## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Part 390

**[Docket No. FMCSA–2012–0103]**

**RIN 2126–AC07**

## Lease and Interchange of Vehicles; Motor Carriers of Passengers

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

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

**SUMMARY:** FMCSA proposes to amend its May 27, 2015, *Lease and Interchange of Vehicles; Motor Carriers of Passengers* final rule in response to petitions for rulemaking and extend the January 1, 2019, compliance date to January 1, 2021. Today's proposal would narrow the applicability of the rule, by excluding from the definition of lease and the associated regulatory requirements, certain contracts and other agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with FMCSA. For passenger carriers that would remain subject to the leasing and interchange requirements, FMCSA proposes to return the bus marking requirement to its July 1, 2015, state with slight modifications to add references to leased vehicles; revise the delayed writing of a lease during certain emergencies; and remove the 24-hour lease notification requirement. This proposal would be a deregulatory action as defined by Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

**DATES:** Comments must be received by November 19, 2018.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2012–0103 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** 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:** This notice of proposed rulemaking (NPRM) is organized as follows:

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Q. Environment (NEPA, CAA, E.O. 12898 Environmental Justice)

## I. Public Participation and Request for Comments

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

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2012–0103), indicate the specific section of this document to which each comment applies, and provide a reason for each recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that the Agency can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2012–0103, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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

### *B. Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble

as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2012–0103, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

*D. Waiver of Advance Notice of Proposed Rulemaking*

Under 49 U.S.C. 31136(g)(1), as amended by section 5202 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, for any regulatory proposal likely to lead to the publication of a major rule,. FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), unless the Agency finds good cause pursuant to sec. 31136(g)(3) that an ANPRM is impracticable, unnecessary, or contrary to the public interest. For purposes of compliance with the FAST Act, the Agency has adopted the Congressional Review Act's definition of ''major rule'' (5 U.S.C. 804(2)), namely a rule that has an annual effect on the economy of $100 million or more. This final rule is not a major rule by that standard and 49 U.S.C. 31136(g)(1) therefore does not apply. Even if it were a major rule, however, FMCSA would find an ANPRM to be unnecessary.

On August 31, 2016, FMCSA published a notice of intent (2016 NOI) announcing that four potential changes to the final rule were under consideration and its plan to issue a rulemaking notice to reconsider those four areas of concern (81 FR 59951). The four changes are discussed in more detail later in this proposal.

FMCSA held a public roundtable on October 31, 2016 to discuss the four issues outlined in the 2016 NOI. The stakeholders represented spoke about those issues and provided information on how to address them. All public comments were placed in the docket of this rulemaking.

On June 16, 2017, FMCSA published a proposal (2017 proposal) in the **Federal Register** (82 FR 27768). The 2017 proposal provided information about FMCSA's planned revisions to the 2015 final rule and requested public comment on the proposed revisions. The 2017 proposal and comments received are discussed in more detail below.

The Agency's intent to issue this NPRM has been announced repeatedly, with opportunities for stakeholder comment available at each stage. Therefore, FMCSA believes a further opportunity to provide comments before issuance of this NPRM would be unnecessary.

*E. Comments on the Collection of Information*

If you have comments on the collection of information discussed in this NPRM, you must also send those comments to the Office of Information and Regulatory Affairs at Office of Management and Budget (OMB). To ensure that your comments are received on time, the preferred methods of submission are by email to *oira_submissions@omb.eop.gov* (include docket number ''FMCSA–2012–0103'' and ''Attention: Desk Officer for FMCSA, DOT'' in the subject line of the email) or fax at 202 395 6566. An alternative, though slower, method is by U.S. Mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, FMCSA, DOT.

## II. Acronyms and Abbreviations

| | |
|---|---|
| 1935 Act ... | Motor Carrier Act of 1935. |
| 1984 Act ... | Motor Carrier Safety Act of 1984. |
| ABA ..... | American Bus Association. |
| BLS ..... | Bureau of Labor Statistics. |
| CMV ..... | Commercial Motor Vehicle. |
| DOT ..... | United States Department of Transportation. |
| E.O ..... | Executive Order. |
| FMCSA ..... | Federal Motor Carrier Safety Administration. |
| FMCSRs ... | Federal Motor Carrier Safety Regulations, 49 CFR parts 350 through 399. |
| FR ..... | Federal Register. |
| L&I ..... | Licensing and Insurance. |
| MAP–21 ... | Moving Ahead for Progress in the 21st Century Act. |
| MCMIS ..... | Motor Carrier Management Information System. |
| NOI ..... | Notice of Intent. |
| NPRM ..... | Notice of Proposed Rulemaking. |
| NTSB ..... | National Transportation Safety Board. |
| OMB ..... | Office of Management and Budget. |
| PRA ..... | Paperwork Reduction Act of 1995. |
| RFA ..... | Regulatory Flexibility Act. |
| SBA ..... | Small Business Administration. |
| SOC ..... | Standard Occupational Classification. |
| STB ..... | Surface Transportation Board. |
| UMA ..... | United Motorcoach Association. |
| VIN ..... | Vehicle Identification Number. |

## III. Executive Summary

*A. Purpose of the Proposed Rule*

Based on a review of the petitions for reconsideration and stakeholder input, FMCSA proposes to revise its regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs). This proposed rule would exclude motor carriers that operate CMVs and have active operating authority registration with FMCSA to transport passengers—hereafter called ''authorized carriers'' or ''carriers with operating authority'' for the sake of simplicity—from the lease and interchange requirements. For leases between authorized carriers, because FMCSA believes their identity can be determined by other means, the assignment of responsibility for regulatory compliance would require no additional regulatory obligations.

FMCSA also proposes to extend the compliance date for the 2015 final rule to January 1, 2021, to give the Agency sufficient time to complete this rulemaking.

*B. Summary of the Major Provisions*

The proposed rule would (1) revise the definition of *lease* to exclude authorized carriers that grant the use of their vehicles to each other; (2) retain the provisions adopted in 2015 to identify the party responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) when at least one of the passenger carriers involved in the lease or interchange of CMVs is not an authorized carrier; (3) ensure that a lessor subject to the proposed rule, *i.e.,* the entity providing the vehicle, surrenders control of the CMV for the full term of the lease or temporary exchange of CMVs; (4) remove the May 27, 2015 final rule's marking requirements and return the marking rule in 49 CFR 390.21(e), with slight modifications; (5) revise the provision allowing a delay in the completion of a lease during certain emergencies; and (6) remove the requirement that motor carriers that are hired to provide charter transportation and lease a CMV from another carrier notify the tour operator or group of passengers about the lease and the lessor. FMCSA requests comments to identify other methods to achieve the safety objectives of this rulemaking.

*C. Costs and Benefits*

The Agency estimates that annually 8,215 motor carriers of passengers and

537,134 passenger-carrying CMV trips would experience regulatory relief under the proposed rule. The Agency estimates that approximately 75 percent of these passenger carriers and CMV trips would experience full regulatory relief and would no longer be subject to the lease and interchange requirements of the 2015 final rule. The remaining 25 percent of these passenger carriers and CMV trips would experience partial regulatory relief and remain subject to reduced lease and interchange requirements, compared to those of the 2015 final rule.

As presented in Table 1, the Agency estimates that the proposed rule would result in a cost savings of $75.1 million on an undiscounted basis, $66.5 million discounted at 3 percent, and $57.5 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to a 10-year cost savings of $7.8 million at a 3 percent discount rate and $8.2 million at a 7 percent discount rate.

TABLE 1—SUMMARY OF THE TOTAL COST OF THE PROPOSED RULE

[In thousands of 2016$]

| Year | Passenger carriers experiencing regulatory relief under the proposed rule | Passenger-carrying CMV trips experiencing regulatory relief under the proposed rule | Undiscounted | | | Discounted | |
|---|---|---|---|---|---|---|---|
| | | | Lease and interchange costs [b] | Charter party notification costs | Total costs [a] | Discounted at 3% | Discounted at 7% |
| 2019 | 7,906 | 516,952 | ($25,298) | ($1,168) | ($26,467) | ($25,697) | ($24,736) |
| 2020 | 7,973 | 521,337 | (4,042) | (1,178) | (5,221) | (4,921) | (4,560) |
| 2021 | 8,041 | 525,758 | (4,077) | (1,188) | (5,265) | (4,819) | (4,298) |
| 2022 | 8,109 | 530,217 | (4,111) | (1,198) | (5,310) | (4,718) | (4,051) |
| 2023 | 8,178 | 534,714 | (4,146) | (1,208) | (5,355) | (4,619) | (3,818) |
| 2024 | 8,247 | 539,249 | (4,182) | (1,219) | (5,401) | (4,523) | (3,599) |
| 2025 | 8,317 | 543,822 | (4,217) | (1,229) | (5,446) | (4,428) | (3,392) |
| 2026 | 8,387 | 548,434 | (4,252) | (1,239) | (5,493) | (4,336) | (3,197) |
| 2027 | 8,459 | 553,085 | (4,289) | (1,250) | (5,539) | (4,245) | (3,013) |
| 2028 | 8,530 | 557,776 | (4,326) | (1,261) | (5,586) | (4,157) | (2,840) |
| Total | | | (62,946) | (12,139) | (75,084) | (66,463) | (57,504) |
| Annualized | | | | | (7,508) | (7,792) | (8,187) |

**Notes:**
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.

The regulatory evaluation for the 2015 final rule addressed the potential safety benefits of lease and interchange requirements for motor carriers of passengers.[1] There were insufficient data and empirical evidence to demonstrate a measurable quantitative relationship between lease and interchange requirements for passenger-carrying CMVs and improved safety outcomes such as reduced frequency and/or severity of crashes or reduced frequency of violations. Therefore, FMCSA performed a threshold analysis, also referred to as a break-even analysis, estimating the reduction in crashes that would need to occur as a consequence of the 2015 final rule in order for the benefits of the rule to exactly offset the estimated costs of the rule.

In considering the potential impact to safety benefits from today's proposed rule, the Agency notes that there remains insufficient data and empirical evidence to clearly demonstrate a measurable quantitative relationship between lease and interchange requirements for passenger-carrying CMVs and improved safety outcomes. Lease and interchange requirements for motor carriers of passengers improve the ability of the Agency and our State partners to attribute the inspection, compliance, enforcement, and safety data to the correct motor carrier and driver, allowing FMCSA and our State partners to more accurately identify unsafe carriers and initiate appropriate interventions. FMCSA believes that the lease and interchange requirements of the proposed rule are a less costly and burdensome regulatory approach than the requirements of the 2015 final rule, yet still enable safety officials and the general public to sufficiently identify the passenger carrier responsible for safety. Therefore, the Agency does not anticipate any change to safety benefits as a result of the proposed rule.

## IV. 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)).[2]

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

[1] U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). ''Final Rule, Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation.'' (Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation). May 2015. Available at: *https://www.regulations.gov/contentStreamer?documentId=FMCSA-2012-0103-0022&attachmentNumber=1&contentType=pdf* (accessed March 9, 2018).

[2] See *https://www.gpo.gov/fdsys/pkg/USCODE-2015-title49/pdf/USCODE-2015-title49-subtitleVI-partB-chap315.pdf.*

section, or chapter 51 or chapter 313 of this title'' [49 U.S.C. 31136(a)(5)].[3]

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)).[4]

This rule imposes legal and recordkeeping requirements consistent with the 1935 and 1984 Acts on certain for-hire and private passenger carriers that operate CMVs, to enable safety officials 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 proposed rule.

## V. Rulemaking History and Purpose

On September 20, 2013, FMCSA published an NPRM that 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 (78 FR 57822). This NTSB recommendation resulted from several investigations of bus crashes that occurred in 2008 (78 FR 57822, 57824–57826). Starting in 2011, FMCSA investigated bus companies operating unsafely along the I–95 corridor. That investigation uncovered additional problems and serious safety violations with other carriers. As Agency investigators tried to understand the relationships and links between bus companies operating in complex networks, they encountered significant difficulties in identifying the motor carriers responsible for regulatory compliance on numerous trips. Vehicles and drivers were found to be frequently rented, loaned, leased, interchanged, assigned, and reassigned with few records and little formality, which obscured the operational safety responsibility of many industry participants. Multiple affiliated entities shared drivers and vehicles within their network intentionally to avoid identification of the motor carrier responsible for safety management, and to conceal excessive and illegal driver work hours that resulted in fatigue-related crashes in some cases.

