therefore includes the following as new Guidance to 49 CFR 383.93:

Commercial Driver's License Standards, Endorsements; Regulatory Guidance for 49 CFR 383.93

Question 15: Is a person who operates a custom motorcoach in commerce with a gross vehicle weight rating or gross vehicle weight greater than 26,001 pounds required to have a passenger endorsement for his or her CDL if the vehicle is designed or used to transport less than 16 passengers, including the driver?

Guidance: Yes. The motorcoach is a Heavy Straight Vehicle (Group B) under 49 CFR 383.91 that is designed to transport passengers in commerce. The driver is, therefore, required by § 383.93(b)(2) to have a passenger endorsement.

Issued on: May 18, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–12641 Filed 5–26–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2012–0103]

RIN 2126–AB44

Lease and Interchange of Vehicles; Motor Carriers of Passengers

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

ACTION: Final rule.

SUMMARY: FMCSA adopts regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) to: Identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs); and ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers. This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by entering into a questionable lease arrangement to operate under the authority of another carrier that exercises no actual control over those operations. This rule will enable the FMCSA, the National Transportation Safety Board (NTSB), and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash investigations. It also provides the general public with the means to identify the responsible motor carrier at the time transportation services are provided.

DATES: *Effective date:* July 27, 2015. *Compliance date:* Motor carriers of passengers operating CMVs under a lease or interchange agreement are subject to this rule on or after January 1, 2017.

Petitions for reconsideration must be received by June 26, 2015 and must be filed in accordance with 49 CFR 389.35.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Bitner, (202) 366–2400, *loretta.bitner@dot.gov*, Office of Enforcement and Compliance. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Acronyms and Abbreviations

1935 Act Motor Carrier Act of 1935
1984 Act Motor Carrier Safety Act of 1984
Advocates Advocates for Highway and Auto Safety
ABA American Bus Association
BASICs Behavioral Analysis and Safety Improvement Categories
CDL Commercial Driver's License
CMV Commercial Motor Vehicle
CSA Compliance, Safety, Accountability
DOT United States Department of Transportation
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations, 49 CFR parts 350 through 399
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
Gobbell Gobbell Transportation Services
LLCs Limited Liability Companies
MCMIS Motor Carrier Management Information System
MCSAP Motor Carrier Safety Assistance Program
MAP–21 Moving Ahead for Progress in the 21st Century Act
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
OOS Out of Service
PRA Paperwork Reduction Act of 1995
QALY Quality-Adjusted Life-Year
RFA Regulatory Flexibility Act
SMS Safety Measurement System
SBA Small Business Administration
STB Surface Transportation Board
UMA United Motorcoach Association
VSL Value of a Statistical Life
VMT Vehicle Miles Traveled
VIN Vehicle Identification Number

II. Executive Summary

A. Purpose of the Final Rule

FMCSA adopts regulations governing the lease and interchange of passenger-carrying CMVs to ensure that passenger carriers cannot evade FMCSA oversight and enforcement by entering into questionable lease arrangements to operate under the authority [1] of another carrier that exercises no actual control over these operations. The rule is based on the broad authority of the Motor Carrier Safety Act of 1984 as amended

[1] While this statement refers to the operating authority issued to for-hire motor carriers by FMCSA, the rule would also apply to private carriers, which are not required to have operating authority. If a private carrier leased a bus from another private carrier, the parties would be required to complete a lease, and the lessee would be responsible for safety and regulatory compliance.

(49 U.S.C. 31136) and the Motor Carrier Act of 1935 (49 U.S.C. 31502).

B. Summary of the Major Provisions

The rule (1) identifies the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs), and (2) ensures that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs and drivers; and (3) requires motor carriers originally hired to provide charter transportation of passengers that subcontract this work to another motor carrier of passengers to notify the tour operator or group of passengers about the role of, and certain information about, the subcontracted motor carrier of passengers.

C. Costs and Benefits

The Agency has revised some of its cost calculations from the NPRM based on comments received. The estimated costs of the final rule consist of the following: (1) Trip- or longer-term lease negotiation; (2) lease documentation; (3) lease copying; (4) receipt documentation; (5) vehicle marking; and (6) documentation as per the common ownership and control and revenue pooling exceptions, in place of a copy of the lease. The analysis also provides a cost estimate of the notification requirement described in the previous paragraph. The analysis considered a no-action alternative (Option 1). It also considered two regulatory options (Options 2 and 3), each with three rates of leasing frequency—low, medium, and high. Other cost elements were considered but eliminated because of their insignificance or because they had already been incurred in the normal course of business. These costs include document storage and disposal of discarded CMV marking materials.

The annualized costs of the Agency-selected option (Option 2, hereafter ''the rule'' or ''final rule'') (at a seven-percent discount rate) from 2017 through 2026 are summarized in Table 1 below. The annualized cost of the final rule at the low-leasing frequency is $4.1 million, at the *medium*-leasing frequency it is *$8.0 million,* and at the high-leasing frequency it is $15.7 million.[2]

TABLE 1—ANNUALIZED COSTS (7% DISCOUNT RATE) OF THE RULE FROM 2017 THROUGH 2026

[In millions of 2013$]

Lease frequency	Selected option
Low	$4.1
Medium	8.0
High	15.7

The anticipated motorcoach-related fatality reductions over the ten-year period from 2017 through 2026 as a result of the rule are presented in Table 2 below for each of the three lease frequencies.

TABLE 2—THRESHOLD ANALYSIS: SAFETY BENEFITS NECESSARY TO OFFSET THE COSTS OF THE RULE

Lease frequency	Prevented fatal crashes necessary over 10 year period of 2017 to 2026 for cost-neutrality	Prevented fatalities necessary over 10 year period of 2017 to 2026 for cost-neutrality
Low	1.65	3.46
Medium	3.24	6.78
High	6.41	13.42

In order for the final rule to achieve cost neutrality across the range of leasing frequencies considered, the rule must prevent between 4 and 14 (determined as 3.46 and 13.42 rounded up to whole numbers) motorcoach-related fatalities, respectively, between 2017 and 2026.

Therefore the plausible range of crash reductions from 2017 to 2026 necessary to achieve cost neutrality with respect to this rule is between 2 and 7 (rounding up to whole numbers and based on 2.09413 statistical fatalities per fatal motorcoach crash, documented in detail in Appendix A of the Regulatory Evaluation). Given the Agency's central assumption of a medium-leasing frequency, the FMCSA analysis shows that the prevention of 4 fatal crashes (3.24 rounded up)—approximately equivalent to the prevention of 7 fatalities (6.78 rounded up) over the ten years from 2017 through 2026 will be sufficient to offset the costs of the rule.

III. Legal Basis for the Rulemaking

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

The 1935 Act authorizes DOT to ''prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).[3]

The 1984 Act confers on DOT authority to regulate drivers, motor carriers, and vehicle equipment. ''At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . .; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)). Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, *i.e.,* to ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this

[2] On a strictly unrounded basis, the costs associated with the low-, medium-, and high-frequency lease scenarios would be even multiples of each other (*e.g.,* the medium-frequency cost = 2 times the low-frequency cost, while the high-frequency cost = 2 times the medium-frequency cost). Tables 12 and 13 of the Regulatory Evaluation document in the rulemaking docket detail the 10-year costs of this rule. For presentation purposes, the values in Tables 12 and 13 of the Regulatory Evaluation are rounded to the nearest $1,000. The sums of these rounded costs serve as the basis for calculating the annualized values shown in Table 1 above. The use of rounding accounts for the slight variations in the annualized values relative to the use of unrounded data.

[3] See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap315.pdf.*

section, or chapter 51 or chapter 313 of this title'' [49 U.S.C. 31136(a)(5)].[4]

The 1984 Act also includes more general authority to ''(8) prescribe recordkeeping . . . requirements; . . . and (10) perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)).[5]

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

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

IV. Proposal

On September 20, 2013, FMCSA published a notice of proposed rulemaking (NPRM) (78 FR 57822). The NPRM discussed the National Transportation Safety Board's (NTSB) recommendation that FMCSA regulate the leasing of passenger carriers in much the same way as it regulates the leasing of for-hire property carriers.

V. Discussion of Comments to NPRM

Twelve submissions were received from the following parties: American Bus Association (ABA), United Motorcoach Association (UMA), Owner-Operator Independent Drivers Association (OOIDA), Greyhound Lines, Peter Pan Bus Lines, Coach USA, Adirondack Trailways, GE Capital, Dawson Bus Service, Advocates for Highway and Auto Safety (Advocates), NTSB, and Gobbell Transportation Services (Gobbell) on behalf of the Tennessee Motor Coach Association, and the motor coach operators that belong to the National Association of Small Trucking Companies.

Impact on Safety

UMA, ABA, Greyhound, Coach USA, and Gobbell argued that the crashes discussed in the NPRM would not have been prevented by the proposed rule, had it been in effect; that the Agency has not demonstrated that the rule will improve safety; and that the rule has no clear safety benefits.

FMCSA Response

As the NPRM said, ''this action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement . . . This action will enable the FMCSA, the National Transportation Safety Board (NTSB), and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to those entities for regulatory violations . . .'' [78 FR at 57822].

Unlike rules that require specific actions that would help to prevent crashes, such as the requirement for properly-adjusted brakes or rest opportunities for drivers, this final rule improves safety less directly and immediately by imposing new requirements to ensure the proper identity of the motor carrier responsible for the operation of the passenger-carrying vehicle. Through the proper identification of the entity, FMCSA and its State partners are in a better position to monitor the safety performance of the entity and remove from service unsafe passenger carriers. Therefore, the rule will improve safety, although not in the same manner as rules concerning vehicle maintenance and hours of service for drivers.

