secretary) when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds from previous registration years held by the UCR Plan in its depository, after distribution to the States and for payment of administrative costs, shall be retained ''and the fees charged . . . shall be reduced by the Secretary accordingly.'' (49 U.S.C. 14504a(h)(4)).

The UCR Plan Board must also obtain DOT approval to revise the total revenue to be collected, in accordance with 49 U.S.C. 14504a(d)(7). This rule grants the UCR Plan Board's requested increase in total revenues to be collected to address anticipated increased costs of administering the UCR Agreement. No changes in the revenue allocations to the participating States were recommended by the UCR Plan Board or authorized by this rule.

The Secretary also has broad rulemaking authority in 49 U.S.C. 13301(a) to carry out 49 U.S.C. 14504a, which is part of 49 U.S.C. subtitle IV, part B. Authority to administer these statutory provisions has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(2) and (7).

The Administrative Procedure Act (APA) allows agencies to make rules effective immediately with good cause, instead of requiring publication 30 days prior to the effective date. 5 U.S.C. 553(d)(3). FMCSA finds there is good cause for this rule to be effective upon publication so that the UCR Plan and the participating States may begin collection of fees on and after October 1, 2022, for the registration year that will begin on January 1, 2023. The immediate commencement of fee collection will avoid delay in distributing the statutory entitlement revenues to the participating States.

V. Discussion of Proposed Rulemaking and Comments

A. The Proposed Rule

On January 24, 2022, FMCSA published in the **Federal Register** at 87 FR 3489 an NPRM titled ''Fees for the Unified Carrier Registration Plan and Agreement'' (Docket No. FMCSA–2022–0001). The NPRM proposed that the UCR Plan and the 41 States participating in the UCR Agreement establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors: 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA (49 U.S.C. 14504a(d)(1)(B)(i)–(iv)). Revenues collected are allocated to the participating States and the UCR Plan. (49 U.S.C. 14504a(d)(7), (g), and (h)).

In accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), fee adjustments may be requested by the UCR Plan when annual revenues exceed the maximum allowed. Also, if there are excess funds after payments to the States and for administrative costs, they are retained in the UCR Plan's depository, and subsequent fees must be reduced as required by 49 U.S.C. 14504a(h)(4). These two distinct statutory provisions both support the fee reduction adjustment that was proposed in the NPRM. The NPRM proposed a reduction in the annual registration fees pursuant to a recommendation of the UCR Plan Board for the 2023 registration year and all subsequent years until a change in fees is authorized pursuant to a new rulemaking by the Agency.

In its August 2021 Recommendation to FMCSA (the ''August 2021 Fee Recommendation''), the UCR Plan Board estimated future period collections using an average of the collections of the past 3 closed years.[1] It also acknowledged that the UCR Plan held excess fees from prior fee years that were available to further reduce fees. In preparing its fee recommendation, the UCR Plan Board also considered that there has been no change to the authorized administrative cost allowance since 2020 and recommended a modest increase in the allowance. The UCR Plan Board recommended that FMCSA reduce the fees for all fee brackets by approximately 27 percent, and FMCSA's NPRM proposed the fees as recommended by the UCR Plan Board.

B. Comments Received

FMCSA solicited comments concerning the NPRM for 30 days ending February 23, 2022. By that date, seven comments were received. This included the UCR Plan Board of Directors (UCR Plan Board), Owner-Operator Independent Drivers Association (OOIDA) (OOIDA's First Comment), the Truckers Auditor, a company, two individuals, and an anonymous commenter. Both individuals, the company, anonymous commenter, and Truckers Auditor all

[1] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0001.*

commented in favor of reducing the fees and in favor of the proposal in general.

During the public comment period, on February 22, 2022, the UCR Plan Board submitted a comment to the docket with a new recommendation for the fees (the UCR Comment or February 2022 Updated Fee Recommendation), updating the August 2021 Fee Recommendation.[2] In the UCR Comment, the UCR Plan Board recommended a further fee reduction based upon updated actual collections and estimated fees. The February 2022 Updated Fee Recommendation proposed fee reductions of approximately 31 percent below the current fees.

After receiving and reviewing the issues raised in the comments submitted in response to the NPRM, on March 22, 2022, FMCSA transmitted a request for information (RFI) to the UCR Plan.[3] On May 9, 2022, the UCR Plan Board submitted to FMCSA a response (Information Response or IR) to the RFI.[4] On May 23, 2022, OOIDA, a commenter responding to the NPRM, requested an opportunity to comment on the IR. In a **Federal Register** notice published June 14, 2022 (87 FR 35940), FMCSA reopened the comment period for 14 days ''for the limited purpose of allowing comments on the UCR Plan's [Information Response].'' In response to this notice, OOIDA and a few other commenters submitted additional comments on or about June 28, 2022.[5] On July 11, 2022, the UCR Plan, relying on 49 CFR 389.23, submitted an additional comment responding to OOIDA's June 28 comment (''Second Comment'').[6] FMCSA has considered this additional information and comments in accordance with 49 CFR 5.5(a)(1).

1. Compliance With Legal Requirements

a. UCR Statute

Comment: OOIDA contended that the proposal would violate the UCR statute and offered several arguments.[7] OOIDA stated that the proposal does not apply the ''full $42 million revenue excess'' to lowering fees. OOIDA also believed that any excess funds from 2021 should have been allocated to 2022 fees, not to 2023 fees. OOIDA also stated that the 2020 fees could not be imposed in 2023 (and also should not be imposed in 2022).

Response: OOIDA's argument that the statute requires that 2021 excess funds should have been reflected in an adjustment in the fees for 2022 is discussed in more detail below. The short answer to this point is that reflecting such excess funds in the current adjustment for 2023 is warranted by the Fee Change Recommendation Policy adopted by the UCR Plan Board at its August 13, 2020, meeting and revised at a meeting on June 8, 2021. The Policy is in the docket (Tab K to the Information Response submitted to FMCSA by the UCR Plan Board on May 9, 2022). FMCSA finds that this policy is consistent with a reasonable interpretation of the relevant statutory provisions, namely 49 U.S.C. 14504a(d)(7), (f)(1) and (h)(4). FMCSA has no authority to address OOIDA's assertion that the fees should not be imposed in 2022 because, by statute, FMCSA proposes and makes UCR fee adjustments following a recommendation of the UCR Plan Board, and no fee adjustment recommendation was submitted for the 2022 registration year.

b. Administrative Procedure Act

Comment: OOIDA commented that the rulemaking did not comply with the APA because the UCR Plan Board did not explain in the fee recommendation how the proposed fees were calculated or why it complied with the law. OOIDA further commented that there was insufficient data or analysis in the rulemaking docket for the public to review, understand, and comment on the recommended fees, and therefore the rulemaking proceeding did not comply with the APA. Finally, OOIDA commented that the UCR Plan Board did not explain how the proposed fees were devised or that the fees would reduce current fees by $22 million in excess revenues.

Response: The Agency published an NPRM and shared with the public all information received from the UCR Plan Board. The notice-and-comment rulemaking process was completed in full compliance with the APA. As a preliminary matter, the statute governing the UCR Plan and associated fees, found at 49 U.S.C. 14504a, sets forth parameters for the UCR Plan Board to make fee recommendations, but it does not require the UCR Plan Board to explain in every fee recommendation to the Secretary and FMCSA how the recommendation complies with the statute. The UCR Plan submitted the fee recommendation in accordance with the statute.

The UCR Plan's August 2021 Fee Recommendation and the Agency's subsequent NPRM provided enough information for OOIDA to provide meaningful comment, including raising questions about the calculations. The August 2021 Fee Recommendation was in the rulemaking docket and included the existing fees and the proposed fees which reflected a reduction of approximately 27 percent for all fee brackets. It provided an explanation as to how the Fee Recommendation was developed by the Plan, including that the fee reduction was expected to result in an under-collection of fees, with the effect, essentially, of refunding excess collections in real time to UCR registrants. The UCR Plan Board also explained in the August 2021 Fee Proposal that it had changed the methodology for projecting future collections in light of the overcollections in several registration years. The APA requires an NPRM to include ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' (5 U.S.C. 553(b)(3)). The NPRM complied with both requirements, and OOIDA was able to examine and comment on the issues involved in great detail.

The Agency also notes that an OOIDA employee is a member of the UCR Plan Board and is thus a participant in the organization making the recommendation. If OOIDA believes there are procedural or substantive errors in the UCR Plan Board submission, OOIDA, as a sitting member on the Board, should have raised those deficiencies (and most of the substantive issues discussed below) directly with the UCR Plan Board. The Agency finds no deficiency with the information submitted or with the notice provided in the NPRM.

c. Suspending Fees for the UCR Plan and Agreement Currently in Effect Would Require a Recommendation From the Plan and a New Rulemaking

Comment: OOIDA also claimed that the current fees in effect are higher than allowed under the statute, because the fees were authorized for registration year 2020, and subsequent years have resulted in excess revenues collected in the 2020 and 2021 registration years with no reduction in 2021 and 2022 fees. OOIDA thus contends that FMCSA must ''immediately suspend'' the UCR fees. OOIDA also suggests that the UCR Plan should apply all excess revenue collected from prior years to reducing

[2] First UCR Plan Board Comment submitted on Feb. 22, 2022 (February 2022 UCR Plan Board Recommendation), available at: *https://www.regulations.gov/comment/FMCSA-2022-0001-0006.*

[3] Both the RFI and the transmittal to the UCR Plan are available in the docket for this rulemaking. FMCSA–2022–0001–010_Attachment_2.pdf and attachment_3.pdf.