Investigators were eventually able to document multiple patterns of serious safety violations by three networks of businesses that deliberately structured their operations to evade Federal regulatory oversight. Each time FMCSA had shut them down in the past, the three networks re-created or reincarnated themselves. These companies, which together transported almost 2,000 passengers daily, showed flagrant disregard for public safety by using drivers without valid commercial driver's licenses or medical qualification certificates, failing to conduct required drug testing of drivers, allowing or requiring drivers to exceed the maximum number of driving hours, and operating buses that were mechanically unsafe and in disrepair. FMCSA shut down these three networks of bus operators after a time-consuming, complex and detailed review of their operations.

In response to an NPRM intended to better ensure the correct identity of the motor carrier responsible for the operation of a passenger-carrying vehicle, 12 parties submitted comments. On May 27, 2015, FMCSA published a final rule (2015 final rule) concerning the lease and interchange of passenger-carrying CMVs (80 FR 30164). Although several of the proposed regulations were revised in response to comments received in response to the NPRM, the motorcoach industry took exception to some of the requirements of the final rule. The Agency published several documents to respond to the industry objections. These documents are discussed in detail in the following section.

## VI. Petitions for Reconsideration and Subsequent Events

### *A. History of Petitions*

The American Bus Association (ABA) and United Motorcoach Association (UMA) filed a joint request for an extension of the June 26, 2015, deadline for the submission of petitions for reconsideration of the final rule. On July 1, 2015, FMCSA extended the deadline to August 25, 2015 (80 FR 37553).

The Agency ultimately received 37 petitions for reconsideration which have been filed in the public docket referenced above. In addition, 11 informal comments were received. Upon review of these requests, FMCSA concluded that some have merit. FMCSA, therefore, extended the compliance date of the final rule from January 1, 2017, to January 1, 2018, to allow the Agency time to complete its analysis and amend the rule where necessary (82 FR 13998, Mar. 16, 2016).

The petitioners argued and explained in more detail that FMCSA had taken a regulatory scheme from the trucking industry and applied it to the bus industry, which has a vastly different operating structure and liability regime. Moreover, the application of these truck regulations to the bus industry offered no additional protection to the public from illegal or unsafe bus operators.

Petitioners further stated that the final rule created an economic and regulatory burden for passenger carriers that already operate safely and have a high degree of compliance. By imposing lease requirements, some of the petitioners argued, the rule did not affect carriers that choose to violate the regulations, but instead burdened those who already operate safely and are in compliance. Another petitioner stated that, while it supported efforts to identify and address chameleon carriers or carriers that may try to operate under the cloak of another carrier, the final rule did not accomplish this goal and, in fact, provided a roadmap for irresponsible carriers to operate legally under the authority of another carrier.

One carrier stated that it had identified several instances where the final rule lacked sufficient clarity to enable it to comply, and that these issue areas affected all of its operations. The final rule also added administrative costs and reduced operational flexibility for charter and tour bus operations, which would, in the end, reduce connectivity and transportation options for the traveling public. Another carrier named two insurance companies that have restrictions in their policies that prohibit the use of non-owned equipment and non-employed drivers, which were major concerns of the NPRM and final rule.

On August 31, 2016, FMCSA published the 2016 NOI announcing that the following four potential changes to the final rule were under consideration:

(1) Exclusion of ''chartering'' from the definition of *lease* in 49 CFR 390.5. The 2015 rule merged the concepts of leasing with ''chartering'' (subcontracting or reassigning

[3] See *https://www.gpo.gov/fdsys/pkg/USCODE-2015-title49/pdf/USCODE-2015-title49-subtitleVI-partB-chap311-subchapIII-sec31136.pdf.*

[4] See *https://www.gpo.gov/fdsys/pkg/USCODE-2015-title49/pdf/USCODE-2015-title49-subtitleVI-partB-chap311-subchapIII-sec31133.pdf.*

contracts). Authorized carriers routinely subcontract or reassign contracts to other authorized carriers to handle demand surges, emergencies, or events that require more than the available capacity. Subcontractors or assignees with their own operating authority have traditionally assumed responsibility for their own vehicles and drivers. Under the 2015 rule, however, a passenger carrier that subcontracted or reassigned work to another carrier would be responsible for that second carrier's compliance with the regulations. Petitioners claimed that making a carrier responsible for the subcontractor's or assignees' vehicles, drivers, and liability would make most short-term subcontracts impossible.

(2) Amending the CMV requirements for the location of temporary markings for leased/interchanged vehicles (49 CFR 390.21(f), 390.303(f)). The petitioners argued that the frequent marking changes needed during leases or interchanges would be impractical and unnecessary because the information required is recorded on the driver's records of duty status for safety inspectors and safety investigators to review; carriers would have to depend completely on drivers to properly change vehicle markings dozens of times per day in remote locations; and it would be unlikely that a member of the public would understand the significance of the markings in the event that he or she focused on the temporary ''operated by'' markings rather than the permanent markings on the bus representing the vehicle owner or long-term lessee.

(3) Changing the requirement that carriers notify customers within 24 hours when they subcontract service to other carriers (49 CFR 390.305). Petitioners argued that a 24-hour deadline is impractical because if an emergency maintenance issue occurs, it may not be possible to notify the customer in a timely manner, particularly if the issue occurs on the weekend, when the customer's offices are closed, and the trip is scheduled to start before the customer's Monday opening time.

(4) Expanding the 48-hour delay in preparing a lease to include emergencies when passengers are not actually on board a bus (49 CFR 390.303(a)(2)). Sometimes events requiring a replacement vehicle might occur when there are no passengers on a vehicle, such as when Amtrak or airline service is suspended or disrupted and buses are needed to transport stranded passengers. A bus operator contracted to provide the emergency service might need to obtain additional drivers and vehicles from other carriers to meet the demand. There might be a last-minute maintenance or mechanical issue, or driver illness, that arises late in the evening or during the night (such as on a multi-day charter or tour trip), or just prior to picking up a group for a charter or scheduled service run.

In the 2016 NOI, FMCSA announced its plan to issue a rulemaking notice to reconsider the four areas of concern listed above. The Agency expressed its belief that it might be possible to adopt less burdensome regulatory alternatives that would not adversely impact safety. FMCSA also explicitly denied other requested revisions because they would either have impaired the purpose of the final rule or did not represent practical alternatives.

Public Roundtable

FMCSA held a public roundtable on October 31, 2016 to discuss the four issues outlined in the 2016 NOI. The stakeholders represented spoke about those issues and provided the Agency with information on how to address them. All public comments were placed in the docket of this rulemaking.

Second Extension of Compliance Date and the Proposal in Response to Petitions for Reconsideration

On June 16, 2017, FMCSA published a final rule (2017 final rule) and a 2017 proposal in the **Federal Register** (82 FR 27766, and 27768). The 2017 final rule extended the compliance date of the 2015 final rule from January 1, 2018, to January 1, 2019. The 2017 proposal provided information about FMCSA's planned revisions to the 2015 final rule and requested public comment on the proposed revisions.

*B. Discussion of Comments and Responses to the June 16, 2017 Proposal in Response to Petitions for Reconsideration*

FMCSA received 24 comments in response to the 2017 proposal regarding the petitions for reconsideration. Two submissions requested an extension of time to comment, one from Coach USA and another from Adirondack Trailways, Pine Hill Trailways and New York Trailways.

The following commenters (hereafter the ''industry commenters''), submitted responses to the June 2017 proposal that were largely the same, both in wording and in format. The industry commenters include: AC Coach Operations, Inc. dba Anderson Coach and Travel, Adirondack Trailways, Pine Hill Trailways and New York Trailways (Responding together), ABA, Beeline Charters and Tours, Burlington Trailways, California Bus Association, Capitol Bus Lines Inc., Connecticut Bus Association, FTI Coach Lines, Georgia Motorcoach Operators Association, Indian Trails, Inc., Minnesota Charter Bus Operator's Association, Onondaga Coach Corp., Pennsylvania Bus Association, Shuttle Express, Inc., and Trans-Bridge Lines.

FMCSA also received unique comments from Academy Bus LLC and Greyhound Lines, Inc.; Delainey Banks, an individual; Coach USA, a non-carrier entity that controls numerous motor carriers of passengers; Reston Limousine; National Interstate Insurance; and the UMA.

Request for an NPRM

Neither the 2016 NOI nor the 2017 proposal contained specific regulatory text. The 2016 NOI announced FMCSA's intent to revise the 2015 final rule in response to petitions. As indicated above, the 2016 NOI described four major changes that were under consideration for regulatory changes.

In the 2017 proposal, the Agency identified its intention to revise the regulations to address ''chartering'' and the 48 hour delay in preparing a lease.

*Comments:* Industry commenters, including Academy Bus LLC., Greyhound Lines, Inc., UMA, Coach USA, and DATTCO, Inc. asked FMCSA to publish a formal NPRM that included proposed regulatory text. Coach USA, among others, noted that the 2017 proposal limited its discussion to only two of the four issues addressed in the 2016 NOI; however, they believed that all four issues should be addressed in rulemaking.

*FMCSA Response:* After publication of the 2016 NOI, FMCSA decided to publish an NPRM to continue the process of revising subpart F of 49 CFR part 390. FMCSA proposes to maintain and expand the emergency 48-hour delay in preparing a lease. FMCSA proposes to remove the 2015 final rule's CMV marking requirements when a passenger-carrying CMV is leased or interchanged. Furthermore, FMCSA proposes changes that would reduce the number of required leases because authorized carriers would not be subject to this proposed rule when using vehicles or acquiring transportation services from other authorized carriers.

Lease and Interchange

The 2015 final rule merged the concepts of leasing and chartering (or subcontracting). Carriers routinely subcontract work to other registered carriers to handle demand surges, emergencies, or events that require more than their available capacity.

Subcontractors with their own operating authority have traditionally assumed responsibility for their own vehicles or drivers. Under the 2015 rule, however, a passenger carrier that subcontracted work to another carrier would be responsible for that second carrier's compliance with the regulations. In the 2015 final rule, FMCSA used the following definition for ''Lease'' in § 390.5: ''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.'' The 2016 NOI indicated that the Agency would address, through rulemaking, this concern relating to the 2015 final rule's merger of the leasing and chartering concepts. In the 2017 proposal, FMCSA said that it intended to revise subpart F of 49 CFR part 390 to exclude ''chartering'' from the leasing requirements of that rule.

*Comments:* UMA, Greyhound, Academy Bus LLC, and others stated that the 2015 final rule is overly burdensome to motor carriers.

According to Coach USA Inc. and other commenters, the rule broadens the term ''lease'' to capture charter and similar operations, thus placing unnecessary burdens on compliant motor coach operators, while doing little to target the safety concern associated with non-compliant carriers. Commenters believed FMCSA should exclude from the definition of ''Lease'' in § 390.5 all passenger-carrying motor carriers that have FMCSA operating authority. Specifically, they asked the Agency to modify the definition of ''Lease'' by clarifying that it does not include a ''contract, subcontract, sublease, rental or charter arrangement between two or more passenger-carrying motor carriers where all parties have operating authority.''

The Minnesota Charter Bus Operator's Association stated that the rule would prohibit the necessary collaboration among multiple operators to meet the needs of large events that occur in Minnesota. This commenter added that the nature of the business requires operators to assist one another in the event of a mechanical breakdown, so they have to act quickly to service and protect the traveling public without the burden of the lease and marking requirement. Capitol Bus Lines, Inc. reported that, as a result of its need to comply with the 2015 final rule requirements, it lost the ability to provide shuttle service for a large fireworks display, which cost the company business. UMA believed the rule needlessly harms passenger groups and carriers in need of immediate assistance. Greyhound wrote the rule would severely curtail, if not eliminate, its leasing of buses to meet peak period demand.