The USDOT identification number allows the Agency to track the safety records of hundreds of thousands of different motor carriers and to assign to each of them the appropriate inspection and violation information. These data in turn feed the Agency's Safety Measurement System (SMS) and Pre-Employment Screening (PSP) programs. Similarly, the leasing requirements of this rule improve the ability of the Agency to attribute the inspection, compliance, and enforcement data collected by the Agency and its State partners to the correct carrier and driver, allowing FMCSA more accurately to identify unsafe and high risk carriers and initiate appropriate interventions.

Exception for Replacement Vehicles

ABA, UMA, Greyhound, and Coach USA noted that mechanical failures can unexpectedly strand passengers at places where safe accommodations may not exist. The commenters argued that, in order to minimize the resulting inconvenience and possible danger to passengers, the carrier must obtain a replacement vehicle as quickly as possible, sometimes from an unknown lessor, and without waiting to negotiate and exchange written lease documents. These commenters requested an exception to the proposed leasing requirements for emergency situations. ABA requested an exemption for leased operation of another carrier's vehicle for a period of less than 30 days as a result of ''a mechanical breakdown or accident while a passenger-carrying commercial vehicle was en-route.''

FMCSA Response

FMCSA agrees that negotiating and writing a lease for a replacement vehicle (perhaps with a driver) from a local passenger carrier and exchanging the appropriate documents could unnecessarily prolong the delays in acquiring alternative transportation for passengers, especially when there are no safe accommodations at the location where the vehicle became disabled. However, the benefits the Agency expects to derive from this rule would be lost if the requirement for a lease were simply waived for 30 days, as requested by ABA. To address these situations, FMCSA has adopted an exception that gives the operating carrier and the lessor up to 48 hours after the lessee takes possession of the replacement vehicle to put in writing the terms of their lease agreement [§ 390.303(a)(2)]. Because the replacement vehicle will pick up the stranded passengers and resume the interrupted trip almost immediately, a lessee may not be able to ensure that a copy of the lease is carried on the vehicle, as required by § 390.303(f)(2). In this limited situation, a lessee that cannot transmit an electronic copy of the executed lease to the driver's wireless device (either because no such device is carried on the vehicle or no wireless connectivity is available) may carry a statement signed by the driver or any available company official that ''[Carrier A] has leased this vehicle to [Carrier B] pursuant to 49 CFR 390.303(a)(2).'' The Agency believes the 48-hour window provides ample time for the parties to document the transaction, given that it is unlikely the driver would have difficulty receiving

[4] See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31136.pdf.*

[5] See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31133.pdf.*

electronic information for more than 2 calendar days.

This exception should be helpful to the many small companies that comprise most of the passenger carrier industry. This exception could also be used when a passenger vehicle is placed out-of-service (OOS) under the North American Standard OOS Criteria and a replacement vehicle is needed to resume the trip.

Financial v. Operational Leases

GE Capital, UMA, and Coach USA disagreed with proposed § 390.301(b), which would have excluded from the scope of the rule any lease-financing arrangement with a duration of 5 years or longer. GE Capital—''on behalf of GE Capital business units that engage in lease-financing of passenger-carrying commercial motor vehicles''—said that ''the proposed draft is not clear enough to also exclude leases in the nature of a lease-financing of CMVs provided by independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks. . . . Financing Lessors are . . . not motor carriers . . . but passive owners/lessors of CMVs for the purpose of providing lease-financing of CMVs for the CMV industry without assuming any operational control, responsibility or oversight of the lease-financed CMVs . . .'' UMA said that ''Commercial institution leasing is certainly dominant; however, leasing by private investors, limited liability corporations, and limited partnerships remain commonplace. . . . Currently, it is routine practice for bus manufacturers or dealers to loan, rent, and lease buses for periods as short as a day.'' Coach USA stated that all of its buses are leased.

FMCSA Response

The Agency never intended the proposed rule to be applicable to leases with non-carrier financial entities. The definition of a *Lease* in proposed § 390.5 was ''a contract or arrangement in which a *motor carrier grants the use of a passenger-carrying commercial motor vehicle to another motor carrier* . . .'' [emphasis added]. To reinforce the point that the rule does not apply unless both parties to the lease are motor carriers, the text of the NPRM's § 390.301(b) has been slightly modified to make it clear that the new requirements do not apply to a contract (however designated, *e.g.,* lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, etc.) between a motor carrier and a manufacturer or dealer of passenger-carrying commercial motor vehicles, provided the financial organization, manufacturer or dealer is not itself a motor carrier. Assuming that GE Capital, banks, private investors, etc., are not themselves motor carriers, their lease-financing contracts with passenger carriers will not be subject to this rule. And even if bus manufacturers or dealers operate as passenger motor carriers, their leasing activity may well be managed by separately incorporated non-carrier financial subsidiaries whose lease contracts would not be subject to this rule.

The NPRM limited the lease-financing exception in § 390.301(b) to leases with a period of 5 years or longer, but in view of UMA's comment that financial leases may have very short terms, FMCSA has removed the 5-year limit; § 390.301(b)(1) applies to a financial lease of any duration.

Revenue Pooling Agreements

ABA pointed out that ''[u]nder 49 U.S.C. 14302(b), an agreement to pool or divide services and earnings may be approved if the carrier participants assent and if the United States Surface Transportation Board finds that the agreement will be in the interest of better service to the public or of economy of operations and will not unreasonably restrain competition. . . . The proposal in the NPRM does not reference the STB, Section 14302 or any provision of the ICC Termination Act. Thus, there is a substantial issue as to whether and how any pooling agreement can be viewed or interpreted in connection with the NPRM.''

Adirondack Trailways indicated that it is ''party to long-standing agreements for Through Service and Revenue Pooling (approved by the Surface Transportation Board) which account for tens of thousands of additional interchanges between and among other well-established and safe passenger carriers who are long-standing parties to such agreements.'' Adirondack argued that these agreements ''do not, and arguably cannot, contain all of the elements required by the newly proposed rules, *e.g.,* to 'specify the time and date when, and the location where the lease, interchange or other agreement begins and ends.' The nature of the interchanges under all of these agreements is such that interchanges often occur in remote locations, with a frequency that is both scheduled and unscheduled (often with no prior notice at all) for durations that are incapable of being predicted in advance due to spontaneous, ever-changing and unpredictable passenger demands.''

Greyhound wrote that, in 2012, it ''operated a total of 8,089 trips with buses leased on an interchange basis from its pool or interline partners.'' It provided no details about these pool agreements.

FMCSA Response

Although the NPRM would have exempted parties to a revenue pooling agreement approved by the Surface Transportation Board (STB) or an interline agreement from the requirement to provide receipts [§ 390.303(d)(4)], the commenters almost unanimously recommended a broader exemption.[6] FMCSA agrees that operations under revenue pooling agreements approved by the STB should be exempt from the lease and receipt requirements of this rule. Revenue pooling allows separate passenger carriers to offer essentially the same service as a single carrier on approved routes. Because the number of carriers in a pool is small, and the parties to the pool typically run the same trips on a daily basis (or even more frequently), the carrier responsible for safety on a particular trip can be narrowed to several carriers at most and often only two carriers. The final rule therefore imposes only a few requirements to enable the agency to track the safety performance of all members of the pool and specifically identify the carrier responsible for safety. Each vehicle must have available, either in hard copy or electronically, the number and date of the STB decision approving the pool and the names of the pool members. In addition, each vehicle must have available a list of (1) all routes covered by the pooling agreement, (2) the carrier or carriers authorized to operate on each route or portion of a route, and (3) all points of origin, destination, or interchange (should interchanges be part of the agreement). This list avoids the time, date, and location information to which Adirondack objected in its comments. However, all members of the revenue pool must mark the vehicles with the name of the operating carrier, as required by § 390.21(f). The advantage of this exception is that the parties to a pooling agreement need not exchange lease documents and receipts.

Cost of the Rule

Greyhound was critical of the NPRM's cost estimates. It commented, among other things, that:

[6] It should be noted that the NPRM's references to ''interline agreements,'' usually paired with a discussion of ''revenue pooling agreements,'' were erroneous and have been removed from this final rule. Since ''interline agreements'' involve the transfer of passengers between motor carriers, but not the exchange of vehicles between those carriers, this rule does not apply to ''interline agreements.''

''FMCSA has estimated annual recurring costs implementing all of the rules for 6,328 carriers to be $4,422,513 or an average cost per carrier of $698.88. Greyhound's estimate of the recurring costs of just the rules that would require new activities for Greyhound would be up to *336 times* the average cost per carrier estimated by FMCSA. Even given that Greyhound is substantially larger than the average carrier, there clearly is a disconnect somewhere. The primary difference appears to be the very minimal personnel cost FMCSA attributes to preparing the detailed information required in the leases or in the trip information sheet required in the interchange situations in lieu of master lease agreements, and then tying that information directly to the receipts.''

Greyhound also stated that: ''In addition, FMCSA attributes zero cost to the preparation, affixing and removal of the required bus signage and to the preparation, signing and storage of the receipts and the supervision of these activities. Clearly, both costs are far from negligible.''

''Greyhound estimates that to complete all of these activities for each trip will require an average of 15–30 minutes per trip,'' and given the number of leased trips Greyhound made in 2012, its labor costs to comply with the new requirements would be $98,000 to $196,000. Adding 20% for supervision, supplies, filing and storage would bring those figures up to $118,000 to $235,000 per year.

In short, Greyhound argued that ''FMCSA severely underestimates the costs through miscalculation of some costs and disregard of others.''

Peter Pan supplied no details, but said that, ''[g]iven our level of leasing, even if we could comply, we have estimated our cost of compliance at over $100,000 annually.''