[4] Available in the docket for this rulemaking. FMCSA–2022–0001–010_Attachment_1.pdf.

[5] FMCSA–2022–0001–011_Attachment_1.pdf.

[6] FMCSA–2022–0001–0116_Attachment_1.pdf.

[7] Available in the docket for this rulemaking at *https://www.regulations.gov/comment/FMCSA-2022-0001-0008.*

the fee scale for registration year 2023 or to refund amounts already paid for registration year 2022 to fee payers.

Response: By statute, the Secretary sets the registration fees based on a recommendation from the UCR Plan Board and only after providing opportunity for notice and public comment. (49 U.S.C. 14504a(d)(7)(B), 14504a(f)(1)(B)). Accordingly, FMCSA believes that any change in fees, including suspension of fees, would require notice and comment rulemaking pursuant to the APA, with an NPRM that includes such action within its scope. The fees currently in effect, which have been applied to registration years 2020, 2021, and 2022, were properly adopted in a final rule for registration year 2020 and all succeeding years until a new fee is adopted. *Fees for the United Carrier Registration Plan and Agreement,* 85 FR 8192 (Feb. 13, 2020). No other fee has been recommended by the UCR Plan Board or authorized by the Secretary since the fee for the 2020 registration year, and subsequent years, was adopted.

The UCR statute does not authorize direct refunding of fees after the fees have been established in a final rule but does explicitly provide for reduction of future fees based on excess collections in prior years. (49 U.S.C. 14504a(h)(4)). The statute does not provide any authority for suspension or reduction of current fees, certainly not without a rulemaking based on a recommendation from the UCR Plan Board. The UCR Plan Board now requests a fee reduction, which is the subject of this rulemaking. As addressed more fully elsewhere in this final rule, collection periods for each registration year span three calendar years, and excess or shortfalls in fees cannot be known, and thus cannot be applied, for potential fee changes in the next calendar year. Instead, excess (or shortfalls in) fees are applied to adjustments in fees for subsequent fee years. This creates a single calendar year gap between fee adjustments, with odd year collections available for adjusting (increasing or decreasing) future odd year fees and even year collections affecting possible adjustments to future even year fees. This is spelled out in the UCR Plan's Fee Change Recommendation Policy, which the UCR Plan Board adopted at the August 31, 2020, Board meeting, and revised at the June 8, 2021, Board meeting.[8] FMCSA notes again that OOIDA is a voting member of the UCR Plan Board and was present at the UCR Plan Board meetings when the Fee Change Recommendation Policy was adopted and revised.

2. Fees and Fee Structure

a. The Fee Structure of the UCR Plan and Agreement Is Progressive

Comment: OOIDA also contended that the current and proposed fee structure for the UCR Plan and Agreement is not ''progressive.'' OOIDA pointed out, through an elaborate mathematical exercise, that a carrier with a vehicle fleet size at the lower end of a fee bracket will pay less per vehicle than a carrier at the upper end of the next lower bracket. OOIDA relied on a definition of ''progressive'' that requires the tax rate to increase when one's income increases.[9]

OOIDA also stated that the fees were not fairly allocated, and that expected noncompliance by some who should pay led to higher fees for those who do pay. OOIDA suggested that this could be avoided through better State enforcement, which it thought FMCSA and the UCR Plan Board could compel.

OOIDA also requested that FMCSA adopt a fee structure it deemed ''constitutional'' that proportionately divided revenue collections by everyone required to pay, and also only collecting sufficient funds to cover entitlement distributions and administrative costs (without any reserves).

Response: The starting point for any analysis of this issue is the statute, which contains several requirements for the fee structure. The fees are based either on the number of commercial motor vehicles (CMVs) operated by motor carriers, motor private carriers and freight forwarders or, for brokers and leasing companies, on the smallest fee charged. There must be not less than four and not more than six fee brackets. Brackets must be based on the size of the fleet of CMVs owned and operated. The fees are recommended to the Secretary by the UCR Plan Board. The fee scale shall be progressive in the amount of the fee. 49 U.S.C. 14504a(f)(1)(A)–(D).

The structure of the fees for the UCR Plan and Agreement was developed by the Plan and carefully considered and approved by FMCSA in a 2007 final rule. *Fees for the Unified Carrier Registration Plan and Agreement,* 72 FR 48585 (Aug. 24, 2007). That final rule explained the need to reflect all the statutory requirements in the fees and fee structure, even if in some situations the result appeared to be inequitable. For example, it was recognized that the fee structure must ensure that the fee scale is progressive across the brackets, such that the individual carrier fee increases as the size of the carrier increases. The fact that a registrant at the top of one bracket may pay less per vehicle than a registrant at the bottom of the next higher bracket is structurally embedded in the statute. The statute requires that the ''fee scale shall be progressive in the amount of the fee'' (49 U.S.C. 14504a(f)(1)(D)), across at least four and not more than six fee brackets, where the brackets are based on fleet size, (49 U.S.C. 14504a(f)(1)(C)). The fee scale is clearly ''progressive'' in this sense, because the fee scale increases with each bracket containing a larger number of CMVs for the motor carrier entities included. Moreover, the statute also requires that the fees be applied uniformly to entities in each bracket ''based on the size of the fleet.'' (49 U.S.C. 14504a(f)(1)(C)). For particular entities, the fee may or may not be progressive as compared to a carrier in another bracket that is close in size, or that has almost the same number of CMVs in its fleet, but that is an expected result of the fee scale under the UCR statute. (72 FR at 48586).

Another appropriate consideration in determining whether the fees are progressive is whether the structure shifts the burden of paying the fees to those entities most likely to be able to pay. The fees are also progressive in this sense because all the motor carriers and other smaller entities, such as freight forwarders, brokers and leasing companies, in the lower brackets provide a smaller proportion of the total revenues than the larger motor carriers in the higher fee brackets. As shown in the following table, for the 2021 registration year motor carriers with 0–2 vehicles in their fleet, and brokers, freight forwarders and leasing companies paying fees in the same bracket were 73.02 percent of the total number of registrants but provided only 23.07 percent of the revenues collected for the UCR Plan. Entities in bracket 2 (3–5 vehicles in their fleets) were 13.63 percent of the total number of registrants and provided 12.84 percent of the revenues. On the other hand, in the 2021 registration year, motor carriers with large fleet sizes that placed them

[8] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0010,* titled ''Response of the Unified Carrier Registration Plan'', 5–6 (May 9, 2022).

[9] OOIDA focuses on fee per truck in its analysis, but the fee is based on the number of CMVs that are self-propelled (*i.e.,* not including trailers) in the carrier's fleet (see 49 U.S.C. 14504a(a)(1)(A)(ii) and (f)(1)). For its definition of *progressive,* OOIDA relies on a paper by an anonymous contributor to an online tax software product, Intuit TurboTax. *https://turbotax.intuit.com/tax-tips/general/understanding-progressive-regressive-and-flat-taxes/L917X2gBs* (retrieved May 19, 2022).

in the last two brackets provided a proportionally much larger share of the revenues. In bracket 5 (101–1000 vehicles in their fleets), the number of registrants was 0.52 percent of the total number of registrations, and these entities provided 19.51 percent of the revenues. Motor carriers in bracket 6 (1001 or more vehicles) were only 0.03 percent of the total registrants and provided 9.90 percent of the total revenues. Very similar distributions of registered entities and fee revenues are shown in the table for registration year 2020 and for 2022, to date.

2022 REGISTRATION YEAR

UCR fee bracket	Number of fee-paying registrants	Total fee revenue	Percentage of fee-paying registrants	Percentage of fee revenue
1 (0–2 vehicles)	377,390	$22,266,010	69.32	19.47
2 (3–5 vehicles)	83,015	14,610,640	15.25	12.77
3 (6–20 vehicles)	60,981	21,404,331	11.20	18.71
4 (21–100 vehicles)	19,322	23,650,128	3.55	20.68
5 (101–1000 vehicles)	3,531	20,603,385	0.65	18.01
6 (1001 or more vehicles)	208	11,851,216	0.04	10.36
Totals	544,447	114,385,710		

2021 REGISTRATION YEAR

UCR fee bracket	Number of fee-paying registrants	Total fee revenue	Percentage of fee-paying registrants	Percentage of fee revenue
1 (0–2 vehicles)	481,497	$28,408,323	73.02	23.07
2 (3–5 vehicles)	89,859	15,815,184	13.63	12.84
3 (6–20 vehicles)	64,836	22,757,436	9.83	18.48
4 (21–100 vehicles)	19,627	24,023,448	2.98	19.51
5 (101–1000 vehicles)	3,416	19,932,360	0.52	16.19
6 (1001 or more vehicles)	214	12,193,078	0.03	9.90
Totals	659,449	123,129,829		

2020 REGISTRATION YEAR

UCR fee bracket	Number of fee-paying registrants	Total fee revenue	Percentage of fee-paying registrants	Percentage of fee revenue
1 (0–2 vehicles)	376,868	$22,235,212	69.13	19.37
2 (3–5 vehicles)	83,211	14,645,136	15.26	12.76
3 (6–20 vehicles)	62,589	21,968,739	11.48	19.14
4 (21–100 vehicles)	18,810	23,023,440	3.45	20.05
5 (101–1000 vehicles)	3,466	20,224,110	0.64	17.62
6 (1001 or more vehicles)	223	12,705,871	0.04	11.07
Totals	545,167	114,802,508		

As shown in the discussion and analysis above, the fee structure satisfies the statutory requirement that it be progressive. The fees increase as the carriers' fleet sizes increase, and the fee amounts place a proportionally larger burden on those carriers with larger fleets that are more likely to be able to pay the fees.[10]

b. Timing of Fee Adjustments and the Meaning of ''Fee Year''

Comment: OOIDA contends that the fee adjustment is contrary to the statute (specifically 49 U.S.C. 14504a(f)(1)(E)(ii)) because, under the adopted procedures, excess funds are used to adjust the fees in alternating calendar years (with a one calendar year gap). For example, under the UCR Plan Board's policy, excess funds collected for 2021 registrations are used to adjust the fees in 2023 and fees collected for 2022 registrations will be used to adjust fees for 2024. OOIDA states that the statute requires excess fee collections be used to reduce the fee charged in the next calendar year.