Industry commenters believed that the rule may exacerbate the problem of non-compliant carriers by creating safe havens and encouraging a switch from chartering to passenger broker operations that the Agency has no authority to regulate. UMA commented that the rule does not identify chameleon carriers, but instead provides a roadmap for carriers that may have compliance or operating authority issues. UMA thought the rule might compel special event organizers and community leaders to spend needless time engaging multiple carriers or to turn to brokers.

While many commenters, including National Interstate Insurance, supported the exclusion of ''chartering'' from the leasing requirements of the rule, as stated in the 2017 proposal, some commenters, including Greyhound Lines, Inc., UMA, and Reston Limousine, wanted the Agency to clarify this term. In their joint request for an extension of time Adirondack Trailways, Pine Hill Trailways, and New York Trailways noted that the proposal equates ''chartering'' to ''subcontracting'' in one section, but then excludes the term ''chartering'' from the entire rule. Reston Limousine suggested defining ''lease'' to exclude contracts, subcontracts, or charter arrangements between two or more passenger-carrying motor carriers with valid individual USDOT operating authority.

Coach USA commented that the administrative and paperwork burden associated with the full range of other regulatory obligations related to chartering/subcontracting arrangements would be prohibitive. Further, Coach USA did not believe that it would be possible for a primary contractor to obtain insurance for vehicles operated by subcontractor, as the final rule seems to require. Coach USA noted that it is not practicable for the primary carrier to ensure that the subcontracting carrier is in full compliance with many FMCSA regulations, particularly given that arrangements with secondary carriers must often be made at the last minute.

Industry commenters added that the Agency should clarify that the current definition of the term ''interchange'' in § 390.5, as used in § 390.21(f) and subpart F of part 390, does not include the act of providing a passenger-carrying CMV by one motor carrier of passengers to another. The industry commenters suggested edits to the definition of ''interchange'' that they believed would resolve the issue.

*FMCSA Response:* Under this NPRM, authorized carriers would not be subject to leasing requirements when they use vehicles or acquire transportation services from other authorized carriers. FMCSA believes this proposed regulatory change, as explained elsewhere in this NPRM, would resolve the objections and concerns of most commenters, without impacting safety.

Assignment of Responsibility

The 2015 final rule governing the lease and interchange of passenger-carrying CMVs holds the lessee carrier directly responsible for violations of the FMCSRs.

*Comments:* UMA consistently argued that FMCSA should not compel two or more carriers, all possessing the requisite Federal operating authority, to enter a lease they would not otherwise enter when engaging each other's services. UMA believed that forcing passenger-carriers into a lease would compel the assignment of inspection violations and crashes to the lessee. The commenter wrote that inspections and crashes should be attributed to the chartered, contracted, or subcontracted carrier that possesses the sole, direct responsibility for compliance and control of vehicle maintenance and driver qualifications and behavior. UMA wrote that the burden of the 2015 rule falls disproportionately on small-fleet passenger carriers and disadvantages them by creating untenable regulatory liability.

*FMCSA Response:* Because Federal operating authority and the practices of the insurance industry both assign responsibility to the operating motor carrier, FMCSA agrees that there is no need to reassign responsibility through this rulemaking. As mentioned above, authorized carriers would not be subject to this proposed rule when they use vehicles or acquire transportation services from other authorized carriers. FMCSA believes that this proposed regulatory change would resolve the objections and concerns of most commenters, without impacting safety.

Marking Requirements

The 2015 final rule added a new § 390.21(f) to cover the marking of leased and interchanged passenger-carrying CMVs, as defined in § 390.5 (80 FR 30178). Carriers operating such CMVs must meet certain standards for marking in § 390.21. They 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.''

*Comments:* Industry commenters generally argued that the 2015 final rule imposes burdensome marking requirements that are impractical, and that there are less burdensome ways to address the Agency's concerns. In their joint request for extension of time, Adirondack Trailways, Pine Hill Trailways, and New York Trailways commented that ''temporary markings'' is a matter of particular importance to them. They argued that the current final rules for temporary markings are unreasonable. They wrote that compliance would be impractical or unsafe, and arguably impossible, due to the design and construction of modern motor coaches.

In its comments, Coach USA recommended that the Agency eliminate the requirement to change vehicle markings when vehicles are exchanged between commonly owned carriers. Coach USA wrote that changing markings on vehicles exchanged between commonly-owned Coach USA companies would be highly burdensome given the large number of such exchanges. Coach USA commented that magnetic marking placards and paper signs are not a practical option. Placing a sign on the inside of the bus could obstruct the driver's view and/or would not meet the legibility requirements due to window glare or window tinting.

Coach USA also argued that requiring vehicles interchanged between commonly-owned companies to be marked in accordance with § 390.21 is likely to cause more confusion among passengers than it resolves. It reported that most of the vehicle exchanges between Coach USA carriers occur between companies that have ''Megabus.com'' written across their vehicles in huge letters. From the public's perspective, these motorcoaches are operated by Megabus. Coach USA did not believe that individuals would understand the temporary markings required by § 390.21 and thought they would result in confusion.

Greyhound Lines Inc. urged FMCSA to exempt from the temporary marking or placarding requirements the operation of vehicles that are being leased or interchanged between carriers that have FMCSA operating authority.

*FMCSA Response:* FMCSA proposes to remove the 2015 final rule's CMV marking requirements when a passenger-carrying CMV subject to the proposed rule is leased or interchanged. The Agency believes this proposed regulatory change would resolve the objections and concerns of the commenters. Under this NPRM, a motor carrier operating a passenger-carrying CMV under a lease having a term of not more than 30 calendar days could mark the CMV with either (1) the name and USDOT identification number of the lessee, or (2) the name and USDOT identification number of the lessor if, in the latter case, a fully complete lease is carried on the leased CMV during the full term of the lease. These proposals would remove the cost of additional marking of the vehicles while maintaining all of the information necessary for enforcement officials to identify the carrier for regulatory compliance. FMCSA proposes to add paragraph (e)(2)(v) to allow a passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) to be excepted from paragraphs (e)(2)(iii) and (iv) regarding a lease document with required information being carried on the vehicle, provided the lessor and lessee comply with the requirements of the provision in § 390.403(a)(2).

Twenty-Four Hour Notice of Lease

If a motor carrier was originally hired to provide charter transportation of passengers and subsequently subcontracted this work to another motor carrier of passengers, the 2015 final rule required the original motor carrier to notify the tour operator or group of passengers within 24 hours after hiring the subcontractor and advising that the transportation would be provided by the subcontractor. The 2016 NOI said that FMCSA was reconsidering that requirement based on petitioners' arguments that the 24-hour deadline is impractical in an emergency.

*Comments:* Industry commenters asked that the 24-hour requirement for notification be clarified in a proposed rule. They also believed that excluding passenger carriers that have operating authority from the definition of ''lease'' in § 390.5 would mean the requirements of § 390.305 Notification, would not apply.

Academy Bus LLC noted that the 24-hour notice to customers was not addressed in the 2017 proposal and said the issue was still of concern. Academy Bus LLC added that the industry is required to be flexible and respond to the public demand on very short notice.

Coach USA believed that excluding chartering and subcontracting arrangements would also eliminate the requirement to notify customers of subcontracting arrangements. Coach USA, however, supported a notification requirement for carriers that had been prohibited from operating by FMCSA or a State and intended to lease, interchange or otherwise convey use of a vehicle to another carrier. In fact, Coach USA argued that these carriers must provide written notice to FMCSA before taking such an action.

*FMCSA Response:* FMCSA proposes to remove the lease notification requirement, and believes its removal at this time may alleviate unnecessary regulatory burdens that, based on available evidence, do not significantly aid travel groups in arranging trips or avoiding particular carriers. If this conclusion is inaccurate, please provide data or information in regard to this matter.

Expanding the 48-Hour Delay in Preparing a Lease

When passengers are on a CMV and an emergency occurs that requires a replacement vehicle from another motor carrier, § 390.303(a)(2) allows the two carriers to postpone writing a lease or other written agreement for up to 48 hours. The Agency believed the 48-hour window would provide ample time for the parties to document the transaction.

One of the issues listed in the 2016 NOI was that FMCSA would reconsider expanding applicability of the 48-hour delay provision for preparing a lease to include emergencies when passengers are not actually on board a bus (81 FR 59952, Aug. 31, 2016). FMCSA provided examples of events that might require a motor carrier to obtain a replacement vehicle immediately:

- Buses might be needed to transport stranded passengers in the event that Amtrak or airline service was suspended or disrupted. A bus operator contracted to provide emergency service might need to obtain additional drivers and vehicles without delay;
- Last minute maintenance or mechanical issues, or driver illness, might arise late in the evening or during the night (such as on a multi-day charter or tour trip), or just prior to picking up

a group for a charter or scheduled service run.

In the 2017 proposal, FMCSA explained that it intended to broaden the emergency 48-hour delay provision for preparing a lease authorized by 49 CFR 390.303(a)(2) and remove the requirement that passengers actually be on board a bus when the exception occurs.

*Comments:* In response to the 2017 proposal, industry commenters indicated that the expansion of the 48-hour exemption could be addressed by changing the definitions in § 390.5. First, it was recommended that operations conducted under revenue pooling arrangements or common ownership and control be excluded from the definition of ''interchange'' in § 390.5. Second, FMCSA was asked to exclude passenger motor carriers from the definition of ''lease'' in § 390.5 when all parties have operating authority. Academy Bus LLC was concerned about lease preparation issues, noting that ''Our industry, by its nature, is required to be flexible and respond to the public demand on very short notice.''

An individual believed that the 48-hour time period for preparing leases might be a good idea for the trucking industry, but that is not the case for passenger carriers. This commenter stated that at peak times ''every worker is stretched thin and there is a need to bring in more operators to provide the same services,'' otherwise customers may be left stranded. In these instances, it is ''an emergency to both the busing companies and the customers to bring in another operator to provide the necessary backup to complete the job in an efficient manner. To combat this situation, companies need to work together before, during and after leasing passenger vehicles.'' This commenter also recommended that accountability be placed directly on the subcontractor and its driver.

Coach USA wrote that the exception in 49 CFR 390.303(a)(2) would likely apply only in rare instances if FMCSA exempted chartering and subcontracting arrangements from the regulations. Coach USA supported extending the 48-hour delay to cases of emergencies where passengers are not yet on the bus. Because operators will likely not have time to mark vehicles in the event of an emergency that requires replacement of a vehicle on very short notice, Coach USA proposed eliminating the final sentence of § 390.303(a)(2), ''The lessee must also mark the vehicle in accordance with § 390.21(f) before operating it.''

*FMCSA Response:* FMCSA adopts the petitioners' recommendation to expand the regulatory exception that permits the delayed writing of a lease during certain emergencies (*e.g.,* a crash, the vehicle is disabled) including when no passengers are on the vehicle. Therefore, FMCSA proposes to move the exception in 49 CFR 390.303(a)(2) to 49 CFR 390.403(a)(2). If a motor carrier obtains a replacement vehicle from, or subcontracts for service with, another motor carrier, the motor carriers may delay writing of a lease during these emergency situations. However, a summary document signed and dated by the lessee's driver or available company official must state: ''[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2)'' and the summary document must be carried on the replacement vehicle for the duration of the lease. Enforcement officials will be able to use this summary document to determine the identity of the carrier responsible for regulatory compliance.

Summary Document Requirements in § 390.301(b)(2) and (3)

In § 390.301(b)(2), the 2015 rule allows passenger-carrying CMVs to be exchanged or interchanged without leases or receipts among commonly owned and controlled motor carriers, provided the driver carries and produces, upon demand of a Federal, State, or local law enforcement official, a summary document listing certain information [*see* 80 FR at 30179].