FMCSA Response

The Agency has revised some of its cost calculations based on comments from Greyhound and others. The Agency updated the time frame of this analysis to consider the 10 year span of 2017 to 2026, which led to increases in certain components of the rule's costs and benefits. Projected growth in the motor carrier industry led to an increased number of affected carriers, thereby increasing the rule's costs. Similarly, inclusion of estimated lease counts provided by Greyhound raised the number of projected leases, adding to the rule's costs. Application of the most recent guidance from the Office of the Secretary of Transportation regarding the value of a statistical life (VSL) in future years increased the monetized benefit resulting from reductions in fatal crashes. A summary of the new estimates contained in the separate Regulatory Evaluation for this rule is presented below in Section VII.A. The cost of this rule depends primarily on the number of lease transactions subject to its requirements. That number is not precisely known, either by FMCSA or—it would appear—by the passenger carrier industry. Greyhound and Peter Pan provided information about their own operations (which cannot be extrapolated to the rest of the industry, given the unusually large size of these two companies), but no commenter took issue with the Agency's three-tier estimates of leasing volume. The final rule, therefore, retains the NPRM's assumptions about low-, medium-, and high-frequency leasing. Our cost analysis assigns a completion time for each separate task needed to comply with the rule. We believe that these times are conservative, especially after repetition makes the requirements familiar to carrier employees, and that the corresponding costs are also conservatively high. Nonetheless, the Agency's threshold analysis, discussed in Section VII.A., shows that the rule would be cost-neutral if it prevented approximately 4 fatal passenger carrier crashes (3.24 rounded up) between 2017 and 2026. This is mathematically equivalent to the prevention of one fatal passenger carrier crash every 3.09 years (3.09 years = 1 crash ÷ (3.24 crashes ÷ 10 years)). In other words, the annual cost of the rule is approximately one-quarter of the cost of a single passenger carrier crash. FMCSA believes that enhanced monitoring of passenger carrier leasing, and of the carriers involved in such leasing, will have beneficial effects that readily cover these costs.

Common Ownership and Control

Coach USA, a non-carrier that controls many passenger carriers, requested ''an exemption from the requirements of proposed section 390.303 for vehicle exchanges between affiliated companies. By 'affiliated companies,' Coach USA means companies that share a common parent company.''

Coach USA described the situations that it believes demand and justify an exemption.

For example, Megabus Southeast LLC . . . and Megabus Northeast LLC . . . currently engage in an interline-type arrangement for transporting passengers between Atlanta, Georgia and Washington, DC. Under this arrangement, Megabus Southeast transports passengers from Atlanta to Christiansburg, Virginia. In Christiansburg, a Megabus Northeast driver assumes control of the vehicle and the vehicle is leased to Megabus Northeast for the trip from Christiansburg to Washington and back to Christiansburg. This leasing of vehicles from Megabus Southeast to Megabus Northeast occurs 14 times per week (7 times in each direction). Coach USA expects to set up similar interline arrangements among its Megabus companies in the near future. In addition, the issue of leases among affiliated Coach USA companies arises on a regular basis in situations where a carrier providing scheduled service needs to add extra sections to accommodate higher than normal volume of passengers. This typically occurs around weekends and holidays. In such situations, the provider of scheduled service will lease a bus from an affiliated provider of charter service. In a typical week, approximately 40 buses are leased by Coach USA companies from an affiliated company for this purpose. On holidays, it can be as many as 50 buses a day. Attempting to comply with the proposed regulations in the situations described above would create an enormous administrative and paperwork burden on the Coach USA companies while serving no useful purpose.

Similar comments were submitted by Adirondack Trailways, which is commonly owned and controlled with two other carriers, Pine Hill Trailways and New York Trailways. Adirondack stated that:

[t]hese three companies interchange buses and drivers on a regular basis every single day. On a slow day there are about two dozen such instances, and on weekends and holidays that number is much greater. In other words, these three commonly owned passenger carriers interchange buses and drivers more than ten thousand times every year. The proposed regulations do not appear to consider this in the analysis or in the regulations. . . . These agreement[s] (for commonly owned and controlled carriers, through service, revenue pooling, etc.) do not, and arguably cannot, contain all of the elements required by the newly proposed rules, *e.g.,* to 'specify the time and date when, and the location where the lease, interchange or other agreement begins and ends.' The nature of the interchanges under all of these agreements is such that interchanges often occur in remote locations, with a frequency that is both scheduled and unscheduled (often with no prior notice at all) for durations that are incapable of being predicted in advance due to spontaneous, ever-changing and unpredictable passenger demands. These pre-existing agreements among commonly owned and controlled passenger carriers and other well established safe passenger carriers are not the problem FMCSA is attempting to solve and should not be affected by the proposed regulations.

FMCSA Response

FMCSA agrees that there is no need for individual leases and receipts when vehicles are interchanged between or among commonly owned and controlled passenger carriers. Such a requirement would add nothing to these carriers' standard business practices and impose unnecessary paperwork. It is likely that all of the ''family'' members are operating according to the same administrative procedures and safety standards. However, FMCSA is imposing a few limits on this exception to ensure the Agency's ability to identify the carrier responsible for safety and regulatory compliance. This is necessary because large holding companies seek to minimize their regulatory and tort exposure by dividing their motor carrier business into multiple limited liability companies (LLCs) while operating them very much like a single corporation. Therefore, each driver in a group of commonly owned and controlled motor carriers must carry a summary document listing all members of the corporate family, along with their USDOT numbers, business addresses, and contact telephone numbers. The document must also identify the operating carrier, the trip (by charter number, run number, or some other identifier), the vehicle (by at least the last 6 digits of the Vehicle Identification Number (VIN) [7]), and the date of the trip. This document is subject to the record retention requirements of § 390.303(d). Like the parties to a pooling agreement, however, commonly owned and controlled carriers need not prepare leases or receipts when they exchange vehicles.

Passenger Carriers Chartering Other Passenger Carriers

ABA said that the NPRM ''does not define, or even mention, the term 'charter,' which is how motorcoach carriers of passengers view the hiring or interchange of vehicles. Therefore, there is a substantial issue as to the relation of 'charter' to 'lease' and how these terms will be interpreted for purposes of the regulation.''

UMA commented that:

> Interstate passenger carriers routinely charter the services of other passenger carriers for emergencies or capacity reasons. Once the compensatory amounts and arrangements are confirmed, a charter contract is often executed, and an insurance certificate is obtained. It is generally considered that the chartered company assumes all responsibilities for regulatory compliance. Thousands of buses and motorcoaches are inspected annually operating under a charter contract from another passenger carrier while the chartered carrier assumes responsibility for their bus and driver regulatory compliance. This system is so effective, FMCSA should completely evaluate the positive attributes of these charter arrangements versus the possibilities that a lease may actually reduce an otherwise compliant chartered passenger carrier's responsibilities and motives; thereby reducing their safety and compliance concerns.

[7] The vehicle identification number (VIN) is a series of Arabic numbers and Roman letters that is assigned by a motor vehicle manufacturer to a motor vehicle for identification purposes in accordance with 49 CFR part 565, Vehicle Identification Number (VIN) Requirements.

FMCSA Response

The NPRM did not specifically discuss ''passenger carriers chartering other passenger carriers'' because the Agency believed it was sufficiently clear that such arrangements, depending on their specific terms, either would not be subject to the proposed rule at all because they involved no leases, or would be subject to the rule because the ''chartered'' carrier was leasing vehicles and drivers to another passenger carrier. Based upon the comments received, it is apparent that clarification is needed.

A passenger carrier that agrees to transport a tour or travel group on a particular trip may find itself without the capacity to accommodate the group. In that case, the carrier might transfer the contract to a second carrier that has the necessary capacity. The second carrier may or may not pay a fee to the transferring passenger carrier. In any case, this rule would not apply to that transaction because the first carrier has not leased equipment from the second. The contract has been reassigned and the second carrier has undertaken the trip in its own name on its own authority with its own vehicle(s), and is therefore responsible for compliance with the FMCSRs. As a good business practice, the transferring passenger carrier should of course immediately notify the tour or travel group that another carrier will provide the transportation. Disgruntled customers have occasionally contacted FMCSA when such notification does not occur and an unknown carrier arrives unexpectedly to pick up a group of passengers. While the final rule does not address communication when a passenger transportation contract is completely transferred to another carrier, the industry should note that the interests of tour operators and their customers are not adequately protected when such contracts are transferred among carriers without prior notice to the passengers affected by the change.

On the other hand, a passenger carrier that needs one or more additional vehicles may subcontract with another carrier to supply the vehicle(s) and possibly also driver(s) while still nominally performing the contract with the tour or travel group. When a passenger carrier hires or charters (*i.e.,* contracts for) the services of another passenger carrier to help perform a contract, it has leased vehicles and services from that carrier. In these circumstances, a lease must be prepared and receipts exchanged in compliance with this rule to indicate that the prime contractor is responsible for the lessor's (*i.e.,* subcontractor's) regulatory compliance. A copy of the lease or written agreement must be on the vehicle obtained from the subcontracted lessor, and the hiring passenger carrier's legal name and USDOT number must be marked on the vehicle as prescribed in 49 CFR 390.21. While the prime contractor (*i.e.,* the lessee carrier) may require the subcontractor to comply with all applicable provisions of the FMCSRs and to indemnify it for any civil penalties assessed for violations of those provisions by the subcontracted lessor, FMCSA and its State partners will hold both the prime contractor and its subcontractor responsible for completion of the lease described in this final rule.