Response: The statute is ambiguous because of its use of the term ''next fee year'' in section 14504a(h)(4). In FMCSA's view, the statute allows an interpretation of the required timing for using excess funds to adjust the UCR Agreement fees. The UCR Plan's procedures, adopted by the UCR Plan Board, properly establish a 2-calendar year cycle for each ''fee year.'' As OOIDA points out,[11] the UCR statute provides that excess funds must be used to reduce the fees charged in the next ''fee year.'' 49 U.S.C. 14504a(h)(4). The term ''fee year'' is used only in that one instance and is undefined by the statute. Again, without definition, the statute uses the term ''calendar year'' in two instances: once for the limited purpose of defining *commercial motor vehicle* during calendar years 2008 and 2009, 49 U.S.C. 14504a(a)(1)(A)(i), and the second, for setting forth the allocation of

[10] This table is based on information provided by the UCR Plan in the IR to FMCSA's RFI, at p. 17 and Tab I. The request and the response have been posted in the docket.

[11] OOIDA's First Comment, p. 5.

fee payments under the new UCR Agreement structure, 49 U.S.C. 14504a(g)(2). In five instances, the statute refers to ''registration year'' to explain the counting of the number of CMVs for registration purposes, (49 U.S.C. 14504a(f)(2), (3)), and setting the allocation of fee payments under the new UCR Agreement structure, (49 U.S.C. 14504a(g)(1), (3)). Once more, the statute does not define ''registration year.'' The use of various terms throughout the statute suggests nuance between the three, and that the terms are not unambiguously the same.

The implemented ''fee year'' timeline is explained by the UCR Plan Board in both its Information Response [12] and the UCR Plan's Fee Recommendation Policy,[13] which was adopted by the UCR Plan Board on August 13, 2020, and revised on June 8, 2021. The Agency again notes that an OOIDA representative is a member of the UCR Plan Board and was present at the Board meetings when the Fee Recommendation Policy was adopted and revised. While phrased differently in different places, in practice, the registration year aligns with the calendar year for that registration. However, the ''administrative period'' during which fees are collected (in other words, the ''fee year'') spans more than two calendar years. The ''fee year'' begins on October 1 of the year prior to the ''registration year,'' continues through the calendar year that is the ''registration year,'' concluding on December 31 of the year after the ''registration year.'' This timeline provides a 3-month pre-registration window before the date on which the fees are due (which is January 1 of the ''registration year''), as well as an audit and dispute resolution period in the calendar year following the registration year. Moreover, this timeline ensures sufficient fee collection data to reasonably and accurately determine whether fee reductions or increases are necessary.[14] The timeline also provides a steady and consistent framework for the UCR Plan Board to calculate and submit a fee adjustment recommendation supported by accurate data to the Secretary, and for FMCSA to conduct the statutorily required notice-and-comment rulemaking and then publish a final rule setting the new fees sufficiently in advance of the start of the applicable fee year.[15] In OOIDA's Second Comment (which is addressed at length below), it continues to miss the distinction between calendar year and fee year even while citing the UCR Plan's clear explanation of the timeline, and practical reasons of time and data collection that led to the distinction.[16]

Further, in its Second Comment, OOIDA resumed questioning the validity of the ''fee year'' structure adopted by the UCR Plan Board.[17] OOIDA again argued that the fee schedule does not comply with the statute and quoted at length from the IR wherein the UCR Plan Board explained the need for ''sufficient data'' on the actual revenues collected to be able to make a reasonable projection of the excess revenues for the registration year at the end of the fee year.[18] OOIDA then argued that the record held no data on when in a calendar year sufficient registration data would be available to determine future fees with reasonable accuracy.[19] While OOIDA raises an interesting idea, that perhaps sufficient data to make excess revenue projections is available earlier in the year, which in turn might enable a faster timeline for fee setting, OOIDA undermines its own argument by pointing out there is no data on that very point.[20] Although OOIDA states that it was ''not proposing that the UCR Plan adopt any specific procedures that might best comply with the statute,'' it speculates that ''one can easily envision collection and accounting standards that would better serve the statute's requirements.'' [21] As a member of the UCR Plan Board, OOIDA's comment rings hollow. Members of the UCR Plan Board are responsible for implementing the UCR Agreement in accordance with the statute. There are challenges to developing, implementing, and administering any program; that does not excuse members of the Board from speaking up when possible problems are identified and then working to develop, offer, and implement solutions.

FMCSA concludes that the UCR Plan's alternating calendar-year fee adjustment schedule, which OOIDA contests, does comply with a reasonable interpretation of all the statutory requirements. The requirement to adjust fees in the next ''fee year'' in section 14504a(h)(4) must be read together with the provisions of sections 14504a(d)(7) and 14504a(f)(1)(E)(ii). Those paragraphs provide the UCR Plan and the Agency the opportunity, and, indeed the obligation, to adopt and implement a statutory interpretation that reflects the unique circumstances of the administration of the UCR Agreement.

3. Proper Use of Revenue

a. Reserve Accounts Are an Appropriate Means of Administering the UCR Agreement and Are Not Excess Funds

Comment: OOIDA claims that the UCR Plan is ''not authorized'' by either the statute or the UCR Handbook to establish financial reserve accounts and allocate funds to such accounts. It claims that the UCR Plan needs specific authorization to establish and maintain such reserve accounts. As a corollary to this contention, OOIDA claims that the funds allocated by the UCR Plan to the reserve accounts over the past several years should be considered excess funds and instead be applied to adjust the fees.

Response: The statute provides that the UCR Plan is the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the unified carrier registration agreement. 49 U.S.C. 14504a(a)(9). It also includes specific authority to provide for the administration of the UCR Agreement (established by 49 U.S.C. 14504(a)(8), (9)) by adopting rules and regulations. 49 U.S.C. 14504a(d)(2)(B). In addition, the UCR Plan Board is authorized to include in the structure of the fees charged to motor carriers, freight forwarders, brokers, and leasing companies an amount to pay the costs of administering the UCR Agreement. (49 U.S.C. 14504a(d)(7)(A)(i)). Accordingly, within the scope of the UCR Plan's statutory responsibility to administer the UCR Agreement is the need to adopt and apply appropriate policies and procedures to manage the funds collected by the UCR Plan that are then distributed both to the participating States and to the UCR Plan to be applied to the administrative costs of carrying out the UCR Agreement. However, a quirk of the statute states that revenues collected may not be used to pay administrative costs until all the participating States have received all their revenue entitlements. 49 U.S.C. 14504a(h)(3)(B). As a practical matter, during a registration year, no funds

[12] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0010,* titled ''Response of the Unified Carrier Registration Plan'', p. 5.

[13] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0020,* Tab K.

[14] Information Response, Docket No. 2022–FMCSA–0001–0010 at 5–6, and Tab K.

[15] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0010,* titled ''Response of the Unified Carrier Registration Plan'', p. 5–6, tab K.

[16] OOIDA's Second comment, *https://www.regulations.gov/comment/FMCSA-2022-0001-0113,* p. 12.

[17] OOIDA's Second comment, p. 6–8.

[18] OOIDA's Second comment, p. 7.

[19] OOIDA's Second comment, p. 7.

[20] OOIDA's Second comment, p. 7.

[21] OOIDA's Second comment, p. 8.

collected can be used for current operations of the UCR Plan in administering the UCR Agreement until all the distributions have been made from the depository to the States that have not achieved their revenue entitlements. As a result of complying with this statutory requirement, at the beginning of each year's operations, the Plan is not receiving any funds budgeted for the administration of the UCR Agreement and cannot carry out its statutory obligations unless funds are available and held elsewhere.

In order to administer the Agreement and to address this situation, at a meeting of the Board of Directors on December 14, 2017, the UCR Plan adopted a financial reserve policy, effective on January 1, 2018, to sustain financial operations in the unanticipated event of significant unbudgeted increases in operating expenses and/or losses in operating revenues.[22] The financial reserve policy was adopted without objection or negative vote from any member of the Board, including all industry members and the representative from OOIDA. With regard to administrative costs, the policy provides for: (1) a liquidity reserve to address the lack of operating cash flow from fee collections during the registration period while all revenues are retained by or distributed to the participating States; (2) a reserve to address a shortfall in fee collections such that the participating States do not receive their revenue entitlements in full and the UCR Plan does not receive any funds for its administrative costs; and (3) a special or capital projects reserve to support future large capital projects.[23] The liquidity reserve is limited to the current year's operating budget for administrative costs. The reserve for any shortfall in revenues is limited to the operating budget for the next two years. Funding for the capital projects reserve requires a majority vote at a meeting of the UCR Plan Board and is limited to one-half of any year's operating budget.

The funds held in the reserve accounts by the UCR Plan are set out in the table below. The data are derived from the UCR Plan's statements of financial position provided in the IR at Tabs A, B, and C.