Section 390.301(b)(3) provides that passenger-carrying CMVs may be exchanged or interchanged without leases or receipts among motor carriers that are party to a revenue pooling agreement approved by the Surface Transportation Board (STB) provided that the driver carries and, upon demand of a Federal, State, or local law enforcement official, displays other information, including a summary document [*see* 80 FR at 30179].

Neither the 2016 NOI nor the 2017 proposal addressed the summary document requirements.

*Comments:* The industry commenters suggested removing the requirements in § 390.301(b)(2) and (3) and instead including language about an abbreviated summary document in the definition of ''interchange'' in § 390.5. If the interchange occurred among commonly owned/controlled motor carriers, the summary document would identify the carriers in that ''family,'' including USDOT numbers and business addresses. If the interchange occurred pursuant to a revenue pooling agreement approved by the STB, the summary document would identify the parties to the agreement, including the USDOT numbers and business addresses. These summary documents would be produced upon the demand of a law enforcement official.

In its request for an extension of time, Coach USA argued that the information required in § 390.301(b)(2)(i) is trip specific, and would require the company to create a new summary document for each of more than 10,000 trips annually. Such a document would impose an unnecessary regulatory burden. Coach USA requested that the summary document required by this provision include only a ''listing of all members of the corporate family along with their USDOT numbers, business addresses and contact telephone numbers.'' The company also asked the Agency to clarify that any summary document may be maintained in electronic format and stored on an electronic logging device.

In its response to the Agency's 2017, proposal, Coach USA, like other industry commenters, reiterated its previous comments.

*FMCSA Response:* Since this proposed rule would not apply to transactions between or among authorized carriers under the proposed exception in § 390.401(b)(1) *Contracts and agreements between motor carriers of passengers with active passenger carrier operating authority registrations,* FMCSA believes that regulatory exceptions for commonly owned and controlled carriers, and carriers participating in STB-approved revenue pooling agreements, are no longer necessary. The industry commenters suggested making the rule inapplicable to commonly owned and controlled carriers and carriers participating in STB-approved revenue pooling agreements, and the Agency agrees with these comments. Therefore, FMCSA proposes to rescind the exceptions in 49 CFR 390.303(b)(2) and (b)(3). All passenger carriers that are commonly owned and controlled or participate in STB-approved revenue pooling agreements operate in interstate commerce and have operating authority. An authorized carrier that obtains a vehicle from another commonly owned and controlled authorized carrier or another participant in an STB-approved pooling agreement, would not be subject to this proposed rule.

## VII. General Discussion of the Proposed Rule

### *A. The Proposed Rule*

FMCSA proposes removing and reserving subpart F of part 390, moving it to subpart G with the same title,

''Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles,'' and making some further regulatory changes discussed later in this document. FMCSA is planning to use subpart F in a future NPRM to be published under RIN 2126–AB56, Unified Registration System Enhancements and Updates.

Definitions

The Agency proposes to revise the definition of *lease* in § 390.5 to include only contracts and agreements in which a motor carrier grants the use of a passenger-carrying CMV to another motor carrier when at least one of the motor carriers is not an authorized carrier.[5] Authorized carriers routinely assist one another by providing transportation services during demand surges, emergencies, or events that require more than their available capacity. These common agreements, some of which amount to subcontracting, would not meet the regulatory definition of a *lease* in this proposed rule. Authorized carriers that are hired by another authorized carrier have traditionally assumed responsibility for their own regulatory compliance and liability. This practice has long been acceptable to the insurance industry. Furthermore, authorized carriers are readily identifiable to enforcement personnel, making a separate lease agreement assigning regulatory responsibility unnecessary.

The definition of *lease* would become narrower by including only contracts and agreements to grant the use of a passenger-carrying CMV between motor carriers when one (or more) such carrier does not have operating authority. The term *lease* would also be revised with added language to include circumstances when no compensation is specified. The terms *lessee* and *lessor* would both be revised slightly to specify that the granting of passenger-carrying CMV usage is through a *lease.*

Marking of Self-Propelled CMVs and Intermodal Equipment

Section 390.21 (suspended) and 390.21T would be returned nearly to the form before the March 27, 2015, final rule. FMCSA would remove the special marking regulations for leased and interchanged passenger-carrying CMVs in paragraph (f). Section 390.21 (suspended) and 390.21T would be revised to treat leased passenger-carrying CMVs like all other rented CMVs. For a lease of 30 calendar days or less, the lessee can opt to mark the vehicle with either the lessee's information or the lessor's information. However, the latter would require a fully executed copy of the lease be carried on the vehicle.

If the motor carrier is operating a passenger-carrying CMV under a lease or rental agreement for more than 30 calendar days, such CMV must be marked with the lessee's identification information. In a lease situation, the operating motor carrier is the lessee. These revised regulations would address petitioners' concerns that there is no easy way to display a temporary marking on certain passenger-carrying motor vehicles for short term leases. FMCSA specifically requests comments from State Agencies that participate in the Motor Carrier Safety Assistance Program about the effectiveness of these proposed marking regulations for leased passenger-carrying CMVs and any potential inspection or enforcement problems.

General Applicability and Exceptions

The general applicability section would be revised slightly to reflect the removal of exceptions in paragraph (b). Section 390.401(b) would be modified in several ways. First, a new exception would appear in paragraph (b)(1) to exclude from the rule contracts and agreements between passenger carriers with active operating authority when one such carrier acquires transportation services from another such carrier. Second, the current exception for financial leases in paragraph § 390.301(b)(1) would be moved to paragraph § 390.401(b)(2) as an exception with a revision. The provision that the financial organization, manufacturer, or dealer must not be a motor carrier to utilize the exception from the rule is proposed for removal because such entities are motor carriers when they move their vehicle inventory between business locations before purchases. Third, the limited exception in paragraph (b)(2) for passenger-carrying CMVs exchanged or interchanged between or among commonly owned and controlled motor carriers would be removed. Fourth, the limited exception in paragraph (b)(3) for passenger-carrying CMVs exchanged or interchanged between or among motor carriers that are a party to a revenue pooling agreement approved by the STB in accordance with 49 U.S.C 14302 would also be removed.

Lease and Interchange Requirements

Lease and interchange requirements would be revised by removing § 390.303(a)(1)(iii), which covers written agreements governing the renting, borrowing, loaning, or similar transfer of a passenger-carrying CMV from another party. The rule would be revised and moved to § 390.403(a)(1) to include such transactions as either a lease or interchange, which makes paragraph (a)(1)(iii) unnecessary. FMCSA is proposing to expand the emergency-related exception in § 390.303(a)(2) (after transferring it to § 390.403(a)(2)) that allows the postponement of the completion of a lease for up to 48 hours for situations, such as a crash or vehicle breakdown, when a replacement vehicle must be immediately obtained from another motor carrier. Industry commenters requested this expansion of the limited exception and FMCSA agrees with them. FMCSA proposes to allow the exception even when passengers are not on the bus.

Section 390.403(b) specifies the contents of lease and interchange documents. This paragraph 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[6] of both parties; (3) the time and date when the lease begins and ends; and (4) a statement that the lessee has exclusive possession and control of the leased vehicle and is responsible for regulatory compliance.

Current § 390.303(b)(4)(i)–(iii) is a slightly revised version of 49 CFR 376.12(c)(1), (2) and (4). Paragraph (b)(4)(i) is essential because it sets forth the basic reason for a lease, from FMCSA's point of view, to assign full responsibility for regulatory compliance to the lessee. FMCSA proposes to make this paragraph more concise. Current paragraph (b)(4)(ii) would be moved to § 390.403(b)(4)(ii) and would retain only the last sentence of that provision. Paragraph (b)(4)(iii) is a useful disclaimer, should the issue of status of the lessor (contractor or employee) arise in a tax context, but FMCSA does not believe it is essential. Therefore, FMCSA proposes to shorten paragraphs (b)(4)(i) and (b)(4)(ii) and remove paragraph (b)(4)(iii).

FMCSA proposes to remove the requirement in § 390.303(b)(5) that the lease contain a statement that the lessee is responsible for compliance with the

[5] This rulemaking does not propose a change to the definition of *lease* in the context of property-carrying vehicles in 49 CFR 376.2.

[6] FMCSA allows the use of electronic signatures in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII, Secs. 1701–1710, 44 U.S.C. 3504 note, 112 Stat. 2681–749). See 76 FR 411, Jan. 4, 2011 and the Electronic Signature final rule's §§ 390.5, 390.5T, and 390.32, April 16, 2018 (83 FR 16226–7).

insurance requirements of 49 CFR part 387.

Section 390.303(c) and (d) would be merged and made more concise. Revised § 390.403(c) would state that a copy of the lease must be carried in the passenger-carrying CMV during the period of the lease or interchange agreement. Both the lessee and lessor would retain the lease or interchange agreement for 1 year afterwards.

Section 390.303(e) would be removed. FMCSA has decided it does not need receipts when vehicles are surrendered to the lessee and returned to the lessor. If FMCSA or another government enforcement agency sought to assign a safety incident to the lessee or the lessor based on a lease or other agreement that had already been terminated, the former parties to the lease would have to decide how to document that premature termination.

FMCSA proposes to remove the requirements in § 390.303(f) for additional temporary markings of leased and interchanged passenger-carrying CMVs, and to return to the text of the marking rule in § 390.21(e)[7] that was effective on July 1, 2015, with slight modifications. The modifications would add references to leased CMVs in paragraph (e) to provide a similar option to rented CMVs.

FMCSA believes that this eliminates one of petitioners' major objections to the 2015 final rule. The proposed rule would require a leased passenger-carrying CMV be marked with the lessee's identification information if the lease is longer than 30 days. Leased passenger-carrying CMVs would be required to be marked with either the lessor's or lessee's identification information if the lease is 30 days or less.

Finally, the proposed rule removes the requirement in § 390.305 to notify the passenger group or their representative within 24 hours after the primary contractor reassigns the transportation to a subcontractor.

*B. Examples of Proposed Rule Implementation*

The following examples illustrate the proposed application of this rulemaking:

Complete Contract Transfer Example

Authorized carrier A is contracted to transport a tour or travel group on a trip, but finds itself without the capacity to accommodate the group. Carrier A completely transfers the contract to authorized carrier B that has the necessary capacity. Carrier A may or may not pay a fee to carrier B for taking over the contract. A complete transfer would require carrier A to cancel its contract with the customer and carrier B to create a new contract with the customer. The proposed rule would not apply to these transactions because these transactions do not qualify as a ''lease'' (or interchange), as defined in § 390.5, of a passenger-carrying CMV.

Complete Subcontracting Among Authorized Carriers

Authorized carrier A lacks the capacity to execute a contracted trip and hires authorized carrier B to make the trip while maintaining its contract with the customer. This arrangement is documented by a charter contract between carriers A and B. Carrier A pays carrier B for the trip. This arrangement is not a lease, first because carrier B is not granting the use of a passenger-carrying CMV to carrier A, and second because both carriers are authorized carriers. Instead, carrier B is making the trip in its own name, on its own authority, with its own vehicles and is therefore responsible for compliance with the FMCSRs. The proposed rule therefore would not apply to this arrangement.

Partial Subcontracting Among Authorized Carriers

Assuming the same facts as described above, except that authorized carrier A provides some of the transportation service while contracting with authorized carrier B for the remainder, this arrangement is not a lease, first because carrier B is not granting the use of a passenger-carrying CMV to carrier A, and second because both carriers are authorized carriers. Carrier A pays carrier B for the transportation service as part of a charter contract. Carrier B is not surrendering control of a passenger-carrying CMV to carrier A for its own use. Both carriers are authorized carriers providing transportation in their own name, on their own authority, with their own vehicles, and each is independently responsible for compliance with the FMCSRs.