In this situation described above, the lessee carrier is fully responsible for the regulatory compliance of the lessor carrier and must mark the vehicles leased from the lessor with the information required by 49 CFR 390.21(f). However, because the name and/or logo of the chartered or hired passenger carrier is likely to be displayed prominently on the vehicles, passengers might overlook the smaller placard required by § 390.21(f)(2) and assume that a different carrier was providing the transportation. To reduce the possibility of confusion, FMCSA has added a provision to the rule that requires a passenger carrier that subcontracts all or a portion of a transportation service to notify the tour or travel group within 24 hours of establishing the subcontracting arrangement that all or some of the transportation will be performed by a lessor subcontractor.

This rule holds the lessee carrier directly responsible for violations of the FMCSRs. While UMA asserted that the chartered passenger carrier generally assumes all responsibilities for regulatory compliance, this final rule does not prevent the two carriers from including in the charter (*i.e.,* lease) contract a provision making the chartered carrier responsible for such compliance, with appropriate indemnification language for penalties imposed by regulatory agencies. The relationship between the two parties remains that of a lessor and lessee. The ''charter contract'' described by UMA appears to involve negotiation and paperwork burdens similar to those associated with a lease. The net burden imposed by this rule therefore should be minor.

Penalties

Advocates generally supported the NPRM, but argued that ''because of the seriousness of the abuses that the provisions are intended to prevent, including, potentially, willful misconduct that attempts to evade FMCSA out-of-service orders, . . . specific criminal and civil penalties should be referenced as applicable to the more serious violations of the lease/interchange restrictions.''

FMCSA Response

FMCSA does not believe that the regulatory language in subpart F of part 390 should include the maximum applicable statutory penalties. The penalties available to the Agency are adequately described in subpart G and appendices A and B of part 386. However, while considering this comment, it became apparent that the NPRM was not sufficiently explicit in assigning responsibility for violations of the proposed rule. We have therefore added paragraph (c) to § 390.301 to clarify that both the lessor and lessee are liable for civil penalties if they exchange vehicles without the required documentation, or prepare a lease, interchange agreement, or other agreement that fails to meet the requirements of subpart F.

Lease Disclosure on Tickets

Advocates argued that the vehicle marking required by the NPRM is insufficient to provide notice of the arrangement to the public prior to the purchase of tickets. Advocates stated:

At the very least, the public must be given notice of the lease/interchange arrangements at the point of sale including locations such as terminals and passenger-carrying motor carrier and associated broker Web sites where tickets are available for sale, as soon as the lease/interchange agreement is signed. This will allow consumers at the point of sale the opportunity to decide whether to purchase tickets for that trip. Similar to online disclosure by airlines that certain flights will be crewed and operated by another airline, or using equipment provided by another airline, motorcoach riders should have the same notice and opportunity to decide whether to nevertheless purchase tickets for that bus ride or to make other travel arrangements. Moreover, consumers who purchased tickets and were not provided with disclosure of the lease/interchange arrangement, or were unaware of the lease/interchange arrangement until arrival at the departure location, at the time of boarding, should be afforded the option of a refund if they decide at that point not to travel on the leased CMV.

FMCSA Response

The Agency does not agree that advance notice of lease and interchange arrangements must be provided to customers. Many of the motorcoach services that have expanded significantly in recent years are so-called curbside operations that do not require, and sometimes do not allow, advance ticketing. Because demand for service cannot always be predicted, these carriers may need to obtain additional vehicles from other carriers on short notice. This rule requires lessors and lessees to document these arrangements and mark the vehicles appropriately, but changing the curbside, on-demand business model is not within the rule's scope or purpose. These carriers may not know until shortly before a trip whether they will need to operate leased vehicles on that trip and therefore cannot give potential customers advance notice of the lease arrangement. Such notice may be more compatible with other types of motorcoach operation, especially those involving commonly owned and controlled carriers and revenue pooling agreements, but even a segment-specific notice requirement would involve significant changes in operating practices. This issue was not raised in the NPRM and, given its far-reaching implications for the industry, cannot be included in today's final rule because the public was not provided with an opportunity to comment on a regulatory proposal to address the issue. The Agency does not find it advisable to delay this rule, and thus defer its benefits, while considering whether to expand its reach as recommended by Advocates.

Out-of-Service Carriers

NTSB supported the NPRM but said that

the FMCSA should do more to protect passenger safety. The FMCSA should require passenger carriers that have been prohibited from operating in interstate commerce for any reason and that intend to lease, rent, interchange, or otherwise convey the control of any of their vehicles to another carrier to obtain written authorization from the FMCSA to conduct such transactions. This will enable the FMCSA to research the safety history of the prospective lessee and determine if it has demonstrated adequate safety practices for its vehicles and drivers.

FMCSA Response

Section 390.305 of the NPRM proposed to require passenger carriers that had been placed out of service to notify FMCSA by email or U.S. Mail, either 3 or 5 business days, respectively, before transferring control of its vehicles to another passenger carrier. The FMCSA has decided that notification and related issues would be best addressed in another rulemaking. Therefore, the language of § 390.305 proposed in the NPRM has been removed.

Miscellaneous Comments

OOIDA asked several questions and provided comments about the NPRM: (1) Why did the Agency limit the rule to motor carrier lessors rather than all lessors of passenger vehicles? (2) Proposed § 390.303(f)(3) said that nothing required by paragraph (f) was ''intended to affect whether the lessor of the passenger-carrying commercial motor vehicle or a driver provided by the lessor is an independent contractor or an employee of the motor carrier lessee.'' OOIDA asserted that paragraph (f)(3) had no legal effect. (3) ''FMCSA should clarify that the Lessee's responsibility to maintain public liability insurance required by federal law means that it cannot delegate such responsibility, including delegating the cost of such insurance, to any other party, including the Lessor. . . . OOIDA believes FMCSA does not need to revise the proposed language, but should explain that it means that by having the responsibility to maintain public liability insurance, the Lessee may not avoid responsibility for the cost of the insurance by passing it on to another party, directly or indirectly.''

FMCSA Response

(1) The 1984 Act (49 U.S.C. 31136) gives the Agency jurisdiction over operators of commercial motor vehicles, but not over equipment lessors generally. The rule is therefore limited to motor carrier lessors. (2) Section 390.303(f)(3) did not claim to have legal effect. On the contrary, it was and is a disclaimer of any such effect. The provision has been re-designated as § 390.303(b)(4)(iii) in the final rule. (3) While the lessee must maintain the evidence of financial responsibility required by 49 CFR part 387, FMCSA has no authority to change a contractual term that obligates the lessor to pay the cost of the insurance the lessee is required to maintain.

MCSAP State Enforcement Plans

No comments were received about the Agency's intention to require our State and local partners to adopt this final rule pursuant to the Motor Carrier Safety Assistance Program (MCSAP) (49 CFR part 350). Therefore, as proposed, State and local agencies participating in MCSAP will be required to include the passenger-carrying CMV lease and marking requirements of this rule in their annual enforcement plans. As mentioned in the NPRM, our MCSAP partners are not required to enforce the CMV leasing regulations in part 376. However, the focus of this final rule is safety, and FMCSA believes that States must adopt and enforce compatible leasing and marking regulations for all motor carriers operating passenger-carrying CMVs in interstate commerce.

VI. Section-by-Section Description of Final Rule

Section 390.5 is amended to add definitions for *lease, lessee,* and *lessor,* all of which are based (with changes) on the same definitions in part 376—Lease and Interchange of Vehicles. Because both parties to the lease required by subpart F of part 390 are motor carriers of passengers, rather than owners of equipment (as in part 376), the terms *lease, lessee,* and *lessor* here apply specifically to motor carriers of passengers and are applicable only to §§ 390.21(f) and 390.301 through 390.305. All three terms are amended to include *interchange* of passenger-carrying CMVs. In § 390.5, *interchange* is currently defined as the tendering of intermodal chassis to a motor carrier; that meaning is retained as paragraph (1), and paragraph (2) is added to describe the exchange of passenger-carrying CMVs between motor carriers continuing a through movement on a particular route. We have also included a cross-reference to § 376.2, where the same terms are defined for purposes of the lease and interchange of property-carrying vehicles.

Section 390.21(e), dealing with the marking of rented CMVs *for periods of 30 calendar days or less,* is amended to limit its application to ''property-carrying CMVs,'' as intended when this paragraph was adopted in 1990 in response to a petition from the Truck Rental and Leasing Association. The Federal Highway Administration noted in the preamble to the final rule that ''[t]he petition articulated compliance problems with a segment of the trucking industry that had not been considered during the promulgation of the marking requirement.'' Paragraph (e) was added to provide an alternative method for compliance with the previous marking requirements in § 390.21 (55 FR 6991, February 28, 1990). Under today's rule, that alternative method is not available in the case of rented passenger-carrying CMVs.

Instead, current paragraphs (f) and (g) of § 390.21 are redesignated as paragraphs (g) and (h), and a new paragraph (f) is added to cover the marking of *Leased and interchanged passenger-carrying commercial motor vehicles.* The marking in new paragraph (f) must meet the requirements of § 390.21(b) *Nature of marking,* (c) *Size, shape, location, and color of marking,* except that marking is required only on the right (curb) side of the vehicle on or near the front passenger door, and (d) *Construction and durability.* Carriers operating leased or interchanged passenger-carrying CMVs as defined in § 390.5 must also display a placard, sign, or other permanent or removable device on the right (curb) side of the passenger-carrying CMV on or near the front passenger door. The device must show the name and USDOT number of the carrier operating the vehicle, preceded by the words ''operated by,'' *e.g.,* ''Operated by ABC Motorcoach, Inc., USDOT 12345678.''