Reserve name	Dec. 31, 2020	Dec. 31, 2021	Feb. 28, 2022
Capital	$0	$288,575	$288,575
Unbudgeted Expense	2,500,000	1,750,000	1,750,000
Financial	12,000,000	12,000,000	12,000,000
Insurance	0	1,750,000	1,750,000
Totals	14,500,000	15,788,575	15,788,575

These reserve funds are a portion of unrestricted net assets of the UCR Plan that are available for use in emergencies to sustain financial operations in the unanticipated event of significant unbudgeted increases in operating expenses and/or losses in operating revenues. FMCSA finds that this is a prudent and reasonable use of the funds available to the UCR Plan to prepare for and meet potential future events. This is especially appropriate considering that due to planned repeated reductions in fees, there is an increasing possibility that in upcoming years there may be a shortfall in the fee revenues. (February 2022 Updated Fee Recommendation at 2.)

Ensuring the availability of reserve funds to meet possible contingencies is an appropriate action for the UCR Plan Board to take in implementing the statute. As FMCSA found in the 2010 final rule that its responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement are guided by the primacy the statute places on the need both to set and to adjust the fees so that they ''provide the revenues to which the States are entitled.'' The statute links the requirement that the fees be adjusted ''within a reasonable range'' to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E); see also 49 U.S.C. 14504a(d)(7)(A)(ii)). (Fees for United Carrier Registration Plan and Agreement, 75 FR 21993 (Apr. 27, 2010) at 21995.)

Because the allocation of funds to reserve accounts by the UCR Plan Board is proper, these funds are not available for adjustment of the fees in accordance with the statute. The statute provides that the UCR Plan Board and FMCSA shall consider whether the revenues generated in the previous fee year and any surplus or shortage from that or prior years enable the participating States to achieve in future registration years the revenue levels set by the UCR Plan Board. (49 U.S.C. 14504a(d)(7)(A)(ii)). As the Plan explained in the Information Response (at 4, note 2):

> The amounts [in reserve accounts] are part of what the Board holds in reserve to cover the Plan's administrative costs for up to three registration years. As explained in the Plan's January 1, 2018 Reserve Fund Policy . . . these administrative reserves (1) provide liquidity to the Plan during the current registration year (since, under the Unified Carrier Registration Act, participating states must receive their revenue entitlements in full before any collected fees are used to pay the Plan's administrative costs, 49 U.S.C. 14504a(h)(3)); and (2) safeguard against the contingency that the Plan's collection of fees for a given registration year under the extant fee schedule produces a revenue shortfall (*i.e.,* collections do not exceed the total revenue entitlement for participating states), which means that the Plan receives no funds to cover its administrative costs for that year, and the Board can rectify the problem only by recommending that the Agency increase the fees in a future registration year.

The funds allocated to the reserve accounts, as part of the administrative costs of administering the UCR Agreement, are not available for reducing the fees, as the UCR Plan correctly states. (49 U.S.C. 14504a(h)(3)(B)). The reserved funds are not ''excess funds'' within the meaning of section 14504a(h)(4). OOIDA's assertion that the funds in the reserve accounts are excess funds to be used to reduce the fees is therefore without merit.

b. Lawfulness and Oversight of UCR Plan and UCR Plan Board Expenses

Comment: OOIDA also challenged the lawfulness of the proposed fees for the 2023 registration year because, it argued, the UCR Plan Board has authorized excessive administrative expenses, has improperly expended money engaging in enforcement activities, and has unfairly focused on

[22] Available in the docket for this rulemaking at *https://www.regulations.gov/document/FMCSA-2022-0001-0010, Tab 1.* The minutes of the December 14, 2017, meeting are available on the UCR Plan's website and have also been posted in the docket.

[23] The UCR Plan Board also later adopted an insurance reserve to provide contingency funds for the self-insurance plan for its officers and directors. See minutes of UCR Plan Board meeting of December 10, 2020, available in the docket for this rulemaking.

enforcement on motor carriers. As examples of unlawful administrative expenses, OOIDA cited the use of outside contractors to aid in carrying out the UCR Agreement, to support in-person meetings of the UCR Plan Board, and for other expenses. In support of the claim that the UCR Plan Board has improperly expended funds on enforcement efforts, OOIDA asserted that the UCR Plan Board's authority is limited to administering funds collected and distributed to states under the UCR statute. OOIDA further asserted that the Board has no authority to write rules, conduct enforcement related activities, or spend UCR fee revenues to improve enforcement. OOIDA also contended that only the States may engage in any enforcement efforts, and that such effort is allowed by the UCR statute, but not required. OOIDA asserted that to comply with the UCR statute, FMCSA must review the appropriateness of UCR administrative expenses before approving updated UCR Agreement fees.

Response: FMCSA agrees with OOIDA that the Agency can consider the appropriateness of the costs incurred by the UCR Plan Board. Section 14504a(d)(7)(A)(i) explicitly states that the UCR Plan Board and the Secretary must consider the administrative costs of the UCR Plan and UCR Agreement in setting the fee level. However, the Agency has no evidence that any of the costs identified by OOIDA are improper or fall outside the bounds authorized by the UCR statute.

Preliminarily, OOIDA's comment misunderstands or misstates the authorities granted and reserved in the UCR statute. The statute provides that the UCR Plan is responsible for developing, implementing, and administering the UCR Agreement. (49 U.S.C. 14504a(a)(9)). The UCR Agreement is the agreement developed by the UCR Plan for governing the collection and distribution of fees paid, registration, and financial responsibility information by regulated entities. (49 U.S.C. 14504a(a)(8)). Reading its requirements together, the UCR statute establishes a framework that presumes compliance via the payment of fees and efforts at ensuring compliance. (49 U.S.C. 14504a(f)(4)). Contrary to OOIDA's assertion that the UCR Plan Board's authority to issue rules and regulations is expressly limited by the statute, the provision OOIDA cited instead directs items for which the UCR Plan must issue rules and regulations. (49 U.S.C. 14504a(d)(2)). The statute says the UCR Plan Board ''shall'' issue rules and regulations to govern the UCR Agreement and that those rules and regulations ''shall'' include the items that follow. (49 U.S.C. 14504a(d)(2)). The rules and regulations the UCR Plan Board must issue include providing for the administration, in other words, the functioning, carrying out, or operation, of the UCR Agreement. (49 U.S.C. 14504a(d)(2)(B)). This explicitly includes procedures for amending the UCR Agreement and obtaining clarification of any provision of the UCR Agreement but does not preclude or prohibit other rules or regulations that ''provide for the administration'' of the UCR Agreement. (49 U.S.C. 14504a(d)(2)(B)).

The additional enforcement provisions in section 14504a(i) relate to specific legal mechanisms and proceedings by other governmental entities to enforce the UCR Agreement but have no impact on efforts by the UCR Plan and the UCR Plan Board to ensure, or improve, compliance with the UCR Agreement, which is required by statute. Indeed, ensuring and improving compliance fall squarely within the purpose of the UCR Agreement and the responsibilities of the UCR Plan Board. Moreover, contrary to the assertion that section 14504a(i)(4) reserves enforcement solely to the participating States, section 14504a(i) begins by explicitly providing for civil lawsuits to be brought by the Attorney General of the United States to compel compliance. The provision OOIDA cites regarding State enforcement authority simply makes clear that State enforcement jurisdiction is not precluded by such Federal jurisdiction and the UCR statute. This provision does not preclude the UCR Plan from assisting the participating 41 States in improving compliance with the requirements of the UCR statute and the UCR Agreement.

FMCSA agrees that much of the enforcement programing by the States has been focused on motor carriers. However, that does not inherently make it unfair. Motor carriers make up the vast majority of potential fee-payors in the UCR Agreement. It is not unreasonable that the UCR Plan and UCR Plan Board would first target compliance efforts at the largest group. As evidence of alleged unfair enforcement efforts directed at motor carriers OOIDA pointed to a report to the UCR Plan Board about the efforts to increase State UCR enforcement.[24] To gain a fuller picture, in the RFI questions the Agency requested information about all enforcement initiative proposals received by the UCR Plan or UCR Plan Board since the start of 2020.[25] In response, the UCR Plan provided details on four enforcement proposals: (1) adding an Auditor/Enforcement Manager position, proposed by the UCR Plan Board Audit Chairperson; (2) mailing postcards to unregistered motor carriers, proposed by the UCR Plan Executive Director; (3) engaging a contractor to conduct three pilot programs targeting unregistered- and new-entrant motor carriers domiciled in non-participating States and roadside violations audits, proposed by the UCR Plan Executive Director and the outside contractor; and (4) developing, hosting, and maintaining a centralized International Registration Plan (IRP) fee calculator, proposed by the UCR Plan Executive Director.[26] The first three proposals were discussed at UCR Plan Board meetings and adopted. The fourth proposal was discussed at a UCR Plan Board meeting, and approval was given to engage in discussions with the IRP (which rejected the idea).[27] The UCR Plan noted in its response that the only mechanism for receiving suggestions and proposals is through the diverse UCR Plan Board membership and the UCR Plan itself.[28] The UCR Plan has no employees and is staffed by contractors engaged by the UCR Plan Board under its statutory authority.