Subcontracting Among Regular Route Authorized Carriers

Authorized carrier A, which provides regular route passenger transportation services according to a fixed schedule, finds itself without the capacity to execute a route. Carrier A hires authorized carrier B to continue this service. This arrangement is documented by a charter contract between carriers A and B. Carrier A pays carrier B for the transportation service. This arrangement is not a lease, first because carrier B is not granting the use of a passenger-carrying CMV to carrier A, and second because both carriers are authorized carriers. This arrangement is also not an interchange because carriers A and B are not conducting a through movement. The proposed rule would not apply to this arrangement. Carrier B will conduct the transportation in its own name, on its own authority, with its own vehicle(s), and is therefore responsible for compliance with the FMCSRs.

Other Business Arrangements Between Passenger Carriers

Example 1

Carrier A is exempt under 49 U.S.C. 13506 from the requirement for operating authority—for example, because of the hotel exemption in section 13506(a)(3)[8]—but finds itself without the capacity to accommodate a group that it originally intended to transport. When this occurs, carrier A hires authorized carrier B to provide charter passenger transportation of the group in whole or in part. This arrangement is documented by a charter contract between carriers A and B. Carrier A pays carrier B for the transportation service, but is not a lessee of carrier B's vehicle. Therefore, this arrangement is not a lease. Carrier B does not claim the exemption in section 13506(a)(3) but conducts the transportation in its own name, on its own authority, with its own vehicle(s) and is therefore responsible for compliance with the FMCSRs. The proposed rule would not apply to this arrangement.

Example 2

Private motor carrier of passengers A finds itself without the capacity to transport the members of its organization. Carrier A therefore hires authorized carrier B to provide charter passenger transportation of the group in whole or in part. This arrangement is documented by a charter contract between carriers A and B. Carrier A pays carrier B for the transportation service. Carrier A is not a lessee and the arrangement is not a lease or interchange because carrier B conducts the transportation in its own name, on its own authority, with its own vehicle(s) and is therefore responsible for compliance with the FMCSRs. The

[7] See e-CFR text in effect on July 1, 2015 at *https://www.ecfr.gov/cgi-bin/text-idx?SID=b9ddca68b462ed0f3d5758839de97752&pitd=20150701&node=pt49.5.390&rgn=div5#se49.5.390_121.*

[8] Section 13506 lists the miscellaneous motor carrier transportation exemptions. Under section 13506(a)(3), neither the Secretary nor the Board has jurisdiction over a motor vehicle owned or operated by or for hotel patrons between the hotel and the local station of a carrier.

proposed rule would not apply to this arrangement.

Example 3

Carrier A is an exempt for-hire motor carrier of passengers (under 49 U.S.C. 13506) that finds itself without the capacity to accommodate a group it originally intended to transport. Carrier A uses a passenger-carrying CMV owned by authorized carrier B. This transaction is a lease under the proposed rule and would be subject to its requirements because carrier A is not authorized to operate for-hire in interstate commerce. In this case, carrier B is a lessor that is surrendering control of a passenger-carrying CMVs to carrier A for the use of that carrier. Carrier A will conduct the transportation in its own name under its own safety registration (*i.e.,* USDOT number) with the CMV leased from carrier B, with or without drivers provided by carrier B, and is therefore responsible for compliance with the FMCSRs.

Example 4

Private motor carrier of passengers A finds itself without the capacity to accommodate a group it originally intended to transport. Carrier A uses a passenger-carrying CMV owned by authorized carrier B. This transaction is a lease under the proposed rule and would be subject to its requirements because carrier A is not authorized to operate for-hire in interstate commerce. In this case, carrier B is a lessor that is surrendering control of a passenger-carrying CMVs to carrier A for the use of that carrier. Carrier A will conduct the transportation in its own name under its own safety registration (*i.e.,* USDOT number) with the CMV leased from carrier B, with or without drivers provided by carrier B, and is therefore responsible for compliance with the applicable FMCSRs.

Example 5

Authorized carrier A lacks the capacity to execute a contracted trip and uses a passenger-carrying CMV owned by private motor carrier of passengers, carrier B. This transaction is a lease under the proposed rule and would be subject to its requirements because private carrier B is not authorized to operate for-hire in interstate commerce and cannot be hired to provide transportation. In this case, carrier B is a lessor that is surrendering control of its passenger-carrying CMV to carrier A. Carrier A will conduct the transportation in its own name, under its own authority, with the CMV leased from the private motor carrier of passengers, with or without drivers provided by carrier B, and is therefore responsible for compliance with the FMCSRs.

Example 6

Private motor carrier of passengers A finds itself without the capacity to transport the members of its organization and uses a passenger-carrying CMV owned by private motor carrier of passengers B. This transaction is a lease under the proposed rule and would be subject to the requirements of this rule because neither carrier has the authority to conduct for-hire operations in interstate commerce. In this case, carrier B is a lessor that is surrendering control of its passenger-carrying CMV to carrier A for the use of that carrier. Carrier A will conduct the transportation in its own name, under its own safety registration (*i.e.,* USDOT number), with the CMV leased from carrier B, with or without drivers provided by carrier B, and is therefore responsible for compliance with the applicable FMCSRs.

Example 7

For-hire passenger carrier A had its operating authority revoked for lack of adequate insurance coverage. Carrier A wishes to generate revenue from its otherwise idle CMVs. It therefore negotiates an arrangement with authorized carrier B to surrender control of its passenger-carrying CMVs to carrier B for a fee. This arrangement is a lease under the proposed rule and would be subject to its requirements because carrier A is not authorized to operate for-hire in interstate commerce. In this case, carrier A is simply a lessor. Carrier B would conduct the transportation in its own name, on its own authority, with the CMVs leased from carrier A, with or without drivers provided by carrier A, and is therefore responsible for compliance with the FMCSRs.

*C. Alternatives*

FMCSA requests comments to identify other methods to achieve the safety objectives of this rulemaking.

## VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

## IX. Section-by-Section Description of the Proposed Rule

*A. Section 390.5 (Suspended) and 390.5T Definitions*

Section 390.5 (suspended) and 390.5T would be amended to revise the definitions of *lease, lessee,* and *lessor* and all of these terms would apply specifically to motor carriers of passengers.

*B. Section 390.21 (Suspended) and 390.21T Marking of Self-Propelled CMVs and Intermodal Equipment*

Section 390.21 (suspended) and 390.21T would be returned nearly to the form before the March 27, 2015, final rule. In the paragraph (e) header, FMCSA replaces ''Rented property-carrying commercial motor vehicles'' with the header phrase ''*Rented CMVs and leased passenger-carrying CMVs.*'' Throughout paragraph (e), the Agency adds the phrase ''or lease'' after the term ''rental agreement.'' When referring to a ''renting motor carrier,'' the Agency adds the phrase ''or lessee'' immediately after it. In paragraph (e)(2)(iv), in addition to the cross reference to the property-carrying leasing regulations in 49 CFR part 376, FMCSA adds a cross reference to the passenger-carrying leasing regulations in subpart G of part 390 so that the revised sentence reads ''See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.'' FMCSA proposes to add paragraph (e)(2)(v) to allow the passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) to be excepted from paragraphs (iii) and (iv) regarding a lease document with required information being carried on the vehicle, provided the lessor and lessee comply with the requirements of the provision in § 390.403(a)(2).

In paragraph (f), FMCSA would remove the special marking regulations for leased and interchanged passenger-carrying CMVs. This proposal would redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively, as they were on July 1, 2015.[9]

*C. Part 390, Subpart F Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles*

Subpart F, including §§ 390.301, 390.303, and 390.305, would be removed and reserved.

[9] See *https://www.ecfr.gov/cgi-bin/text-idx?SID=b9ddca68b462ed0f3d5758839de97752&pitd=20150701&node=pt49.5.390&rgn=div5#se49.5.390_121.*

*D. Part 390, Subpart G Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles*

Subpart G, consisting of §§ 390.401 and 390.403, would be added.

*E. Section 390.401 Applicability*

Paragraph (a) would add the general applicability for passenger-carrying CMV leases and interchanges as the terms ''lease'' and ''interchange'' would be defined in this proposal's §§ 390.5 (suspended) and 390.5T.

Paragraph (b) would provide the two proposed exceptions to the general rule. Paragraph (c) would provide that if the use of a passenger-carrying commercial motor vehicle is conferred between motor carriers subject to this proposal and either carrier fails to meet all applicable requirements of subpart G, both motor carriers shall be subject to a civil penalty.

*F. Section 390.403 Lease and Interchange Requirements*

In paragraph (a)(1), this proposal would set out the two instances in which a lease or other agreement is required (and the lease or agreement must then meet the conditions of paragraphs (b) and (c) of this section). In paragraph (a)(2), this proposal would allow the delayed writing of a lease after an emergency, such as a disabled vehicle, that disrupts or delays a trip, and would not limit the exception to times when passengers are on the bus.

Paragraph (b) would specify the four minimum required items of any lease, sublease, or interchange document required under this proposal: (1) *Vehicle identification information;* (2) *Parties;* (3) *Specific duration;* and (4) *Exclusive possession and responsibilities.*

Paragraph (c) would provide when a copy of the lease must be on the passenger-carrying CMV and how long both the lessor and lessee must retain copies of the lease, sublease, or agreement.

## X. Regulatory Analyses

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

FMCSA performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (February 26, 1979)).

As described earlier, the proposed rule would reduce the scope of the lease and interchange requirements for motor carriers of passengers. Furthermore, those passenger carriers and passenger-carrying CMV trips for which the proposed rule would remain applicable would be subject to lease and interchange requirements that are reduced in comparison to those of the 2015 final rule. At the same time, FMCSA believes that the lease and interchange requirements of the proposed rule would still enable safety officials and the general public to sufficiently identify the passenger carrier responsible for safety. As a consequence, FMCSA estimates that the proposed rule would result in a cost savings, but would not result in any change to safety benefits.

The Agency estimates that the proposed rule would result in a cost savings of $75.1 million on an undiscounted basis, $66.5 million discounted at 3 percent, and $57.5 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to a 10-year cost savings of $7.8 million at a 3 percent discount rate and $8.2 million at a 7 percent discount rate, again representing a decrease in cost or a cost savings.

Key Inputs to the Analysis

The proposed rule revises regulations established in the 2015 final rule, therefore the 2015 final rule serves as the baseline against which the effects of the proposed rule are evaluated. Many of the key inputs to this analysis of the proposed rule are based on the same data sources and methods as those developed and used in the evaluation of the 2015 final rule, with various updates made as needed to reflect more recently available data and information. Therefore, a copy of the regulatory evaluation for the 2015 final rule is available in the docket for the proposed rule, and, where applicable, the Agency cites that document in the analysis below.[10] A 10-year analysis period of 2019 to 2028 is utilized for this analysis of the proposed rule, and all monetary values are expressed in 2016 dollars.

Number of Passenger Carriers Experiencing Regulatory Relief Under the Proposed Rule

The Agency estimates that an annual average of 8,215 motor carriers of passengers would experience regulatory relief under the proposed rule, as discussed below. This represents the average over the 10-year analysis period of the individual annual estimates of the total number of passenger carriers experiencing regulatory relief under the proposed rule, which are presented in Table 2. As also shown in Table 2, the Agency estimates that approximately 75 percent of this total number of passenger carriers would experience full regulatory relief and would no longer be subject to the lease and interchange requirements for passenger-carrying CMVs as a consequence of the proposed rule. The remaining 25 percent of these passenger carriers would experience partial regulatory relief and remain subject to reduced lease and interchange requirements compared to those of the 2015 final rule.

TABLE 2—ESTIMATED NUMBER OF PASSENGER CARRIERS EXPERIENCING REGULATORY RELIEF UNDER THE PROPOSED RULE

| Year | Passenger carriers experiencing full regulatory relief under the proposed rule | Passenger carriers experiencing partial regulatory relief under the proposed rule | Total passenger carriers experiencing regulatory relief under the proposed rule |
|---|---|---|---|
| 2019 | 5,929 | 1,977 | 7,906 |
| 2020 | 5,980 | 1,993 | 7,973 |

[10] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.''