The final rule adds to part 390 a new subpart F entitled ''Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles.'' The ''Applicability'' statement in § 390.301(a) makes clear that—with the exceptions noted—the subpart applies to all leases or interchanges of passenger-carrying CMVs between motor carriers, no matter how brief. Paragraph (b), however, explains (1) that the rule does not cover leases between carriers and vehicle manufacturers or dealers (providing they are not themselves motor carriers) because most of these contracts are likely to be in the nature of purchase agreements, unlike the routine or casual transfers of vehicles between passenger carriers to meet temporary fluctuations in demand; (2) that leases and receipts are not required when passenger vehicles are exchanged between or among commonly owned and controlled motor carriers; and (3) that leases and receipts are not required when passenger carriers that are party to a revenue pooling agreement approved by the Surface Transportation Board exchange or interchange passenger vehicles between or among themselves on routes subject to the pooling agreement and mark the vehicle appropriately. Paragraph (c) provides that if the use of a passenger-carrying commercial motor vehicle requires a lease, but the motor carriers fail to make the lease or fail to meet all applicable requirements of subpart F, both motor carriers shall be subject to a civil penalty specified in 49 CFR part 386, Appendix B, paragraphs (a)(1) or (a)(3).

Section 390.303 specifies the contents of lease and interchange documents. Paragraph (a)(1) requires a written lease or interchange document, or a written agreement covering any less formal temporary transfer of a passenger-carrying CMV.

Paragraph (a)(2) creates an exception to the requirement that the lease or interchange agreement be signed before the vehicle is operated under the terms of the agreement. When a passenger vehicle is disabled during a trip, the lessor and lessee of the replacement vehicle may postpone the completion of a written lease for up to 48 hours.

Paragraph (b) requires the lease, interchange agreement, or other agreement to contain: (1) The name of the vehicle manufacturer, the year of manufacture, and the last 6 digits of the Vehicle Identification Number; (2) the legal names, contact information, and signatures of both parties; (3) the time and date when the lease begins and ends and other specific information; (4) a statement that the lessee has exclusive possession and control of the leased vehicle and is responsible for regulatory compliance; and (5) a statement that the lessee is responsible for compliance with the insurance requirements of 49 CFR part 387.

Paragraph (c) requires an original and two copies of each lease, *etc.*, with one copy to be kept on the leased passenger vehicle. The parties may prepare, sign, exchange, and maintain the lease (and any other documents required by this rule) in electronic [8] or paper format. Leases generated, exchanged, or maintained using electronic methods do not satisfy FMCSA requirements unless they are legible and capable of being retained and accurately reproduced for reference by any party entitled to access them.

Paragraph (d) requires that copies of each lease or other agreement or statement must be retained for one year after expiration of the lease or agreement.

Paragraph (e) includes detailed requirements for the preparation of receipts when vehicles are surrendered to the lessee and returned to the lessor.

Paragraph (f) specifies how the leased equipment is to be marked and identified in leases or other agreements.

Section 390.305 requires that, when a passenger carrier with an original charter contract leases vehicles from a subcontractor carrier to perform the charter, it must notify the charter party within 24 hours after hiring the subcontractor that the transportation will be provided by the subcontractor.

VII. Regulatory Analyses

A. Regulatory Planning and Review

FMCSA has determined that this action is a non-significant regulatory

[8] Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, 114 Stat. 464, 15 U.S.C. 7001–7031) was signed into law on June 30, 2000. This act promotes the use of electronic contract formation, signatures, and recordkeeping in private commerce by establishing legal equivalence between traditional paper-based methods and electronic methods. See 76 FR 411 (January 4, 2011) for FMCSA regulatory guidance concerning electronic signatures and documents.

action under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The estimated economic costs of the rule do not exceed the $100 million annual threshold. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest. This rule has not been reviewed formally by the Office of Management and Budget (OMB).

Due to the lack of data that would enable FMCSA to quantify the safety benefits of this final rule, the separate Regulatory Evaluation in the docket relies upon a threshold analysis. There are no statistical or empirical studies that directly link the written documentation of a vehicle lease agreement to enhanced motor carrier safety. And though the Agency has described above the many practical, informational, and administrative benefits of this final rule, it is unable to quantify its safety benefits, typically measured in terms of avoided crashes. In accordance with OMB guidance (Circular A–4),[9] a Federal regulatory agency has the option to conduct a threshold analysis in lieu of a cost-benefit analysis in cases in which either the benefits (as in this case) or the costs are unquantifiable, or difficult to quantify. A threshold analysis estimates the quantified costs of a rule in terms of the non-quantified benefits (in this instance, the number of passenger-carrier crashes that would have to be prevented by the rule to equal its costs). The rule is expected to provide safety benefits that are not directly or easily quantifiable. Hence, the estimated costs of the regulatory options in this final rule are compared to the number of passenger-carrier-related fatalities, currently estimated at $20.3 million per crash [10] during calendar year 2017 [11] that would have to be avoided to make the rule cost-neutral.

Additionally, the final rule is expected to provide many practical benefits to the public and to FMCSA. These benefits include more effective oversight and enforcement, through proper identification of passenger carriers and proper documentation of lease agreements—both of which help ensure accurate identification of the carrier responsible and liable for operation of the leased vehicle. Additionally, the proper marking of vehicles provides useful information to the traveling public and State and Federal enforcement personnel.

Passenger Carriers Subject to This Final Rule

Passenger carriers provide many types of service, including transit, school, charter, tour, sightseeing, airport shuttle, commuter, and scheduled intercity routes. The motorcoach industry, which largely provides scheduled service, charter, tour and sightseeing services, provided more than 637 million passenger trips in 2012. FMCSA has jurisdiction over 29,000 passenger carriers of various types, including, but not limited to, carriers that are authorized for-hire, exempt for-hire, private (business), and private (non-business).

The carrier population impacted by this rule consists of motor carriers transporting passengers in interstate commerce in CMVs that either (1) have a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; (2) are designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) are designed or used to transport more than 15 passengers (including the driver) and are not used to transport passengers for compensation [49 U.S.C. 31132(1)(A)–(C)]. For purposes of the Regulatory Evaluation the total number of private carriers that meet the terms of § 31132(1)(C) (16+ passengers) was reduced by 90 percent because private passenger carriers do not lease vehicles to a significant degree.

Table 3 below shows the number of passenger carriers considered for such inclusion, based on the carrier population in FMCSA's Motor Carrier Management Information System as of June, 2014. Passenger motor carriers of five types are listed in Table 3 below: (1) For-hire motor carrier,[12] authorized by FMCSA under 49 U.S.C. chapter 135; (2) For-hire motor carrier, exempt under 49 U.S.C. chapter 135, but subject to chapters 311, 313, and 315, and using CMVs designed to transport 9 or more passengers (including the driver); (3) For-hire motor carrier, exempt under 49 U.S.C. chapter 135, but subject to chapters 311, 313, and 315, and using CMVs designed to transport 16 or more passengers (including the driver); (4) Private motor carrier of passengers (business); [13] and (5) Private motor carrier of passengers (non-business).[14] The private passenger carriers in categories (4) and (5) are reduced by 90 percent, as referred to in the previous paragraph and in the final rule's Regulatory Evaluation.[15]

TABLE 3—ESTIMATED NUMBER OF PASSENGER CARRIERS FULLY SUBJECT TO FINAL RULE BASED ON CARRIER POPULATION AS OF JUNE 2014

	For hire			Private (not for compensation)	
	Authorized	Exempt 9+ passengers	Exempt 16+ passengers	Business	Non-business
Carriers in 2014 [16]	5,945	296	180	2,605	3,673
Percentage Excluded	n/a	n/a	n/a	90%	90%
Carriers Affected by the Rule	5,945	296	180	261	367
Total Affected	7,049				

[9] *www.whitehouse.gov/omb/circulars_a004_a-4.*

[10] The FMCSA estimate for calendar year 2013 is $19.5 million. The fatal crash estimate is based on the current VSL of $9.2 million, plus other cost elements, such as injuries, medical, emergency services, property damage, pollution, and delay. See Appendix A—Motorcoach Crash Cost Estimation Methodology at the end of the final Regulatory Evaluation for a detailed analysis of this estimate. Source: Zaloshnja, E. and Miller, T. (2006). ''Unit Costs of Medium and Heavy Truck Crashes,'' Final Report for FMCSA, Federal Highway Administration. Accessed December 16, 2013, at: *http://mcsac.fmcsa.dot.gov/documents/Dec09/UnitCostsTruck%20Crashes2007.pdf.*

[11] The first full year during which the rule is expected to be in effect is 2017.

[12] Defined at 49 CFR 390.5.

[13] Defined at 49 CFR 390.5.

[14] Defined at 49 CFR 390.5.

[15] See the final rule's Regulatory Evaluation in the docket.

[16] The count of passenger carriers in the first row of Table 3 is 12,699. This count is greater than the count of the unique number of passenger carriers (11,183, based on the same source data) because carriers operating in more than one of the roles presented in Table 3 are counted here as distinct carriers for each role. This approach potentially overstates the number of affected carriers, depending on the degree to which carriers engaged in multiple roles divide driver and vehicle time between roles.

The Regulatory Evaluation in the docket estimates that 7,049 passenger carriers will be affected by this rule in 2017: (1) 5,945 authorized for-hire (they have operating authority from FMCSA), (2) 296 exempt 9+ for-hire motor carriers, (3) 180 exempt 16+ for-hire motor carriers, (4) 261 private business motor carriers, and (5) 367 private non-business motor carriers.

The Regulatory Evaluation considers a baseline no-action alternative (Option 1) and two regulatory options (Options 2 and 3). The threshold analysis considers three scenarios [17] intended to capture the possible variations in leasing frequency. The scenarios are based on the frequency with which the average passenger carrier with 6.6 power units [18] leases other passenger-carrying power units. The rates are: (1) Low frequency, (2) medium frequency, and (3) high frequency. No commenter took issue with the Agency's three-tier estimates of leasing volume. The final rule, therefore, retains the NPRM's assumptions about low-, medium-, and high-frequency leasing. The frequency assumptions are listed below in Table 4.