In response, OOIDA complained that the UCR Plan had not provided a complete response and proceeded to list five items that were all non-responsive to FMCSA's original RFI question, which sought information on proposals or suggestions submitted to the UCR Plan.[29] In the one item close to on-point, OOIDA raised concerns that the UCR Plan and UCR Plan Board were consistently not doing enough to enforce UCR fee compliance by brokers, freight forwarders, and leasing companies, and OOIDA even provided exhibits of emails and meeting minutes as evidence that its concerns were being deliberately ignored.[30] Contrary to OOIDA's assertion of being ignored, however, the email chain shows other UCR Plan Board members and FMCSA working together to answer questions and attempt to identify the root of the problem of non-compliance by these

[24] Exhibit 1 of the first OOIDA comment available at *https://www.regulations.gov/comment/FMCSA-2022-0001-0008.*

[25] See FMCSA RFI, Q9.

[26] The Second UCR Plan Board response available at *https://www.regulations.gov/comment/FMCSA-2022-0001-0116* on p. 27–30 (Q9).

[27] The UCR Plan Board RFI response available at *https://www.regulations.gov/comment/FMCSA-2022-0001-0116* on p. 27–30 (Q9), and OOIDA's June 28 comment available at *https://www.regulations.gov/comment/FMCSA-2022-0001-0113,* p. 18–19.

[28] UCR Plan RFI Response, p. 27 (Q9).

[29] OOIDA's Second comment, p. 15–17.

[30] OOIDA's Second comment, p. 16, Ex. A.

non-motor carrier entities.[31] A significant number of new brokers have entered the industry in the last few years. But brokers do not operate CMVs and are therefore not subject to roadside inspections that would disclose whether they have paid UCR fees. The most recent data from FMCSA and the UCR Plan shows that there are 24.615 active brokers registered at FMCSA, compared to the 22,508 mentioned in OOIDA's First Comment. FMCSA appreciates the difficulties that the UCR Plan has experienced in obtaining compliance by the significant number of brokers that have entered the industry recently. In any event, the impact of non-compliance by brokers is minimal. Even if all of the 15,538 non-compliant active brokers paid the established fees in either 2022 or during the upcoming 2023 registration year, the revenue contributed would be less than 1 percent.[32] The UCR Plan Board has approved several initiatives presented by its contractors to assist the States in improving compliance by the large number of new brokers, and FMCSA expects that these efforts to improve compliance by brokers with be successful.

However, while OOIDA notes that enforcement towards brokers, freight forwarders, and leasing companies would ''require some creativity, careful thought, and actual effort, since enforcement of these entities cannot be carried out via roadside inspections,'' the record provides no evidence that OOIDA has offered any proposals or suggestions for pilots or programs that could provide a solution. OOIDA concludes the section complaining about the pilots and initiatives undertaken by the UCR Plan Board and assails the Plan's Executive Director for improperly engaging in enforcement efforts. FMCSA notes that not all pilot programs will be successful but are tests, to try something new and see if it works. Upon the available record, the efforts of the UCR Plan's Executive Director might more accurately be viewed as those of an engaged organizational leader researching and developing potential solutions and presenting solution proposals to the Board of Directors, which oversees the UCR Plan's work and has the authority to remove him should he fail to adequately achieve the Board's goals.

The Agency notes that OOIDA objects that insufficient enforcement efforts are targeted at brokers, freight forwarders, and leasing companies, yet OOIDA (unlike other industry members of the UCR Plan Board) did not support initiatives intended to improve compliance among this group.[33] Further, based on the information provided by both OOIDA and the UCR Plan, OOIDA has not offered specific solutions, pilot programs, or projects to address the issue that all parties seem to agree is a problem.[34] FMCSA does not see any improper expenditures of funds for enforcement activities in any of the materials submitted, nor any contravention of the UCR statute on such matters. The Agency also observes that OOIDA inconsistently objects to the UCR Plan's use of administrative funds to support efforts by the participating States to enforce compliance with registration requirements while simultaneously complaining about the alleged lack of such compliance.

Elsewhere OOIDA expressed concern that fees are too high because of insufficient compliance and enforcement, but the association also objected to the Plan's efforts to improve UCR Agreement compliance through education and training by UCR contractors. OODIA cannot have it both ways. The UCR statute explicitly authorizes the UCR Plan Board to ''contract with any person or any agency of a State to perform administrative functions required under the unified carrier registration agreement.'' (49 U.S.C. 14504a(d)(6)). The programs administered by all of the UCR contractors, including the operator of the online national registration system, have been implemented on behalf of, and at the direction of, the UCR Plan Board, and will result in greater fee-paying compliance generally. As more revenues are collected due to increased compliance, future UCR fees will be further reduced. Indeed, the 2010 final rule set targets for compliance by the States in order to justify the increased fees adopted. (75 FR 21993 at 22003).

It is also important to recognize that 100 percent compliance is not feasible for motor carriers and other entities such as brokers and freight forwarders, as FMCSA recognized in the 2010 final rule. The fee structure and fee levels were established in that final rule based on a compliance rate of 86.42 percent. (75 FR at 21997) The UCR Plan's support of the enforcement efforts by the States is an important element for ensuring compliance with the registration and fee payment requirements set out in the statute.

Finally, OOIDA asserted in its comment that certain UCR Plan Board spending is inappropriate. Specifically, OOIDA objects to UCR Plan Board members' travel to Board meetings in different locations and other efforts to increase awareness in the industry (such as hats and shirts bearing the UCR logo) and the States (particularly the 10 non-participating jurisdictions) about the Plan and the registration requirements imposed by the statute. The UCR statute specifies that the UCR Plan Board must meet at least once per year, and additional meetings may be called by the Board's Chairperson, a majority of the directors, or the Secretary. (49 U.S.C. 14504a(d)(4)). The UCR statute further explicitly requires that all directors on the UCR Plan Board be reimbursed for those travel expenses. (49 U.S.C. 14504a(d)(3)(B)). OOIDA submitted a copy of the UCR Plan Board's proposed meeting schedule for 2022 seemingly to show the misuse of UCR Agreement money.[35] However, the planned schedule showed three planned Board meetings by teleconference and five at locations around the country. Similarly, subcommittee meetings were planned throughout 2022, with eleven scheduled via teleconference and seven in-person around the country (two of which were in conjunction with full UCR Plan Board meetings in the same location). The Agency is mindful that open public meetings held at different locations around the country provide an opportunity to increase awareness of the UCR Plan and its activities, and to enhance State enforcement with on-site training. These are common practices for national groups with geographically disbursed membership, and OOIDA has provided no data to support a decision that these expenditures are improper, excessive, or beyond the authority explicitly granted in the UCR statute. Indeed, the statute expressly provides that, even though board members do not receive any compensation from the U.S. government, board members and subcommittee members are reimbursed for travel expenses. (49 U.S.C. 14504a(d)(3)). This clearly indicates that in-person meetings at convenient locations are contemplated by the statute for all board members, including the OOIDA representative.

In OOIDA's Second Comment it explicitly challenged, for the first time, the proposed $250,000 UCR Plan budget increase contained in both the UCR Plan Board's August 2021 Fee Recommendation and February 2022

[31] OOIDA's 28Second comment, p. 16, Ex. A.

[32] This analysis is based on data presented to the UCR Plan Board at a meeting on August 11, 2022. When this data is made available in the minutes of the meeting, it will be added to the docket.

[33] OOIDA's Second comment, p. 16, Ex. A, Ex. B.

[34] OOIDA's Second comment, p. 16, Ex. A, Ex. B.

[35] OOIDA's First Comment, Ex. K. In any event, FMCSA understands that the UCR Plan is reducing the number of planned in-person meetings for 2023.

Updated Fee Recommendation, and it challenged the UCR Plan Board's description of ''cost escalations of various vendors'' as ''questionable.'' [36] In calling this budget increase request into question OOIDA noted that the UCR Plan has not fully used its authorized budget in recent years. However, the Agency cannot ignore the recent inflation occurring in the U.S. and global economy.[37] The reason provided for the requested increase is anticipated increased costs. Particularly given the high inflation rates earlier this year, nothing in the record credibly calls into question the UCR Plan Board's request for additional funds due to anticipated increased costs in the next registration year. Moreover, the most recent allowance of administrative costs of $4,000,000 is a significant reduction from the $5,000,000 allowance initially approved in 2007. See Fees for Unified Carrier Registration Plan and Agreement, 72 FR 48585, 48587 (Aug 24, 2007) (adopting proposal from NPRM, 72 FR 29472, 29474 (May 29, 2007)). In setting the UCR fees, the Secretary is required by statute to consider the costs associated with administering the UCR Plan and UCR Agreement and upon this record has determined that the proposed UCR Plan budget increase of $250,000, or 6.25 percent, is appropriate and lawful.

FMCSA has reviewed the appropriateness of the expenses authorized by the UCR Plan Board and questioned by OOIDA, as well as the requested increase in funds for the upcoming registration year. Upon this review, the Agency finds no evidence that the expenditures and requested budget increase exceed the authority established in the UCR statute.

Finally, the Agency must address OOIDA's contentions regarding contractors working for the UCR Plan Board and the UCR Plan's Executive Director. The statute explicitly allows the UCR Plan Board, upon which a representative of OOIDA sits, to enter into contracts with any person or State agency to carry out administrative functions under the UCR Agreement, so long as the UCR Plan Board retains its decision or policy-making responsibilities. (49 U.S.C. 14504a(d)(6)). OOIDA inaccurately accused the UCR Plan Executive Director of improperly answering the Agency's RFI questions on behalf of the UCR Plan Board. The UCR Plan submitted an additional comment on July 11, 2022, that fully explained the Executive Director's role in submitting the Information Response requested by FMCSA:

> The preparation of the responses was thus purely an administrative task for the Plan, appropriately delegated to and overseen by . . . the Executive Director. The responses referred back to and supported the Board's August 26, 2021 and February 22, 2022 fee change recommendations to the Agency; they did not change those recommendations in any way. The responses also referred the Agency to policies that the Board had duly voted on and passed (*i.e.,* the January 1, 2018 Reserve Fund Policy and the June 8, 2021 Fee Change Recommendation Policy, (Docket ID FMCSA–2022–0001–0010, at Tabs I and K, respectively)); they did not articulate or rely on any new or updated policy that would have required Board approval.