TABLE 2—ESTIMATED NUMBER OF PASSENGER CARRIERS EXPERIENCING REGULATORY RELIEF—Continued UNDER THE PROPOSED RULE

| Year | Passenger carriers experiencing full regulatory relief under the proposed rule | Passenger carriers experiencing partial regulatory relief under the proposed rule | Total passenger carriers experiencing regulatory relief under the proposed rule |
|---|---|---|---|
| 2021 | 6,031 | 2,010 | 8,041 |
| 2022 | 6,082 | 2,027 | 8,109 |
| 2023 | 6,134 | 2,044 | 8,178 |
| 2024 | 6,185 | 2,062 | 8,247 |
| 2025 | 6,238 | 2,079 | 8,317 |
| 2026 | 6,290 | 2,097 | 8,387 |
| 2027 | 6,344 | 2,115 | 8,459 |
| 2028 | 6,397 | 2,133 | 8,530 |
| Annual average | 6,161 | 2,054 | 8,215 |

To derive the estimates presented in Table 2 of the number of passenger carriers experiencing regulatory relief under the proposed rule, FMCSA first estimated the number of passenger carriers that, in the absence of the proposed rule, would be affected by the lease and interchange requirements of the 2015 final rule. This estimate is based on the same data sources and methods as those developed and used in the evaluation of the 2015 final rule [11] but updated to reflect more recently available data and information. Data from the FMCSA Motor Carrier Management Information System (MCMIS) and the FMCSA Licensing and Insurance (L&I) system were used to develop a new baseline value for the reported number of all active interstate passenger carriers operating in the U.S. as of the end of calendar year 2017, namely 13,386 carriers.[12] [13]

Of this total population, the Agency estimates that, in the absence of the proposed rule, 7,774 of these passenger carriers would be subject to the May 2015 final rule. This estimate is based on the same methods as those developed and used in the evaluation of the 2015 final rule, and assumes that under that rule 100 percent of authorized for-hire carriers, 100 percent of exempt for-hire carriers, and 10 percent of private passenger carriers would be subject to the lease and interchange requirements for passenger-carrying CMVs.[14]

TABLE 3—REPORTED NUMBER OF ACTIVE INTERSTATE PASSENGER CARRIERS OPERATING IN THE U.S. (AS OF DECEMBER 29, 2017), AND ESTIMATED NUMBER THAT WOULD BE SUBJECT TO THE MAY 2015 FINAL RULE IN THE ABSENCE OF THE PROPOSED RULE

| Type of passenger carrier operation | Total number of carriers | Number (and percent) estimated to be subject to the May 2015 final rule in the absence of the proposed rule |
|---|---|---|
| Authorized For-Hire [(a)] | 6,629 | 6,629 (100% of total). |
| Exempt For-Hire (9+) [(b)] | 340 | 340 (100% of total). |
| Exempt For-Hire (16+) [(c)] | 181 | 181 (100% of total). |
| Private (business) [(d)] | 2,599 | 260 (10% of total). |
| Private (non-business) [(e)] | 3,637 | 364 (10% of total). |
| Total [(f)] | 13,386 | 7,774. |

**Notes:**

(a) A commercial entity whose primary business activity is the transportation of passengers by motor vehicle for compensation.

(b) A for-hire entity that is exempt under 49 U.S.C. 13506, and operates at least one passenger vehicle designed or used to accommodate 9 or more passengers including the driver.

(c) A for-hire entity that is exempt under 49 U.S.C. 13506, and operates at least one passenger vehicle designed or used to accommodate 16 or more passengers including the driver.

(d) A private entity engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

(e) A private entity involved in the interstate transportation of passengers that does not otherwise meet the definition of a ''private (business)'' motor carrier of passengers as noted above.

[11] Further details regarding the specific data sources and methods can be found in DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Pages 9–12.

[12] U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). Motor Carrier Management Information System (MCMIS), and Licensing and Insurance (L&I) system. Snapshots as of December 29, 2017 (DART request ID #38883).

[13] The total number of 13,386 passenger carriers as of the end of 2017 actually represents 11,705 unique carriers, because some carriers provide passenger service in more than one of the operation classifications shown. Consistent with the approach used in the regulatory evaluation for the May 2015 final rule, the larger number was used here so as to not risk underestimating the number of affected passenger carriers and the corresponding cost of the lease and interchange requirements of the May 2015 final rule.

[14] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Pages 9–12.

(f) The total number of 13,386 passenger carriers shown actually represents 11,705 unique carriers, because some carriers provide passenger service in more than one of the operation classifications shown. Consistent with the approach used in the regulatory evaluation for the May 2015 final rule, the larger number was used here so as to not risk underestimating the number of affected passenger carriers and the corresponding cost of the lease and interchange requirements of the May 2015 final rule.

The 2017 value of 7,774 passenger carriers that would be subject to the 2015 final rule was then used as the basis to develop future projections over the 2019 to 2028 analysis period. These projections were developed by increasing the baseline 2017 value of 7,774 passenger carriers consistent with the occupation-specific employment growth projections for Standard Occupational Classification (SOC) Code 53–3021 (Bus drivers, transit and intercity) obtained from the Bureau of Labor Statistics (BLS) Employment Projections Program which, from 2016 to 2026, is forecast to grow by 0.85 percent annually.[15] This results in a projection of the number of passenger carriers that, in the absence of the proposed rule, would be subject to the 2015 rule each year over the 2019 to 2028 analysis period. In the absence of the proposed rule, all of these passenger carriers would be subject to the 2015 rule. As discussed earlier, under the proposed rule a large portion of these passenger carriers would no longer be subject to lease and interchange requirements, and the remaining carriers would be subject to reduced requirements. In Table 2, the column on the far right shows the projected number of passenger carriers that would experience regulatory relief under the proposed rule over the 10-year analysis period of 2019 to 2028, which equals an annual average of 8,215 passenger carriers.

Table 2 also shows the subset of those 8,215 passenger carriers that under the proposed rule would experience full regulatory relief and would no longer be subject to lease and interchange requirements. Over the 10-year analysis period, the Agency estimates that an annual average of 6,161 passenger carriers, or approximately 75 percent of the total number of carriers that would experience regulatory relief, would experience full regulatory relief. This value was estimated by assuming that approximately 10 percent of authorized for-hire carriers would be subject to the lease and interchange requirements under the proposed rule, rather than 100 percent as assumed previously under the 2015 final rule and as shown in Table 3.

For exempt for-hire carriers and private passenger carriers, the analysis assumes that 100 percent and 10 percent, respectively, of these carriers would continue to be subject to the lease and interchange requirements under the proposed rule, the same percentages as under the 2015 final rule and also as shown in Table 3. Combined, these changes result in an estimated overall reduction of approximately 75 percent in the number of passenger carriers subject to lease and interchange requirements under the proposed rule.[16] This reduction is consistent with the comments and petitions for reconsideration that the Agency received, a number of which suggested that the scope of the 2015 final rule likely encompassed a relatively large proportion of passenger-carrying CMV trips in which both the lessor and the lessee were authorized carriers. Petitioners generally argued that such carriers should not be subject to lease and interchange requirements.

Finally, Table 2 also presents an estimate of the remaining subset of the annual average of 8,215 passenger carriers that would experience partial regulatory relief and remain subject to reduced lease and interchange requirements compared to those of the 2015 rule. Over the 10-year analysis period, the Agency estimates that an annual average of 2,054 passenger carriers, or approximately 25 percent of the total, would experience partial regulatory relief. As noted earlier, however, these carriers would be subject to reduced requirements compared to those of the 2015 final rule.

FMCSA requests comments and submission of quantitative or qualitative data addressing the potential number of passenger carriers that would experience regulatory relief under the proposed rule.

### Number of CMV Trips Experiencing Regulatory Relief Under the Proposed Rule

The Agency estimates that an annual average of 537,134 passenger-carrying CMV trips would experience regulatory relief under the proposed rule over the 10-year analysis period, as presented in Table 4 and discussed below. This estimate is based on the same methods as those developed and used in the evaluation of the 2015 final rule.[17] The estimated number of passenger carriers that would experience regulatory relief under the proposed rule (see Table 2) serves as the primary basis for the estimate of the number of trips that would experience regulatory relief under the proposed rule. For each of the carriers in Table 2, we assumed an estimated average of 64 trips per year are operated with leased or interchanged vehicles. This is consistent with the assumptions used in the regulatory evaluation for the 2015 final rule.[18] The estimated number of trips that would experience regulatory relief under the proposed rule (see Table 4) also incorporates a modest upward adjustment to reflect an annual average of 11,400 trips operated by Greyhound, one of the largest U.S. interstate passenger carriers. This adjustment is consistent with the methods used in the evaluation of the 2015 final rule,[19] and is based on data that was provided to FMCSA by Greyhound regarding trips with leased and interchanged vehicles in 2012.[20]

[15] U.S. DOLBLS. ''Occupational Employment Projections. Table 1.2: Employment by detailed occupation, 2016 and projected 2026.'' Available at: *https://www.bls.gov/emp/ep_data_occupational_data.htm* (accessed December 29, 2017).

[16] As shown in Table 3, in 2017 an estimated 7,774 passenger carriers would be subject to the lease and interchange requirements of passenger-carrying CMVs under the May 2015 final rule. Under the proposed rule, as noted, the analysis assumed that only 10 percent of authorized for-hire carriers would be subject to the lease and interchange requirements of passenger-carrying CMVs, or 10 percent of 6,629, which equals 663 authorized for-hire passenger carriers. The analysis also assumed that 100 percent of exempt for-hire carriers and 10 percent of private passenger carriers would continue to be subject to the lease and interchange requirements for passenger-carrying CMVs under the proposed rule, which equals 100 percent of 340 and 181 exempt for-hire carriers (totaling 521 exempt for-hire carriers), and 10 percent of 2,599 and 3,637 private carriers (totaling 624 private carriers). Therefore, the Agency estimates that 1,808 passenger carriers would be subject to the lease and interchange requirements of passenger-carrying CMVs in 2017 under the proposed rule, or 23.3 percent of those subject to the requirements under the 2015 final rule, which is rounded to 25 percent for purposes of developing the future projections of affected passenger carriers presented in Table 2. This is a 75 percent reduction in the number of passenger carriers affected by the lease and interchange requirements of passenger-carrying CMVs as a consequence of the proposed rule.

[17] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 21, Table 6.

[18] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 21, Table 6.

[19] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Pages 12 to 13.

[20] ''Lease and Interchange of Vehicles; Motor Carriers of Passengers. NPRM.'' September 20, 2013. Comments of Greyhound Lines, Inc.. Docket ID number FMCSA–2012–0103–0010. Page 2. November 12, 2013. Available at: *https://*

Continued

The Agency estimates that approximately 75 percent of these passenger-carrying CMV trips would experience full regulatory relief and would no longer be subject to the lease and interchange requirements of the 2015 final rule. The remaining 25 percent of these trips would experience partial regulatory relief and remain subject to reduced lease and interchange requirements compared to those of the 2015 final rule.

FMCSA requests comments and submission of quantitative or qualitative data addressing the potential number of passenger-carrying CMV trips that would experience regulatory relief under the proposed rule.

TABLE 4—ESTIMATED NUMBER OF PASSENGER-CARRYING CMV TRIPS EXPERIENCING REGULATORY RELIEF UNDER THE PROPOSED RULE

| Year | Passenger-carrying CMV trips experiencing full regulatory relief under the proposed rule | Passenger-carrying CMV trips experiencing partial regulatory relief under the proposed rule | Total CMV trips experiencing regulatory relief under the proposed rule |
|---|---|---|---|
| 2019 | 387,714 | 129,238 | 516,952 |
| 2020 | 391,003 | 130,334 | 521,337 |
| 2021 | 394,318 | 131,440 | 525,758 |
| 2022 | 397,663 | 132,554 | 530,217 |
| 2023 | 401,036 | 133,678 | 534,714 |
| 2024 | 404,437 | 134,812 | 539,249 |
| 2025 | 407,866 | 135,956 | 543,822 |
| 2026 | 411,325 | 137,109 | 548,434 |
| 2027 | 414,814 | 138,271 | 553,085 |
| 2028 | 418,332 | 139,444 | 557,776 |
| Annual average | 402,851 | 134,284 | 537,134 |

Other Key Inputs to the Analysis

The opportunity cost of the time employees of passenger carriers spend complying with the lease and interchange requirements represents approximately 95 percent of the total cost of the 2015 final rule. The cost savings from the proposed rule are likewise heavily influenced by aggregate changes in the opportunity cost of employee time.