TABLE 4—TOTAL LEASES PER YEAR

	Lease frequency			Notes
	Low	Medium	High	
Peak Leases Per Month	4	8	16	
Peak Months	4	4	4	May–August.
Off-Peak Leases Per Month	2	4	8	
Off-Peak Months	8	8	8	September–April.
Total	32	64	128	(8 × 4) + (4 × 8).

Source: FMCSA Commercial Passenger Carrier Safety Division staff experience and contacts with industry.

Estimated Costs of the Final Rule

The estimated costs of the final rule are presented in three parts: (1) The annual cost to active passenger carriers; (2) the one-time cost in year one; and (3) the annual cost for passenger carriers with original charter contracts to notify the charter party within 24 hours after hiring a subcontractor. The first part is an estimate of the four cost components mentioned above—(a) lease documentation, (b) lease copying, (c) lease receipt documentation, and (d) vehicle marking. Table 5 below [19] summarizes the costs.

TABLE 5–BREAKOUT OF COSTS OF THE RULE IN 2017

	Option 3			Notes
	Low	Medium	High	
Lease Documentation	$1,648,000	$3,221,000	$6,368,000	$6.54 × 492,578.
Lease Copying	76,000	148,000	292,000	0.30 × 492,578.
Lease Receipt Copy	151,000	296,000	584,000	0.60 × 492,578.
Vehicle Marking	10,000	20,000	39,000	0.04 × 492,578.
Cost to All Carriers in 2017	1,885,000	3,685,000	7,283,000	Sum of the above 4.
One-Time Cost to All-Carriers	9,889,000	19,329,000	38,209,000	Lease Negotiation.
Annual Cost to Notify Charter Parties	401,000	795,000	1,581,000	Charter Party Notification.
	Option 3			Notes
	Low	Medium	High	
Lease Documentation	$1,648,000	$3,221,000	$6,368,000	$6.54 × 492,578.
Lease Copying	76,000	148,000	292,000	0.30 × 492,578.
Lease Receipt Copy	151,000	296,000	584,000	0.60 × 492,578.
Vehicle Marking	2,016,000	3,941,000	7,790,000	8.00 × 492,578.
Cost to All Carriers in 2017	3,891,000	7,606,000	15,034,000	Sum of the above 4.
One-Time Cost to All-Carriers	9,889,000	19,329,000	38,209,000	Lease Negotiation.
Annual Cost to Notify Charter Parties	401,000	795,000	1,581,000	Charter Party Notification.

The second part is the one-time cost of lease negotiation (from Tables 7, 8, and 9 in the final rule's Regulatory Evaluation).[20] The third part is an estimate of the cost to passenger carriers to notify contracted passenger groups (from Table 10 in the final rule's Regulatory Evaluation).[21] As mentioned above, this cost applies to a small proportion of the impacted population of passenger carriers. The *estimated cost of the final rule* is thus the sum of these three parts.

The annualized costs of the rule discounted at seven percent for Options 2 and 3 for low-, medium-, and high-leasing frequency for the period from 2017 through 2026 are given in Table 1 of the Executive Summary above. For preferred Option 2 given medium-leasing frequency, the annualized cost over the period is $8.0 million.

The ten-year estimated costs of Option 2 are summarized in Table 12 of

[17] Scenarios determined by FMCSA experts and contacts with industry.

[18] See Section 2.3 of this final rule's Regulatory Evaluation for detail; the estimate of average passenger carriers operating of 6.6 power units is derived from MCMIS and SMS snapshots as of June 20, 2014.

[19] Costs, benefits, and net benefits are not shown for the no-action (Option 1) alternative, as they are zero in all instances.

[20] See the final rule's Regulatory Evaluation in the docket.

[21] Ibid.

the final rule's Regulatory Evaluation (a set of nine tables).[22] The costs are calculated for each of the three leasing frequency scenarios (low, medium, high), at zero-percent (not discounted), three-percent, and seven-percent discount rates ($9 = 3 \times 3$). The total estimated ten-year cost for the low-frequency scenario, not discounted, is $35.1 million. The total estimated ten-year cost for the low-frequency scenario, at the three-percent discount rate is $31.9 million, and at a seven-percent discount rate is $28.6 million. Under the medium-frequency scenario, not discounted, the ten-year cost is $68.8 million. Under the medium-frequency scenario, at the three-percent discount rate the ten-year cost is $62.5 million, and at a seven percent discount rate is $56.0 million. Under the high-frequency scenario, not discounted, it is $136.0 million, at the three percent discount rate it is $123.5 million, and at a seven percent discount rate is $110.6 million. Table 12 of the final rule's Regulatory Evaluation provides a full breakdown by year for all components of the costs for the nine scenarios at low, medium, and high lease and subcontract agreement frequencies, and on not discounted, three-percent discounted, and seven-percent discounted bases.

Estimated Benefits and Threshold Analysis Results

The Regulatory Evaluation develops a threshold analysis. Fatal motorcoach crashes are valued at different amounts for each year from 2017 through 2026 because the VSL, the key component of the cost of a fatal crash, increases at a rate of 1.18 percent annually.

The average cost of a fatal motorcoach crash, which has an average of 2.09413 equivalent statistical lives lost,[23] is estimated at $19,500,000 (in 2013 dollars), $19,266,000 of which is the monetized quality-adjusted life-year (QALY). The remaining $234,000 is comprised of medical costs, emergency services, property damages, lost productivity from roadway congestion, and environmental costs. It is assumed that the VSL—and thus the QALY component—increases at a rate of 1.18 percent annually. By 2017, the QALY component (in 2013 dollars) increases from $19,266,000 to $20,192,000 ($\$20{,}192{,}000 = \$19{,}266{,}000 \times (1.0118^4)$). Together with the remaining $234,000 in costs, the cost of a fatal crash in 2017 is estimated to be $20,426,000 in 2013 dollars ($20,426,000 = $20,192,000 + $234,000). This cost increases analogously for the next nine years from 2018 through 2026. For example, in 2018, the cost is $20,664,000, which is $20,192,000 (the QALY costs in 2017) times 1.0118, then adding on the $234,000.

For each year, the cost of the rule that year is divided by the cost of a fatal crash in that year. For example, in 2017, for Option 2, not discounted and at low-leasing frequency, the cost is estimated at $12,175,000 (from Table 12 of the final rule's Regulatory Evaluation, for 2017, second column, last row of the first part of the table), and the cost of a crash is estimated at $20,426,000 (from the previous paragraph), so for 2017, a reduction of 0.597 fatal crashes (about sixty percent of a fatal crash, or alternately 1.25 fatalities) is necessary for the costs of the rule to be covered (0.597 crashes = $12,175,000 cost ÷ $20,426,000 cost per fatal crash; 1.25 fatalities = 2.09413 fatalities per fatal crash × 0.597 fatal crashes). For 2018, the cost is estimated at $2,335,000 (from Table 12 of the final rule's Regulatory Evaluation, for 2018, third column, last row of the first part of the table), and the cost of a crash at $20,664,000 (from the last paragraph), so for 2018, 0.1130 fatal crashes, equivalent to 0.24 fatalities, must be prevented to offset the costs of the rule (0.1130 crashes = $2,335,000 cost ÷ $20,664,000 cost per fatal crash; 0.24 fatalities = 2.09413 fatalities per fatal crash × 0.1130 fatal crashes). Remember, there is a large decrease after the first year because the one-time cost of negotiation is no longer in effect. This process is analogous for the remaining eight years of the projection. The ten individual annual fatal crash reductions (and corresponding number of fatalities prevented) that are necessary to achieve cost neutrality in each year are then summed up to arrive at the total crash reduction needed to achieve cost neutrality over the ten-year period spanning 2017 through 2026. In the case of Option 2 at medium-leasing frequency, this amounts to 3.24 crashes over ten years, which the Agency rounds up to 4 in the summary discussion following Table 2 above. This process is independent of the discount rate as discounting adjusts costs and benefits by equal proportions, leaving the ratio of the two unchanged. Table 6 below summarizes these necessary crash reductions and corresponding number of statistical fatalities prevented, similarly to as in Table 2 above, with an added column showing the corresponding ten-year cost estimates under each scenario.

TABLE 6—THRESHOLD ANALYSIS: SAFETY BENEFITS NECESSARY TO OFFSET THE COSTS OF THE RULE

Option	Lease frequency	Ten-year costs (in millions of 2013$, not discounted)	Prevented fatal crashes necessary for cost-neutrality	Prevented fatalities necessary for cost-neutrality
2 (Agency-Selected Option)	Low	$35.1	1.65	3.46
	Medium	68.8	3.24	6.78
	High	136.0	6.41	13.42
3	Low	57.3	2.68	5.61
	Medium	112.0	5.25	10.99
	High	221.6	10.38	21.74

Please review the final rule's Regulatory Evaluation in docket FMCSA–2012–0103 for a thorough discussion of the assumptions the Agency made, the public comments the Agency considered, the options/alternatives considered in developing this final rule, the analysis conducted, and the details for the estimates presented here.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.

[22] Ibid.

[23] For an explanation of how the average equivalent statistical lives lost and average cost of a fatal motorcoach crash were calculated, see Appendix A of the Regulatory Evaluation for this final rule in the docket.

L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, September 27, 2010), requires FMCSA to perform a detailed analysis of the potential impact of the final rule on small entities. Accordingly, DOT policy requires that agencies shall strive to lessen any adverse effects on these businesses and other entities. Each final regulatory flexibility analysis [24] required under this section must contain the following:

Final Regulatory Flexibility Analysis (FRFA)

(1) A statement of the need for, and objectives of, the rule.