As a member of the UCR Plan Board, OOIDA has the opportunity to engage in the oversight of the UCR Plan and the development, implementation, and administration of the UCR Agreement. However, OOIDA expressed concern that ''volunteer Board members do not have sufficient time to provide detailed oversight'' of the various contractors.[38] FMCSA is unable to address these concerns, as the UCR statute establishes the structure wherein an unpaid Board of Directors implements and oversees the UCR Agreement and UCR Plan. (49 U.S.C. 14504a(a)(8)–(9), (d)(3), (d)(7)). However, FMCSA urges all members of the UCR Plan Board to become knowledgeable about their individual and collective duties as members of the UCR Plan Board and to personally assess, periodically, whether they have the time and ability to fulfill those obligations.

4. Issues Beyond the Scope of This Rulemaking

Comment: OOIDA commented about what it contends are FMCSA's past incorrect actions or inactions. OOIDA stated that FMCSA should have taken action to adjust the fees for 2021 and 2022.

Response: These concerns, insofar as they might involve the fees that were in effect in 2021 and 2022 (as maintained in effect by 49 CFR 367.60) are beyond the scope of this proceeding, which involves a recommended fee adjustment for 2023.

C. Reopening of Comment Period

As discussed above, on March 22, 2022, FMCSA sent an RFI to the UCR Plan. On May 9, 2022, the UCR Plan provided an IR with the additional responsive information to FMCSA,[39] which was posted to the public docket. Thereafter OOIDA requested an extension of the comment period,[40] and on June 14, 2022, FMCSA announced the reopening of the public comment period in a **Federal Register** notice [41] (87 FR 35941) with comments due June 28, 2022. FMCSA reopened the NPRM comment period for the limited purpose of allowing comments on the UCR Plan's IR (87 FR 35940, June 14, 2022).

Comments During the Reopened Comment Period

By the close of the reopened comment period on June 28, 2022, more than 100 comments were received, including OOIDA's Second Comment, and comments from the Western States Trucking Association. The UCR Plan Board submitted a late comment on July 11, responding to OOIDA's Second Comment, which FMCSA has considered, along with other submissions made after the comment period, in accordance with 49 CFR 5.5(a)(1). To the extent that comments OOIDA made in its Second Comment were directly relevant to the preceding discussion, those comments have already been addressed and will not be repeated here. The remaining issues in OOIDA's Second Comment are addressed below.

Several of these comments contained similar language, and one included the full appeal an organization made to its members, which contained the language that was repeatedly submitted by other commenters. There were several identical comments submitted that were not germane to this rule, as they discussed or criticized the UCR Plan as a program and go far beyond the scope of the proposal at hand. Many, if not all such comments, were addressed to matters that would require a statutory change.

OOIDA's Second Comment is far-ranging in scope, and the Agency has determined it would be useful to address the issues and concerns raised. Despite the objections voiced in OOIDA's Second Comment, the UCR Plan Board has complied with the law in providing the 2023 fee reduction recommendation. Further, many of the issues OOIDA raised in its Second Comment were out of scope for this comment period and, also, are not within FMCSA's authority to address under the UCR statute. In recurring objections to the UCR Plan Board's

[36] OOIDA's Second comment, p. 11.

[37] *https://www.washingtonpost.com/business/2022/07/13/inflation-june-cpi/.*

[38] OOIDA's Second comment, p. 2.

[39] The request and the response are available in the docket at *https://www.regulations.gov/document/FMCSA-2022-0001-0010.*

[40] Available in the docket at *https://www.regulations.gov/document/FMCSA-2022-0001-0011.*

[41] Available in the docket at *https://www.regulations.gov/document/FMCSA-2022-0001-0012.*

proposed downward fee adjustment of nearly 31 percent, OOIDA's comment conveys significant criticisms of the UCR statute and OOIDA's displeasure with both the UCR Plan's business accounting practices, and the duties and time commitment involved with Board membership. Some of OOIDA's comments also indicate that it may not fully understand the legal obligations of volunteer members of a Board of Directors to collectively manage and conduct oversight of an organization. The Agency now addresses the issues raised in OOIDA's Second Comment.

Comment: OOIDA complained that UCR Plan Executive Director did not address the legal arguments OOIDA made in its First Comment.

Response: Again, this comment is out of scope. However, in this instance, the Agency has determined that a response is appropriate. OOIDA fails to recognize that FMCSA did not ask the UCR Plan to provide that information in the RFI questions. FMCSA only sought UCR Plan data and information that was factual and administrative in nature that would further enhance the administrative record for this rulemaking. Substantively, as discussed above regarding OOIDA's First Comment, the UCR Plan Board has adopted schedules and procedures that comply with the framework established by the UCR statute.

Comment: OOIDA asserted that the UCR Fee adjustment is the government's only real oversight authority over the UCR Plan, without which, ''the administration of the UCR Plan is left entirely to its contractors.''

Response: Again, this comment is out of scope. However, in this instance, the Agency has determined that a response is appropriate. It appears, through this comment, that OOIDA does not fully understand the role of the UCR Plan nor acknowledge or accept the authority and responsibility of the UCR Plan Board, upon which OOIDA holds a seat. By statute the UCR Plan Board may contract with individuals to carry out the work of the UCR Plan and underlying UCR Agreement, including administrative tasks. It is the statutory responsibility of the UCR Plan Board to conduct oversight of the UCR Plan and its contractors.

Comment: OOIDA took issue with the Agency's 14-day re-opening of the comment period and noted the statutory timeline for FMCSA to publish the Fee Adjustment Final Rule is 90 days from receipt of the UCR Plan Board's recommendation.

Response: Again, this comment is out of scope. However, it raises procedural issues, and, in this instance, the Agency has determined that a response is appropriate. FMCSA is aware of the statutory provision setting the deadline to issue fee adjustments following receipt of a UCR Plan Board recommendation. *See* 49 U.S.C. 14504a(d)(7). That provision requires notice and comment rulemaking and directs that fees be set within 90 days of receiving the Board's recommendation. *See* 49 U.S.C. 14504a(d)(7)(B). FMCSA also recognizes that the UCR fee collection schedule, adopted and implemented by the UCR Plan Board and UCR Plan, is best administered if FMCSA's fee adjustment rulemaking is finalized sufficiently in advance of the opening of a new UCR fee collection window, or ''fee year,'' which opens October 1 of each year.

FMCSA acknowledges that it was slow to initiate this rulemaking. FMCSA did not anticipate that, unlike previous UCR fee reduction rulemakings, this nearly 31 percent fee reduction would be contested and controversial. FMCSA is committed, whenever possible, to ensuring that UCR fees are finalized and published sufficiently in advance of the opening of the registration fee collection window to provide certainty to registrants, the UCR Plan Board, and the participating States that have statutory rights to UCR revenues.

Comment: OOIDA reasserted its contention that the UCR Plan Board's adoption of policies establishing reserve funds exceeds the authority granted in the UCR statute. Further, OOIDA reasserted that the alternating year schedule for a UCR ''fee year'' violates the UCR statute.

Response: Again, this comment is out of scope. However, in the interest of thoroughness, the Agency has determined that in this instance a response is appropriate. The Agency responds that both issues were previously raised in OOIDA's First Comment and substantively addressed by FMCSA above.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Questions 1 and 2, OOIDA reasserted the claim from its First Comment that the UCR Plan was improperly holding excess funds in violation of the UCR statute.

Response: OOIDA's discussion of these UCR Plan responses restates arguments previously raised and does not provide new information. The comments do not enhance the Agency's understanding of the issue at hand. The issues raised regarding accounting, availability of funds for an adjustment in a specific fee year, and the legality of a reserve fund policy are all addressed above in response to OOIDA's First Comment, and nothing in OOIDA's Second Comment alters that analysis.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Question 3, OOIDA contests for the first time the UCR Plan Board's proposed budget increase of $250,000.00 for the UCR Plan. OOIDA also reiterates arguments it previously raised, and FMCSA has addressed, that contest the Board's authority to establish a ''fee year'' based on alternating calendar years.

Response: OOIDA's objection to the requested UCR Plan budget increase is untimely. Nonetheless, FMCSA has addressed the argument substantively in the discussion above of OOIDA's First Comment regarding the ''Lawfulness and Oversight of UCR Plan and UCR Plan Board Expenses.'' Similarly, in Response to OOIDA's First Comment, FMCSA has already addressed the UCR Plan Board's authority to establish the alternating calendar year schedule for establishing ''fee years'' under the statute.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Question 4, OOIDA argued that the UCR Plan response did not follow FMCSA's directions to use plain language that could be understood by a non-technical audience.

Response: OOIDA's comment is non-substantive, but for the sake of completeness, FMCSA will address it. The issues being discussed are technical in nature and require some technical language. However, to aid readers without technical training, FMCSA sought to obtain through RFI number four data, with a corresponding ''narrative explanation,'' to more clearly lay out what the UCR Plan Board was requesting and how the numbers and data supported that request. The Agency directed the UCR to avoid ''shorthand, abbreviations, or acronyms,'' as these queues may not be readily understood by those not active on the UCR Plan Board or employed in math-related fields. The UCR response satisfied the request to further explain the data in the Fee Calculations spreadsheet.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Question 5, OOIDA reiterated its contention that the UCR Plan Board cannot implement a ''fee year'' schedule that differs from a ''calendar year.''