The Agency evaluates changes in employee opportunity cost by using their labor costs. Labor costs comprise wages, fringe benefits, and overhead. Fringe benefits include paid leave, bonuses and overtime pay, health and other types of insurance, retirement plans, and legally required benefits (Social Security, Medicare, unemployment insurance, and workers' compensation insurance). Overhead includes any expenses to a firm associated with labor that are not part of employees' compensation, and typically includes many types of fixed costs of managing a body of employees, such as management and human resource staff salaries or payroll services. The economic costs of labor to a firm, in this case a passenger carrier, include all forms of compensation and labor related expenses. For this regulatory evaluation, the costs of labor to the firm are calculated to include base wages and fringe benefits, plus overhead.

For the regulatory evaluation of both the 2015 final rule and this proposed rule, the median hourly base wage rate for the BLS SOC code 53–1031, ''First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators,'' is used as the basis for calculating the relevant cost of labor. For 2016, BLS reports an hourly base wage rate of $27.54 for this occupation.[21]

BLS does not publish data on fringe benefits for specific occupations, but it does do so for broad industry groups in its Employer Costs for Employee Compensation (ECEC) publication. A fringe benefit rate of 57 percent (*i.e.,* equal to 57 percent of the base wage rate) is used. This is based on information from the June 2016 BLS ECEC data, which for the ''Transportation and warehousing'' segment of private industry reports a benefits cost of $14.09 per hour worked, which represents 57 percent of wages and salaries in that industry segment of $24.73 per hour.[22]

Finally, for estimating overhead rates, the Agency used industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute, North Dakota State University.[23] Research conducted for this model found an average cost of $0.107 per mile of CMV operation for management and overhead, and $0.39 per mile for labor, indicating an overhead rate of 27 percent (27% = $0.107 ÷ $0.39 (rounded to the nearest whole percent)).

Combined, the overall relevant cost of labor, including base wage rate, fringe benefits, and overhead, for passenger carriers that would experience regulatory relief under the proposed rule is $54.91 per hour.

Costs

The proposed rule would not result in any increase in costs. It revises the 2015 final rule, which serves as the baseline against which the effects of the proposed rule are evaluated. Absent the proposed rule, the Agency estimates

*www.regulations.gov/contentStreamer?documentId=FMCSA-2012-0103-0010&attachmentNumber=1&contentType=pdf* (accessed March 12, 2018). Greyhound reported 10,263 passenger-carrying CMV trips performed in 2012 by vehicles leased and interchanged. This 2012 value was then adjusted to reflect observed industry growth from 2012 to 2016 as represented by growth in employment for SOC Code 53–3021 (Bus drivers, transit and intercity), and then further adjusted to reflect employment growth projection for SOC Code 53–3021 (Bus drivers, transit and intercity).

[21] U.S. DOLBLS. ''Occupational Employment Statistics (OES). National.'' May 2016. March 31, 2017. Available at: *https://www.bls.gov/oes/special.requests/oesm16nat.zip* (accessed January 18, 2018).

[22] U.S. DOLBLS . ''Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, March 2015.'' Available at: *https://www.bls.gov/news.release/archives/ecec_09082016.pdf* (accessed March 5, 2017).

[23] Berwick, Farooq. *Truck Costing Model for Transportation Managers.* North Dakota State University. Upper Great Plains Transportation Institute. August 2003. Appendix A, pp. 42–47. Available at: *http://www.mountain-plains.org/pubs/pdf/MPC03-152.pdf* (accessed July 20, 2015).

that the baseline costs of the 2015 final rule over the 10-year analysis period of 2019 to 2028 would be $10.4 million on an annualized basis at a 7 percent discount rate.[24] As noted earlier, the Agency estimates that the proposed rule would result in a cost savings of $8.2 million at a 7 percent discount rate relative to the 2015 baseline, representing a 79 percent overall reduction in cost.

The estimated reduction of approximately 75 percent in the number of passenger carriers and CMV trips under the proposed rule is responsible for most of the annualized cost savings. The remaining cost savings are the result of reduced requirements for those approximately 25 percent of passenger carriers and CMV trips that would remain subject to the lease and interchange rules.

Under both the 2015 rule and the proposed rule, costs are organized into six major categories. Five are related to the requirements under § 390.303 of the 2015 rule, and include: One-time costs of lease negotiation; lease documentation costs; lease copying costs; lease receipt costs; and vehicle marking costs. The sixth cost category is related to the charter party notification requirement under § 390.305 of the 2015 rule.

One-time costs of lease negotiation under the proposed rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, the time expended by employees in negotiating the lease and developing the lease document, and the total labor cost of these employees. The number of trips that would experience regulatory relief under the proposed rule for this cost category are the trips that would no longer be subject to the lease and interchange requirements. As presented earlier in Table 4, the Agency estimates that an annual average of 402,851 passenger-carrying CMV trips would no longer be subject to the lease and interchange requirements. Consistent with the approach used in the 2015 regulatory evaluation, for each of these trips it is assumed that 30 minutes of employee time is saved, for both the lessor and the lessee, for a total time savings of one hour for each such trip.[25] This savings is valued at the total labor cost of $54.91 per hour, described earlier. The resulting savings in one-time costs of lease negotiation under the proposed rule would be $21.3 million on an undiscounted basis over the 10-year analysis period, and $2.8 million on an annualized basis at a 7 percent discount rate. As noted earlier, FMCSA proposes to remove the requirement in § 390.303(b)(5) that the lease contain a statement that the lessee is responsible for compliance with the insurance requirements of 49 CFR part 387. Although in theory this proposed change may result in a modest incremental reduction in the amount of time passenger carrier employees expend in negotiating the lease and developing the lease document for carriers still subject to the leasing and interchange requirements, there is no empirical basis upon which to estimate such a possible impact. Therefore the Agency has chosen not to make any such incremental reduction in its analysis. Also, not quantifying such a potential impact is a conservative approach that helps to avoid overestimating the cost savings of the proposed rule.

Lease documentation costs under the proposed rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, the time spent by carrier employees verifying the information and signing the lease, and the total labor cost of these employees. The number of trips that would experience regulatory relief under the proposed rule for this cost category are the same as above, an annual average of 402,851 trips that would no longer be subject to the lease and interchange requirements. Consistent with the 2015 regulatory evaluation, for each trip that would experience regulatory relief under the proposed rule for this cost category this analysis assumes that both the lessor and the lessee save 5 minutes of employee time, for a total savings of 10 minutes for each such trip.[26] This is valued at the total labor cost of $54.91 per hour. The resulting savings in lease documentation costs under the proposed rule would be $36.9 million on an undiscounted basis over the 10-year analysis period, and $3.7 million on an annualized basis at a 7 percent discount rate.

Lease copying cost savings under the proposed rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, and an estimated cost per copy. The number of trips that would experience regulatory relief under the proposed rule for this cost category are the same as above, an annual average of 402,851 such trips. As in the 2015 regulatory evaluation, it assumed that for each trip one copy of the lease is made for the lessor and another for the lessee, each at a cost of $0.15, for a total cost of $0.30 per trip.[27] The resulting in lease copying cost savings under the proposed rule would be $1.2 million on an undiscounted basis over the 10-year analysis period, and $0.12 million on an annualized basis at a 7 percent discount rate.

The remaining three cost categories (lease receipts, vehicle marking, and charter party notification) would be eliminated for all passenger carriers and passenger-carrying trips, including those that would still be subject to lease and interchange requirements under the proposed rule.

Lease receipt cost savings under the 2015 rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, with two receipts assumed per trip (one for obtaining, the other for surrendering the vehicle), and both the lessor and lessee requiring copies of each, for a total of four receipts per trip. Because the proposed rule would remove the receipt provision in its entirety, the cost savings would apply to all trips listed in Table 4, an annual average of 537,134 trips. Consistent with the 2015 regulatory evaluation, each receipt is assumed to cost $0.15, with four receipts required for a total of $0.60 per trip.[28] The resulting cost savings in lease receipt under the proposed rule would be $3.2 million on an undiscounted basis over the 10-year analysis period, and $0.321 million on an annualized basis at a 7 percent discount rate.

Vehicle marking cost savings under the 2015 rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, and marking costs per vehicle that include two sheets of letter size paper per trip at $0.014 per sheet, plus $0.04 for

[24] This annualized cost estimate of $10.4 million differs somewhat from the value of $8.0 million that was presented in the regulatory evaluation for the 2015 final rule primarily due to various real and nominal updates made to reflect more recently available data and information, as well as the different time frames covered by the 10-year analysis period for each respective analysis (previously 2017 to 2026, and now 2019 to 2028).

[25] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Pages 16 to 17.

[26] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 17.

[27] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 17.

[28] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 17 to 18.

adhesive tape. Because the proposed rule would remove the marking provision in its entirety, the cost savings would apply to all trips listed in Table 4, an annual average of 537,134 trips. The resulting cost savings in vehicle marking under the proposed rule would be $0.355 million on an undiscounted basis over the 10-year analysis period, and $0.035 million on an annualized basis at a 7 percent discount rate.

Charter party notification cost savings under the 2015 rule are calculated based on the number of CMV trips that would experience regulatory relief under the proposed rule for this cost category, and an estimated expenditure by passenger carrier employees of 5 minutes per notification.[29] Because the proposed rule would remove the notification provision in its entirety, the resulting cost savings would apply to all trips in which notification would otherwise have been necessary, which are assumed to be 50 percent of the total annual average of 537,134 passenger-carrying CMV trips listed in Table 4.[30] The resulting savings in charter party notification costs under the proposed rule would be $12.1 million on an undiscounted basis over the 10-year analysis period, and $1.2 million on an annualized basis at a 7 percent discount rate.

In summary, and as presented in Table 5, the Agency estimates that the proposed rule would result in a cost savings of $75.1 million on an undiscounted basis, $66.5 million discounted at 3 percent, and $57.5 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to a 10-year cost savings of $7.8 million at a 3 percent discount rate and $8.2 million at a 7 percent discount rate.

TABLE 5—TOTAL COST OF THE PROPOSED RULE

[In thousands of 2016$]

| Year | Undiscounted | | | | | Discounted | |
|---|---|---|---|---|---|---|---|
| | Lease and interchange costs | | | Charter party notification costs | Total cost [a] | Discounted at 3% | Discounted at 7% |
| | Lease negotiation costs [b] | Lease documentation, copying, and lease receipt costs | Vehicle marking costs | | | | |
| 2019 | ($21,290) | ($3,974) | ($34) | ($1,168) | ($26,467) | ($25,697) | ($24,736) |
| 2020 | 0 | (4,008) | (34) | (1,178) | (5,221) | (4,921) | (4,560) |
| 2021 | 0 | (4,042) | (35) | (1,188) | (5,265) | (4,819) | (4,298) |
| 2022 | 0 | (4,076) | (35) | (1,198) | (5,310) | (4,718) | (4,051) |
| 2023 | 0 | (4,111) | (35) | (1,208) | (5,355) | (4,619) | (3,818) |
| 2024 | 0 | (4,146) | (36) | (1,219) | (5,401) | (4,523) | (3,599) |
| 2025 | 0 | (4,181) | (36) | (1,229) | (5,446) | (4,428) | (3,392) |
| 2026 | 0 | (4,216) | (36) | (1,239) | (5,493) | (4,336) | (3,197) |
| 2027 | 0 | (4,252) | (37) | (1,250) | (5,539) | (4,245) | (3,013) |
| 2028 | 0 | (4,289) | (37) | (1,261) | (5,586) | (4,157) | (2,840) |
| Total | (21,290) | (41,301) | (355) | (12,139) | (75,084) | (66,463) | (57,504) |
| Annualized | | | | | (7,508) | (7,792) | (8,187) |

**Notes:**

(a) Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)

(b) Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.