Passenger carriers lease, rent, interchange, and loan passenger-carrying CMVs to each other with great frequency, on short notice, and often for short periods of time and with minimal legal formality. As a result, it is difficult for the general public and enforcement personnel to determine which carrier is actually operating the passenger-carrying CMV and responsible for compliance with safety regulations. The written lease required by this final rule for most transactions involving the renting, leasing, interchanging, and loaning of passenger carrying CMVs would eliminate any confusion about who is responsible for crashes and enable the Agency to identify the appropriate motor carrier operating the vehicle and thus responsible for its safe operation. Similarly, the notification requirement for subcontracted passenger charter service would promote passenger awareness of the lessor/lessee relationship in the event that an original charter contract holder subcontracts some or all of a charter group's service to another carrier.

This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. For FMCSA's authority to take this action, see the section earlier in this final rule titled, ''III. Legal Basis for the Rulemaking.''

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

The public comments raised no significant issues in response to the IRFA.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

The Chief Counsel for Advocacy of the Small Business Administration filed no comments to the proposed rule. Thus, FMCSA has nothing to respond to from the Chief Counsel for Advocacy of the Small Business Administration.

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Generally, motor carriers are not required to report their annual revenue to the Agency, but all carriers are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business, given the Small Business Administration's (SBA) prescribed revenue threshold of $15 million (See the U.S. Small Business Administration's ''Table of Small Business Size Standards Matched to North American Industry Classification Codes'' for Subsector 485, Transit and Ground Transportation). In order to produce this estimate, it is necessary to determine the average annual revenue generated by a single power unit.

With regard to passenger-carrying vehicles, the Agency conducted an analysis to estimate the average number of power units for a small entity earning $15 million annually, based on an assumption that passenger carriers generate annual revenues of $161,000 per power unit. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($186,000). A lower estimate was used because passenger-carrying CMVs generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks,[25] and it is therefore assumed that they would generate less revenue per power unit on average. The analysis concluded that passenger carriers with 93 power units or fewer ($15,000,000 divided by $161,000/power-unit = 93.2 power units) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 power units. The results show that about 97% of active passenger carriers have 93 power units or less.[26] Therefore, the overwhelming majority of passenger carriers would be considered small entities to which this final rule would apply.

(5) A description of the reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of the report or record.

The exact regulatory burden of this final rule is difficult to estimate considering the lack of specific information on the prevalence and frequency of vehicle leasing among passenger carriers. There is also the added complexity of the wide variation in size, business model, and fleet vehicle configuration. The Agency, however, believes that the practical regulatory burden of this final rule will be relatively small. Written documentation of business transactions and retention and availability of work documents (*i.e.,* lease agreements and receipts) are hallmarks of professional management. Additionally, businesses are required to prepare, retain, and submit receipts of various business transactions to the Internal Revenue Service and other agencies. Furthermore, the practical requirements of the final rule (*i.e.,* lease and receipt preparation, copying, storage, and vehicle marking) are easily satisfied through a wide array of flexible options. The Agency estimates that the financial burden of the final rule, per carrier (per leased power unit), is not significant. As stated above, the estimated per unit cost of a lease agreement, in terms of the lessee and the lessor, is $7.48, which is the sum of 4 cost components: (1) Lease documentation ($6.54), (2) Lease copying ($0.30), (3) Receipt documentation ($0.60) and (4) Leased vehicle marking ($0.04). FMCSA does not believe this per-unit cost to be significant. Furthermore, this per-unit cost may effectively be lower, if a durable marking sign were to be re-used multiple times, a receipt were combined with a lease, and/or the preparation time for a lease were reduced through the use of generic or master-type lease forms. In addition, and as stated above, the analysis assumes a one-time lease negotiation cost, which the Agency believes is minimal, considering that several leases can be combined and negotiated as one (master) lease and many lease forms are available online and do not require legal assistance.

[24] ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, May 2012'' at *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.*

[25] FMCSA Commercial Motor Vehicle Facts—March 2013.

[26] MCMIS snapshot as of January 23, 2015.

The final rule also includes a notification requirement for passenger carriers with original charter contracts that lease vehicles from a subcontractor carrier to perform the charter. In such instances, the original charter contract holder must notify the charter party within 24 hours after hiring the subcontractor that the transportation will be provided by the subcontractor. The primary purpose of this notification provision is to further reduce the chance of confusion among passengers as to the carrier responsible for regulatory compliance (the lessee). While the marking requirement included in this rule aids in this purpose, passengers may overlook the smaller placard required by § 390.21(f)(2) and assume that a different carrier is providing the transportation. The requirement included in this final rule helps ensure that the charter group's representative will be informed of the nature of the subcontract agreement, thereby promoting passenger awareness should passengers overlook the placard on the vehicle. Compliance with this requirement is projected to involve minimal time and cost on a per-subcontracted-charter basis, constituting 5 minutes of office staff time to send an email notification. Carriers which routinely utilize such subcontract agreements (that is, at the medium assumed frequency involving 64 charter group notifications per year) are projected to incur a 5.33 hour annual compliance burden (5.33 hours = 64 notifications per year × 5 minutes per notification ÷ 60 minutes per hour). Charter service is a relatively greater component of fleet VMT for the smallest carriers than that of the larger carriers.[27] Therefore while the analysis presented in Table 10 of this final rule's Regulatory Evaluation assumes that half of passenger carriers subject to the final rule utilize subcontract agreements, it is estimated that approximately 75 percent of small entities subject to this final rule will incur this 5.33 hour burden (76.7 percent is the average percentage of motorcoach service mileage categorized as charter, tour, and sightseeing in Figure 2.5 of the ABA's Motorcoach Census 2013 among fleet sizes 99 and fewer (the closest proxy to the group constituting carriers with 93 or fewer PUs), weighted by the vehicle mileage according to respective fleet size as shown in Table 2–4 of the same ABA publication).[28] The Agency considers it a conservatively high estimate that 75 percent of small entities subject to this final rule will incur this 5.33 hour burden for the following reasons: (1) It is assumed that all charter, tour, and sightseeing VMT are incurred in the course of subcontracted service agreements; (2) it assumes one vehicle per subcontract agreement.

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Loretta Bitner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement 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–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

C. Federalism (Executive Order 13132)

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

D. Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $151.1 million (which is the value of $100 million in 2012 after adjusting for inflation) or more in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

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

F. Executive Order 13045 (Protection of Children)

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

G. Executive Order 12630 (Taking of Private Property)

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

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This final rule does not require the collection of any personally identifiable information.

[27] Motorcoach Census 2013, ABA, *http://www.buses.org/files/Foundation/Census2013.pdf* (accessed February 13, 2015). "Fixed-route services' share of motorcoach service mileage increases with fleet-size category, accounting for only 10.4% of mileage for the smallest carriers to 79.5% for the largest carriers."

[28] The full calculation of the 76.7 percent value is documented in this final rule's Regulatory Evaluation.

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

I. Executive Order 12372 (Intergovernmental Review)

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

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This final rule amends two OMB approved information collections titled ''Commercial Motor Vehicle Marking Requirements,'' OMB No. 2126–0054, and ''Lease and Interchange of Motor Vehicles,'' OMB No. 2126–0056. The annual burdens for these information collections are estimated to be about 14,000 hours (rounded up to the next higher thousand from the 13,543 hour value shown in the CMV Marking PRA supporting statement) and 602,500 hours (rounded up to the nearest hundred from the 602,435 hour value shown in the Lease and Interchange of Vehicles PRA supporting statement).

Lease Preparation Information Collection Analysis

For lease preparation, the Agency estimates the cost of obtaining and preparing a standard generic template that is freely available on the Internet, or through trade organizations or existing passenger carriers. The total number of pages of one such template is two, which is the number used in the Agency's estimate. The estimated annual number of burden hours depends on the estimated annual frequency of leasing. Assuming lease frequency is medium, the Agency assumes that the average passenger carrier (6.6 power units) will engage in 64 lease agreements per year. This estimate consists of 8 leases per peak month (May through August) and 4 leases per off-peak month (September through April). The total annual number of leases estimated in 2017 is 492,578—that is, 64 lease agreements for each the 7,518 carriers estimated to be affected by this rule in 2017 (492,578 = 64 × 7,518 plus 11,426 leases for Greyhound). The Agency assumes 5 minutes of documentation time per lease agreement. This amounts to 5 and ⅓ hours per carrier per year (5⅓ = 64 × 5 ÷ 60) and amounts to an industry total of about 41,048 hours (41,048.2 = 492,578 × (5 ÷ 60). This total is multiplied by two, since the cost burden applies to both the lessees and the lessors. Thus, the total is 82,096 hours (82,096 = 41,048.2 × 2). Table 2 of the final rule's supporting statement for OMB Control Number 2126–0056, ''Lease and Interchange of Vehicles'' presents these calculations.

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

Notification

Under the final rule, when a passenger carrier with a charter contract leases vehicles from a subcontractor carrier to perform the charter, it must notify the charter party within 24 hours after hiring the subcontractor that the transportation will be provided by the subcontractor.

The estimated annual number of passenger carriers that lease vehicles from a subcontractor to perform a charter is estimated to be 3,759 in 2017, the first year of the rule. It is assumed that virtually all of those carriers will elect to use the electronic notification option, since it is the most convenient, quickest, and least costly. The average number of notifications per year is 242,996 (3,759 carriers × 64 notifications per carrier + 2,420 notifications specific to Greyhound). Given the 5 minutes needed to complete the notification, this amounts to 5.33 hours per carrier per year (excluding Greyhound from this average as it is an outlier) for the 3,759 carriers and an industry total of 20,250 hours (20,250 = 242,996 notifications × 5 minutes per notification ÷ 60 minutes per hour).