Response: This comment is redundant with arguments made in OOIDA's First Comment. Accordingly, the Agency has substantively addressed it above in the response under the heading ''Timing of Fee Adjustments and the Meaning of ''Fee Year.''

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Questions 6 and 7, OOIDA noted that the UCR Plan had already collected fees for the 2022 registration year that surpassed the revenue needed to fulfill the UCR Agreement's statutory obligations, and that the UCR Plan had provided the requested information.

Response: In the sixth and seventh RFI questions, which sought revenues and registrants broken down by UCR Fee brackets, FMCSA sought to gather data to examine the claim in OOIDA's First Comment that the fees are not adequately ''progressive'' as required by statute. OOIDA did not recognize the Agency's effort on this point, as evidenced by OOIDA's (incorrect) assertion that the Agency did not seek information on this topic in the RFI. *See* OOIDA's Second Comment, pg. 22.

To the extent these comments relate to the argument in OOIDA's First Comment, that the fees are not progressive as required by statute, the Agency has addressed the issue substantively above.

Regarding OOIDA's assertion that the fees collected for the 2022 registration year have already exceeded the UCR's statutory obligations, as discussed above, the UCR statute explicitly contemplates the possibility of overcollection of UCR fees and subsequent adjustments of fees in the next ''fee year,'' which has lawfully been established as the second, or alternating, calendar year.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Question 8, OOIDA contended that the data provided by the UCR Plan demonstrated the consistent under-enforcement of UCR fees against brokers, freight forwarders, and leasing companies, and resulted in ''indefensibly higher'' fees for motor carriers. The UCR Plan's IR response showed total freight forwarder and broker registrations for 2020 as 22,638, and for 2021 as 29,476. OOIDA next referred to its First Comment to say that there were 22,508 freight forwarders and brokers registered with the Agency in calendar year 2020 (based on the date of emails in OOIDA's Ex. L). OOIDA again complained that enforcement efforts are unfairly focused on motor carriers.

Response: According to the numbers provided, the UCR Plan collected fees from more than 100% of FMCSA's registered brokers and freight forwarders for calendar year 2020. This is clearly an issue that deserves further attention from all parties. However, the data and information provided does not support OOIDA's claim of egregious under-compliance and under-enforcement of UCR fee payment by freight forwarders and brokers. FMCSA also notes that adding the numbers OOIDA cited (*see* OOIDA's First Comments, Ex. L) regarding freight forwarder and broker registrations produces a total of 22,587 registered entities, not 22,508 as OOIDA asserted.

OOIDA's repeated complaint that enforcement efforts unfairly target motor carriers is addressed above in response to its First Comment.

Comment: In response to the UCR Plan's IR answers addressing FMCSA's RFI Question 9, OOIDA asserted that the UCR Plan response was incomplete. OOIDA then provided a listing and discussion of items that it presumably believed were responsive to the question asked.

Response: OOIDA's comment responding to the UCR Plan's response to the ninth RFI question was largely non-responsive but is otherwise addressed above in the section entitled ''Lawfulness and Oversight of UCR Plan and UCR Plan Board Expenses.'' In short, OOIDA complains that the UCR Plan unfairly focuses enforcement on motor carriers. Yet the available record does not show any meaningful efforts by OOIDA to use its position on the UCR Plan Board to suggest and advocate for pilots or programs to improve enforcement targeting non-MC registrants.

Comment: OOIDA also raised, for the first time, the idea that the UCR Plan Board may not consider any matter unless it has first been considered by the Industry Advisory Subcommittee (IAS) and the IAS has provided a recommendation to the Board. OOIDA contended that any action by the UCR Plan Board that was not first considered by the IAS was contrary to law and thus invalid. OOIDA contends that the IAS had lapsed after the prior Chairperson stepped down, that the UCR fee adjustment recommendations had thus not been considered by the IAS, and therefore any fee adjustment would be unlawful. In support, OOIDA cited 49 U.S.C. 14504a(d)(5)(A), which states that the UCR Plan Board must appoint an IAS and that the IAS ''shall consider any matter before the board and make recommendations to the board.'' 49 U.S.C. 14504a(d)(5)(A). OOIDA further complained that every other UCR Plan Board subcommittee is statutorily required to have at least one member representing the motor carrier industry, 49 U.S.C. 14504a(d)(5)(D), but that in practice, this is not followed and, specifically, no motor carrier representative sat on the Audit Subcommittee during development of the 2023 fee proposal.

Response: OOIDA's comment is out of scope for the second comment period. However, it raises issues of procedure and statutory authority, and, in this instance, the Agency has determined it is appropriate to address. OOIDA claimed for the first time that the industry advisory subcommittee authorized by 49 U.S.C. 14504a(d)(5)(A) has not considered the current fee adjustment. The statute, however, contains no express language prohibiting the UCR Plan Board from considering matters that have not first been considered by the IAS, and FMCSA does not infer congressional intent to create such a prohibition. The Plan Board is the principal governing body for implementation of the URC Agreement. The IAS is, by definition and statute, its subcommittee. Therefore a more logical inference of congressional intent, consistent with the ordinary functioning of subcommittees, is that through section 14504a(d)(5)(A) Congress intended to restrict the universe of matters the *subcommittee* could consider to just those matters that come before the Plan Board. If the committee decides not to consider such a matter, or is unable to do so, the UCR Plan Board nevertheless may consider and act on the matter. During such consideration by the UCR Plan Board, the five industry members, including a member from OOIDA, have an opportunity to consider the matter and express the industry's views. Regarding composition of the other subcommittees and any absence of a motor carrier representative, the OOIDA representative and other members could have raised any issue about the activities of the IAS or other subcommittees during any board meeting.

The statute explicitly directs the Chairperson to appoint an IAS. The statute also states that the chair of each subcommittee must be a director on the UCR Plan Board and that for the IAS, membership is reserved exclusively to representatives of entities that are required to pay the UCR fees. 49 U.S.C. 14504a(d)(5)(C), (D). For the IAS then, the chairperson must be one of the five directors representing the fee-paying industry. This point was also highlighted in an exchange OOIDA provided in its Second Comment, that when OOIDA asked why the IAS had lapsed the response was that ''it hadn't'' but that the IAS's role had diminished since the former IAS chair retired—this was viewed as acceptable since everyone on the IAS was also already a member of the UCR Plan Board. It followed, then, that the IAS work was

simply occurring within the larger Board meetings. OOIDA finds this answer unsatisfactory, and so does the Agency. However, there is scant evidence in the record that any member of the UCR Plan Board or professional contractors identified this issue for some time. However, the failure of the IAS to be formally appointed, meet, consider matters before the UCR Plan Board and provide recommendations does not render all actions of the UCR Plan Board unlawful, as OOIDA suggested. The instructions that the IAS consider any matter before the UCR Plan Board is a directive to the IAS, spelling out its obligations to those who would hold a seat on that subcommittee. The alternative reading that OOIDA advocates would have the absurd result that the IAS could prevent the UCR Plan Board from taking action on any matter simply by declining to consider it. The statute does not state that the UCR Plan Board has an obligation to receive a recommendation from the IAS before acting. FMCSA does agree, however, that the IAS should be formally reconstituted and understands that this process has begun with the May 19, 2022, initial organization meeting.

FMCSA also agrees with OOIDA regarding the concern that the motor carrier industry is not consistently represented on all subcommittees. Consistent compliance with this statutory requirement would provide additional oversight on the UCR Plan activities. FMCSA believes it is appropriate for OOIDA and all other industry representatives on the Board to use their positions to ensure that such participation happens, whether by UCR directors representing the motor carrier industry or non-directors, as allowed by statute. (49 U.S.C. 14504a(d)(5)(C)). Again though, a mere opportunity for improved motor carrier representation on UCR subcommittees does not render actions of the Plan Board, including these proposed fee adjustments, unlawful or invalid.

VI. Changes From the NPRM

The proposed fees in the NPRM are modified based upon the UCR Plan Board's updated recommendation submitted in its February 2022 Fee Recommendation. Instead of a fee reduction for the 2023 registration year of approximately 27 percent for all fee brackets, as proposed in the NPRM, this final rule adopts an even greater fee reduction of approximately 31 percent for all fee brackets. See the section-by-section discussion below for additional detail.

VII. International Impacts

Motor carriers and other entities involved in interstate and foreign transportation in the United States that do not have a principal office in the United States are nonetheless subject to the fees for the UCR Plan. They are required to designate a participating State as a base State and pay the appropriate fees to that State (49 U.S.C. 14504a(a)(2)(B)(ii) and (f)(4)).

VIII. Final 2023 State UCR Revenue Entitlements and Revenue Targets

The recommendation from the UCR Plan, as indicated above, is an adjustment from $4,000,000 to $4,250,000 for administrative costs, resulting in a total revenue target of $112,027,060. The adjustment is based on an analysis approved by the board of directors that indicated that legal expenses for the administration of the UCR Agreement will be higher on an ongoing basis. Therefore, in accordance with 49 U.S.C. 14504a(d)(7) and (g)(4), FMCSA approves the following table of State revenue entitlements, administrative costs, and the total revenue target under the UCR Agreement, as proposed in the NPRM. These State revenue entitlements, the administrative costs, and the total revenue target will remain in effect for 2023 and subsequent years unless and until approval of a revision occurs.

STATE UCR REVENUE ENTITLEMENTS AND FINAL 2023 TOTAL REVENUE TARGET

State	Total 2023 UCR revenue entitlements
Alabama	$2,939,964.00
Arkansas	1,817,360.00
California	2,131,710.00
Colorado	1,801,615.00
Connecticut	3,129,840.00
Georgia	2,660,060.00
Idaho	547,696.68
Illinois	3,516,993.00
Indiana	2,364,879.00
Iowa	474,742.00
Kansas	4,344,290.00
Kentucky	5,365,980.00
Louisiana	4,063,836.00
Maine	1,555,672.00
Massachusetts	2,282,887.00
Michigan	7,520,717.00
Minnesota	1,137,132.30
Missouri	2,342,000.00
Mississippi	4,322,100.00
Montana	1,049,063.00
Nebraska	741,974.00
New Hampshire	2,273,299.00
New Mexico	3,292,233.00
New York	4,414,538.00
North Carolina	372,007.00
North Dakota	2,010,434.00

STATE UCR REVENUE ENTITLEMENTS AND FINAL 2023 TOTAL REVENUE TARGET—Continued

State	Total 2023 UCR revenue entitlements
Ohio	4,813,877.74
Oklahoma	2,457,796.00
Pennsylvania	4,945,527.00
Rhode Island	2,285,486.00
South Carolina	2,420,120.00
South Dakota	855,623.00
Tennessee	4,759,329.00
Texas	2,718,628.06
Utah	2,098,408.00
Virginia	4,852,865.00
Washington	2,467,971.00
West Virginia	1,431,727.03
Wisconsin	2,196,680.00
Subtotal	106,777,059.81
Alaska	500,000.00
Delaware	500,000.00
Total State Revenue Entitlement	107,777,060.00
Administrative Costs	4,250,000.00
Total Revenue Target	112,027,060.00

IX. Section-by-Section Analysis

In this rule, FMCSA removes 49 CFR 367.20, 367.30, 367.40, and 367.50. These sections established fees applicable for registration years from 2007 to and including 2019. The UCR Plan is no longer collecting fees for those registration years, and these sections are removed to avoid confusion or uncertainty about the applicable fees.

FMCSA redesignates 49 CFR 367.60 as 49 CFR 367.20 and revises the provisions of that section (which were adopted in the 2020 final rule) so that the fees apply to registration years 2020, 2021, and 2022 only. A new 49 CFR 367.30 establishes new reduced fees applicable beginning in registration year 2023, based on the revised recommendation submitted by the UCR Plan Board in its February 2022 Updated Fee Recommendation, which it submitted as a comment to the public docket for the NPRM. These fees will remain in effect for subsequent registration years after 2023 unless revised by a future rulemaking. The fees in this section are lower than proposed in the NPRM in recognition of the updated recommendation submitted by the UCR Plan Board in its February 2022 Updated Fee Recommendation.

X. Regulatory Analyses

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

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within OMB determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under these Orders.

The changes in this rule reduce the registration fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. While each motor carrier will realize a reduced burden, fees are considered by OMB Circular A–4, Regulatory Analysis as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

This rule reduces annual registration fees for the UCR Plan and Agreement. The entities affected by this rule are the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies, and the fee reduction for these entities is the rule's primary impact. Because the State UCR revenue entitlements remain unchanged by this rule, the participating States are not economically impacted. The recommended reduction from the current 2020 registration year fees (approved by the Board on August 12, 2021) and modified in February 2022, is just under 31 percent, or about $18 in the lowest bracket and $17,688 in the highest bracket, per entity, depending on the number of vehicles owned or operated.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).'' [42]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[43] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

This rule directly affects the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Under the standards of the RFA, as amended by the SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State or the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under section 601(5) of the RFA.

The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule impacts a significant number of small entities, FMCSA examined the 2017 Economic Census data [44] for two different industries, truck transportation (Subsector 484) and transit and ground transportation (Subsector 485).

According to the 2017 Economic Census, approximately 99.4 percent of truck transportation firms, and approximately 99.2 percent of transit and ground transportation firms, had annual revenue less than the SBA's revenue thresholds of $30 million and $16.5 million, respectively, to be defined as a small entity. Therefore, FMCSA has determined that this rule impacts a substantial number of small entities. However, FMCSA has determined that this rule will not have a significant impact on the affected entities. The effect of this rule is to reduce the annual registration fee motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay. The reduction will range from $18 to $17,688 per entity, depending on the number of vehicles owned and/or operated by the affected entities.

Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,[45] FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–

[42] A ''major rule'' means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

[43] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

[44] U.S. Census Bureau, *2017 US Economic Census.* Available at *https://data.census.gov/cedsci/table?q=United%20States&t=Value%20of%20Sales,%20Receipts,%20Revenue,%20or%20Shipments&n=484&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=true* (accessed Dec. 28, 2021).

[45] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $170 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. Although this rule would not result in such an expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005, requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This final rule would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6.h. The Categorical Exclusion (CE) in paragraph 6.h. covers regulations and actions taken pursuant to regulation implementing procedures to collect fees that will be charged for motor carrier registrations. The requirements in this rule are covered by this CE and do not have any effect on the quality of the environment.

List of Subjects in 49 CFR Part 367

Intergovernmental relations, Motor carriers, Brokers, Freight Forwarders.

■ In consideration of the foregoing, FMCSA revises 49 CFR chapter III, part 367 to read as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

Sec.
367.20 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2020 and ending in 2022
367.30 Fees under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2023 and Each Subsequent Registration Year Thereafter.

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87. §§ 367.20, 367.30 367.40, 367.50.

§ 367.20 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2020 and ending in 2022.

TABLE 1 TO § 367.20—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEARS BEGINNING IN 2020 AND ENDING IN 2022

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$59	$59
B2	3–5	176	
B3	6–20	351	
B4	21–100	1,224	
B5	101–1,000	5,835	
B6	1,001 and above	56,977	

§ 367.30 Fees under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2023 and Each Subsequent Registration Year Thereafter.

TABLE 1 TO § 367.30—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEARS BEGINNING IN 2023 AND EACH SUBSEQUENT REGISTRATION YEAR THEREAFTER

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$41	$41
B2	3–5	121	
B3	6–20	242	
B4	21–100	844	
B5	101–1,000	4,024	
B6	1,001 and above	39,289	

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–18944 Filed 8–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220829–0175]

RIN 0648–BL40

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2022 Recreational Management Measures

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

ACTION: Final rule.

SUMMARY: This rule implements changes to fishing year 2022 recreational management measures for Gulf of Maine cod and haddock. The measures are intended to ensure the recreational fishery achieves, but does not exceed, fishing year 2022 catch limits. This action is required to help achieve optimum yield, prevent overfishing, and ensure management measures are based on the best scientific information available.

DATES: The measures in this rule are effective August 30, 2022.

ADDRESSES: To review **Federal Register** documents referenced in this rule, you can visit: *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.*

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

Background

The recreational fishery for Gulf of Maine (GOM) cod and GOM haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). The multispecies fishing year starts on May 1 and runs through April 30 of the following calendar year. The FMP sets sub-annual catch limits (sub-ACL) for the recreational fishery each fishing year for both stocks. These sub-ACLs are a fixed proportion of the overall catch limit for each stock. The FMP also includes proactive recreational accountability measures (AMs) to prevent the recreational sub-ACLs from being exceeded and reactive AMs to correct the cause or mitigate the effects of an overage if one occurs.

The proactive AM provision in the FMP provides a process for the Regional Administrator, in consultation with the New England Fishery Management Council, to adjust recreational management measures for the upcoming fishing year to ensure that the recreational sub-ACL is achieved, but not exceeded. The provisions governing this action can be found in the FMP's implementing regulations at 50 CFR 648.89(f)(3).

The 2022 recreational sub-ACL set by Framework Adjustment 63 (87 FR 42375; July 15, 2022) for GOM cod is 192 mt, and the 2022 recreational sub-ACL for GOM haddock is 3,634 mt, as set by Framework Adjustment 59 (85 FR 45794; July 30, 2020).

Using the GOM cod and GOM haddock 2022 sub-ACLs and a peer-reviewed bioeconomic model developed by NMFS's Northeast Fisheries Science Center that predicts fishing behavior under different management measures, we estimated 2022 recreational GOM cod and haddock removals under several combinations of minimum sizes, slot limits, possession limits, and closed seasons. The bioeconomic model considers measures for the two stocks in conjunction because cod are commonly caught while recreational participants are targeting haddock, linking the catch and effort for each stock to the other. The bioeconomic model results suggest that measures for both GOM cod and haddock can be slightly liberalized without the 2022 recreational fishery's sub-ACLs being exceeded. With any given model, there exists some level of uncertainty in the accuracy of model predictions. While a number of parameters and unpredicted events may impact the differences between model predictions and real-world catch, in recent years the bioeconomic model has performed well in terms of model-predicted versus actual catch estimates, which suggests the model is a good tool for assessing the potential impacts of regulatory changes. As in past years, we used preliminary data for the most recent fishing year from the Marine Recreational Information Program (MRIP) to calibrate the model. Incorporation of new waves, or data updates, may result in changes in model estimates. MRIP data can be uncertain and highly variable from year to year.

For each of the sets of management measures, 100 simulations of the bioeconomic model were conducted, and the number of simulations which yielded recreational mortality estimates under the sub-ACL was used as an estimate of the probability that the simulated set of measures will not result