OMB No. 2126–0056, New IC–2 Summary

Annual Burden Hours (in 2017): 602,500 [602,435 = 7,518 (master lease) + 492,572 (negotiation) + 82,095 (documentation) + 20,250 (charter group notification)]

Annual Number of Respondents (in 2017): 2,887,000 [2,886,912 = 7,518 carriers × up to 6 people per lease × 64 leases annually per carrier]

Annual Number of Responses (in 2017): 2,706,000 [2,705,796 = 492,572 (leases) + 985,144 (transcription of lease agreements) + 985,144 (transcription of receipts) + 242,996 (charter group notification)]

OMB No. 2126–0056, Total for Both IC–1 and New IC–2

Estimated Average Total Annual Burden Hours (in 2017): 677,000 [= 74,500 + 602,500]

Estimated Annual Number of Respondents (in 2017): 2,923,000 [= 36,000 + 2,887,000]

Estimated Annual Number of Responses (in 2017): 3,384,000 [= 678,000 + 2,706,000]

Passenger-Carrying CMV Marking Information Collection Analysis

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

OMB No. 2126–0054, New IC–2 Summary

Annual Burden Hours (in 2017): 14,000

Annual Number of Respondents (in 2017): 5,000

Annual Number of Responses (in 2017): 36,000

OMB No. 2126–0054, Total for Both IC–1, New IC–2, and IC–3

Estimated Average Total Annual Burden Hours: 851,000

Estimated Annual Number of Respondents: 287,000

Estimated Annual Number of Responses: 1,928,000

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of this proposed rule to inform the traveling public and Federal, State, and local law enforcement officers to identify the passenger carrier responsible for safety, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. You may submit comments on the information collection burden addressed by this final rule to OMB. The OMB must receive your comments by June 26, 2015. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street NW., Washington, DC 20503. Please also provide a copy of your comments on the information collection burden addressed by this proposed rule to docket FMCSA–2012–0103 in *www.regulations.gov* by one of the four ways shown above under the **ADDRESSES** heading.

K. National Environmental Policy Act and Clean Air Act

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

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

Thus, the final action will not require an environmental assessment or an environmental impact statement.

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

L. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 390

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

The Final Rule

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

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; sections 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; and 49 CFR 1.87.

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

§ 390.5 Definitions.

* * * * *

Interchange means—

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

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

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

* * * * *

Lease, as used in § 390.21(f) and subpart F of this part, means a contract or arrangement in which a motor carrier grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, in exchange for compensation. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see § 376.2 of this subchapter.

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

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

* * * * *

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

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

* * * * *

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

* * * * *

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

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

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

* * * * *

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

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

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

§ 390.301 Applicability.

(a) *General.* Except as provided in paragraphs (b)(1) through (3) of this section, this subpart applies to the following actions, irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers:

(1) The lease of passenger-carrying commercial motor vehicles; and

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

(b) *Exceptions*—(1) *Financial leases.* This subpart does not apply to a contract (however designated, *e.g.,* lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, etc.) between a motor carrier and a financial organization or a manufacturer or dealer of passenger-carrying commercial motor vehicles (provided the financial organization, manufacturer or dealer is not itself a motor carrier) allowing the motor carrier to use the passenger-carrying commercial motor vehicle.

(2) *Common Ownership and Control.* (i) Passenger-carrying commercial motor vehicles may be exchanged or interchanged without leases or receipts between or among commonly owned and controlled motor carriers, provided the driver of each such carrier carries, and upon demand of a Federal, State, or local law enforcement official produces, a summary document listing:

(A) All motor carriers subject to common ownership and control, including their USDOT numbers, business addresses, and telephone numbers;

(B) The name and telephone numbers of the motor carrier operating the vehicle for the current trip;

(C) The vehicle used for the trip, identified by the last 6 digits of the Vehicle Identification Number (VIN);

(D) The trip, identified by the carrier's charter number, run number, or other means specifically to identify the trip; and

(E) The date of the trip.

(ii) Each commercial motor vehicle exchanged or interchanged pursuant to this paragraph (b)(2) must be marked as required in § 390.21(f) to show the name of the responsible motor carrier operating the vehicle.

(3) *Revenue pooling.* (i) Passenger-carrying commercial motor vehicles may be exchanged or interchanged without leases or receipts between or among motor carriers that are party to a revenue pooling agreement approved by the Surface Transportation Board (STB) in accordance with 49 U.S.C. 14302, provided the driver of each vehicle operating under the agreement carries, and upon demand of a Federal, State, or local law enforcement official displays:

(A) The number and date of the STB decision approving the revenue pooling agreement and the names of the parties to the agreement; and

(B) A summary document showing:

(*1*) All routes covered by the pooling agreement;

(*2*) The carrier or carriers authorized to operate on each route or portion of a route and the telephone numbers of each carrier; and

(*3*) All points of origin, destination, or interchange (if interchanges are part of the agreement).

(ii) Each commercial motor vehicle exchanged or interchanged pursuant to this paragraph (b)(3) must be marked as required in § 390.21(f) to show the name of the responsible motor carrier operating the vehicle.

(c) *Penalties.* If the use of a passenger-carrying commercial motor vehicle is conferred on one motor carrier subject to this subpart by another such motor carrier without a lease, interchange agreement, or other agreement, or pursuant to a lease, interchange agreement, or other agreement that fails to meet all applicable requirements of subpart F, both motor carriers shall be subject to a civil penalty.

§ 390.303 Written lease and interchange requirements.

Except as provided in § 390.301(b) and paragraph (a)(2) of this section, a motor carrier may transport passengers in a leased or interchanged commercial motor vehicle only under the following conditions:

(a) *In general*—(1) *Written lease or agreement required.* There shall be in effect either:

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

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

(iii) A written agreement meeting the conditions of paragraphs (b) through (f) of this section and governing the renting, borrowing, or loaning, or similar transfer of a passenger-carrying commercial motor vehicle from another party. The provisions of the agreement shall be adhered to and performed by the motor carrier lessee.

(2) *Exception.* When an event occurs while passengers are on a passenger-carrying commercial motor vehicle (*e.g.,* a crash, the vehicle is disabled, the driver is ill) that requires a motor carrier immediately to obtain a replacement vehicle from another motor carrier, the two carriers may postpone the writing of the lease or written agreement for the replacement vehicle for up to 48 hours after the time the lessee takes exclusive possession and control of the replacement vehicle. The driver of the vehicle must carry for the duration of the lease, and upon demand of an enforcement official produce, a document signed and dated by the lessee's driver or available company official stating: ''[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.303(a)(2).'' The lessee must also mark the vehicle in accordance with § 390.21(f) before operating it.

(b) The written lease, interchange agreement, or other agreement required by paragraph (a)(1) of this section shall contain:

(1) *Vehicle identification information.* The name of the vehicle manufacturer, the year of manufacture, and at least the last 6 digits of the Vehicle Identification Number (VIN) of each passenger-carrying commercial motor vehicle transferred between motor carriers pursuant to the lease, interchange agreement, or other agreement.

(2) *Parties.* The legal name and telephone number of the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the legal name and telephone number of the motor carrier providing the equipment (lessor), and signatures of both parties or their authorized representatives.

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

(4) *Exclusive possession and responsibilities.* (i) A clear statement that the motor carrier obtaining the passenger-carrying commercial motor vehicle (the lessee) has exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the lease, interchange agreement, or other agreement. Such lease or written agreement shall further provide that the lessee shall assume complete responsibility for operation of the passenger-carrying commercial motor vehicle and compliance with all applicable Federal regulations for the duration of the lease, interchange agreement, or other agreement.

(ii) Provision may be made in the lease, interchange agreement, or other agreement for considering the lessee as the owner of the equipment for the purpose of subleasing it to other motor carriers of passengers during the period of such lease or agreement. In the event of a sublease, all of the requirements of this section shall apply to the parties to the sublease.

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

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

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

(d) *Record retention.* Copies of each lease (including the alternative statement required by § 390.303(a)(2)), interchange agreement, or other agreement, and the receipts required by paragraph (e) of this section, shall be retained by the lessor and lessee for one year after the expiration date of the lease, interchange agreement, or other agreement. The summary documents required by § 390.301(b)(2) and (3) shall be retained by the motor carrier performing the trip identified in each such document for one year after the final date of such trip.

(e) *Receipts for passenger-carrying commercial motor vehicle.* Except as otherwise provided in § 390.301(b)(2) and (3), receipts specifically identifying the passenger-carrying commercial motor vehicle to be leased or otherwise temporarily transferred and stating the date, time of day, and location where possession is transferred, shall be given as follows:

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

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

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

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

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

(2) Except as otherwise indicated in paragraph (a)(2) of this section and in this paragraph, a copy of the lease, interchange agreement, or other agreement shall be carried on the passenger-carrying commercial motor vehicle.

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

(ii) In lieu of a copy of an interchange agreement, a written statement meets the requirements of this paragraph if it identifies the parties to the agreement by company name and USDOT number, states the use to be made of the passenger-carrying commercial motor vehicle and the duration of the agreement, is signed by the parties' authorized representatives, and is carried on the passenger-carrying commercial motor vehicle.

§ 390.305 Notification.

Within 24 hours after a motor carrier of passengers originally hired to provide charter transportation of passengers subcontracts, *i.e.,* leases, the services of another motor carrier of passengers to provide that transportation, the motor carrier originally chartered by the tour operator or passenger group must notify the operator or group, or their representative(s), about the role of the subcontractor and provide the legal name, USDOT number, and telephone number of the subcontracted, *i.e.,* leased, motor carrier of passengers.

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