Benefits

The regulatory evaluation for the 2015 final rule attempted to estimate the potential safety benefits of lease and interchange requirements,[31] but there were insufficient data and empirical evidence to demonstrate a measurable quantitative relationship between lease and interchange requirements and improved safety outcomes, such as reduced frequency and/or severity of crashes or reduced frequency of violations. Therefore, FMCSA followed the guidance of the Office of Management and Budget (OMB) in its Circular A–4 and performed a threshold analysis.[32] Also referred to as a break-even analysis, a threshold analysis attempts to determine the amount of safety benefits (*e.g.,* reduced crashes and corresponding reductions in fatalities, injuries, and property damage) that would need to occur as a consequence of a rule in order for the rule to yield zero net benefits (*i.e.,* for the benefits of the rule to equal, or exactly to offset, the estimated costs of the rule).

The problem of insufficient data and empirical evidence noted in 2015 is still present today. Unlike regulations dealing with vehicle equipment or driver behaviors that can be clearly linked to reduced crashes and improved safety, both the 2015 final rule and this proposed rule affect safety less directly and immediately. Lease and interchange requirements for motor carriers of passengers improve the ability of the Agency to attribute the inspection, compliance, enforcement, and safety data collected by the Agency and its State partners to the correct motor carrier and driver, allowing FMCSA to more accurately identify unsafe carriers and initiate appropriate interventions. FMCSA believes that this proposed rule would be a less costly and burdensome regulatory approach than the 2015 final rule, yet would still enable safety officials and the general public to

[29] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 24 to 26.

[30] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.'' Page 24 to 26.

[31] DOT FMCSA, ''Lease and Interchange of Vehicles, Motor Carriers of Passengers, 2015 Final Rule Regulatory Evaluation.''

[32] OMB. ''Circular A–4. Regulatory Analysis.'' September 17, 2003. Available at: *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (accessed March 9, 2018).

sufficiently identify the passenger carrier responsible for safety. Therefore, the Agency does not anticipate any change to safety benefits as a result of the proposed rule.

FMCSA requests comments and submission of quantitative or qualitative data addressing the potential impacts to safety benefits from the proposed rule.

*B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)*

This rulemaking is expected to be an E.O. 13771 deregulatory action.[33] Details on the estimated cost savings of this rulemaking can be found in the rule's economic analysis. The present value of the cost savings of this rulemaking, measured on an infinite time horizon at a 7 percent discount rate, is $83.6 million. Expressed on an annualized basis, the cost savings are $5.9 million. These values are expressed in 2016 dollars.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.[34] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The proposed rule would not result in any increase in costs or any increase in burden. The proposed rule would reduce the applicability of the lease and interchange requirements for motor carriers of passengers, resulting in a substantial reduction in the number of entities that would be subject to these requirements and a commensurate reduction in costs and burden experienced by these entities. Furthermore, for those motor carriers of passengers that would continue to be subject to the lease and interchange requirements under the proposed rule, the requirements would be reduced in comparison to the existing requirements. This would also result in a reduction in costs and burden experienced by these entities.

The regulated entities that would experience regulatory relief under the proposed rule include all of the passenger carriers that are subject to the existing lease and interchange requirements. Approximately 75 percent of this total number of passenger carriers would experience full regulatory relief, and would no longer be subject to lease and interchange requirements for passenger-carrying CMVs. The remaining 25 percent of these passenger carriers would experience partial regulatory relief and remain subject to reduced lease and interchange requirements compared to those of the 2015 final rule.

As presented earlier in Table 3 of the Regulatory Analyses section, as of 2017 there were an estimated 7,774 passenger carriers subject to the existing lease and interchange requirements, representing approximately 58 percent of all active interstate passenger carriers. As presented in Table 2, this population of passenger carriers is projected to increase slightly due to general baseline industry growth to 7,906 passenger carriers in 2019, the first year that the proposed rule is anticipated to be in effect. Therefore, it is estimated that 7,906 passenger carriers would experience regulatory relief under the proposed rule. The number of these 7,906 passenger carriers that are small entities is not directly known by FMCSA, and is therefore estimated below.

The U.S. Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[35] It is estimated that the passenger carriers that would experience regulatory relief under the proposed rule would be in industries within Subsector 485 (Transit and Ground Passenger Transportation). All eleven 6-digit NAICS industries within Subsector 485 have an SBA size standard based on annual revenue of $15.0 million. Three of the eleven 6-digit NAICS industries within Subsector 485 are likely to encompass most of the passenger carriers that would experience regulatory relief under the proposed rule, and details regarding the SBA size standards for those three industries are presented in Table 6.

TABLE 6—SBA SIZE STANDARDS FOR SELECTED INDUSTRIES [(a)]

| NAICS code | NAICS industry description | SBA size standard (annual revenue in millions of dollars) | SBA size standard (number of employees) |
|---|---|---|---|
| 485113 | Bus and Other Motor Vehicle Transit Systems | $15.0 | (none). |
| 485210 | Interurban and Rural Bus Transportation | 15.0 | (none). |
| 485510 | Charter Bus Industry | 15.0 | (none). |

**Notes:**
(a) U.S. Small Business Administration (SBA). ''Table of Small Business Size Standards.'' October 1, 2017. Available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.xlsx* (accessed March 20, 2018).

Data regarding the annual revenue earned by the estimated 7,906 passenger carriers that would experience regulatory relief under the proposed rule is not collected by FMCSA and is not otherwise available from other

[33] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. Feb. 3, 2017.

[34] Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601 *et seq.*).

[35] OMB. ''North American Industry Classification System.'' 2017. Available at: *https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf* (accessed March 20, 2018).

sources. Therefore, the SBA size standard of $15.0 million in annual revenue cannot be directly applied in order to determine how many of the 7,906 passenger carriers that would experience regulatory relief under the proposed rule are small entities. FMCSA does, however, collect information regarding the number of passenger-carrying vehicles operated by these carriers. As of the end of 2017, of the active interstate passenger carriers operating in the U.S. as presented earlier in Table 3, approximately 81 percent operated six or fewer passenger vehicles, and approximately 93 percent operated 19 or fewer passenger vehicles.[36] We estimate that in the passenger carrier industry, the average revenue earned per motorcoach is approximately $200,000.[37] [38] [39] This would mean that the SBA size standard of $15.0 million in annual revenue would equate to a carrier size of 75 passenger vehicles. Therefore, carriers operating 75 passenger vehicles or fewer would be classified as small, consistent with the SBA size standard of $15.0 million. As of the end of 2017, of the active interstate passenger carriers operating in the U.S. as presented earlier in Table 3, approximately 98 percent operated 75 or fewer passenger vehicles. The Agency does not believe that the proposed rule would disproportionately apply to either larger or smaller passenger carriers, and we therefore estimate that a similar 98 percent of the 7,906 passenger carriers that would experience regulatory relief under the proposed rule, or approximately 7,750 passenger carriers, would be small entities. Therefore, FMCSA has determined that this proposed rule will have an impact on a substantial number of small entities.

Although FMCSA has determined that this proposed rule would have an impact on a substantial number of small entities, the Agency has determined that the impact on the small entities that would experience regulatory relief under the proposed rule would not be significant. The proposed rule would not result in any increase in costs or any increase in burden for passenger carriers that are small entities. The effect of the proposed rule would be a reduction in costs and burden, and would be entirely beneficial to the passenger carriers that are small entities. As discussed in the Regulatory Analyses section, the Agency estimates that the proposed rule would result in a total cost savings of $75.1 million on an undiscounted basis over the 10-year analysis period used for the regulatory evaluation, or $7.5 million on an annualized basis. As presented in Table 2, an annual average of approximately 8,215 passenger carriers would experience regulatory relief under the proposed rule over the same 10-year analysis period, 98 percent of which are estimated to be small entities. The annual cost savings per small carrier would therefore be at most $914 on average (potentially even somewhat less, given that approximately 2 percent of passenger carriers that would experience regulatory relief under the proposed rule are not small entities and therefore may represent a disproportionately larger share of the overall absolute cost savings because of the larger scale of their operations). For even the smallest of the small entities, those operating only one passenger vehicle, this $914 in annual savings represents only about one half of one percent of the estimated total annual revenues of $200,000 for a carrier with just one vehicle. Therefore, although FMCSA has determined that this proposed rule would have an impact on a substantial number of small entities, the Agency has also determined that the impact on these small entities would not be significant, and furthermore will be entirely beneficial.

Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. FMCSA requests comments on this certification and on the analysis presented in support of it.

*D. 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 proposed rule so that they can better evaluate its effects and participate in the rulemaking initiative. If the proposed 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, Ms. Loretta Bitner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman 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). The DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.[40]

*E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act requires agencies to prepare a comprehensive written statement for any proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $156 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2015 levels) or more in any one year. Because this proposed rule would not result in such an expenditure, a written statement is not required. However, the Agency does discuss the costs and benefits of this

[36] U.S. DOT, FMCSA. Motor Carrier Management Information System (MCMIS), and Licensing and Insurance (L&I) system. Snapshots as of December 29, 2017 (DART request ID #38883).

[37] The information available regarding revenue for the passenger carrier industry is limited. The American Bus Associated reported that for 2004, revenue per motorcoach was approximately $160,000. Inflated from 2004 dollars to 2016 dollars using either CPI–U or the Implicit Price Deflator for GDP, this value becomes approximately $200,000 per vehicle.

[38] American Bus Association (ABA). ''Motorcoach Census 2005.'' September 2006. Page 19, Table 3–5 (Carrier Revenue per Motorcoach, Averages, 2004). Available at: *https://www.iru.org/apps/cms-filesystem-action?file=events_2007_busandcoach/Motorcoach%20Census%202005%2009-21-20061.pdf* (accessed March 8, 2018).

[39] Greyhound, one of the largest interstate passenger carriers operating in the U.S., reported total revenue for 2017 of $894 million, with 78 percent of that total, or $697 million, being passenger revenue. With a fleet size reported to consist of 1,600 buses for the same year, this equals an average passenger revenue per motorcoach of $435,000. We believe that substantially higher levels of per vehicle revenue such as this are not representative of the smaller passenger carriers that make up most of the industry, and therefore the lesser estimate of $200,000 revenue per motorcoach described above was used here so as not to risk underestimating the number of small entities in the passenger carrier industry when used to compare against the SBA size standard of $15.0 million in annual revenue. Greyhound data is from ''FirstGroup plc, Annual Report and Accounts, 2017'', pages 18–19, available at *http://www.firstgroupplc.com/–/media/Files/F/Firstgroup-Plc/indexed-pdfs/2017%20ARA/2017%20FirstGroup%20plc%20Annual%20Report%20and%20Accounts.pdf* (accessed March 19, 2018).

[40] U.S. Department of Transportation (DOT). ''The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf* (accessed January 17, 2018).

proposed rule elsewhere in this preamble.

*F. Paperwork Reduction Act*

This proposed rule would amend two OMB-approved information collections titled ''Commercial Motor Vehicle Marking Requirements,'' OMB No. 2126–0054, and ''Lease and Interchange of Vehicles,'' OMB No. 2126–0056, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The Agency's CMV marking regulations require freight-carrying commercial motor carriers, passenger-carrying commercial motor carriers, and intermodal equipment providers to display the USDOT number and the legal name or a single trade name of the carrier or intermodal equipment provider on their vehicles. The USDOT number is used to identify all motor carriers in FMCSA's registration and information systems. It is also used by States as the key identifier in the Performance and Registration Information Systems Management (PRISM) system, a cooperative Federal/State program that makes motor carrier safety a requirement for obtaining and maintaining CMV registration and privileges. Vehicle marking requirements are intended to ensure that FMCSA, the National Transportation Safety Board (NTSB), and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies. These marking requirements also provide the public with beneficial information that could assist in identifying carriers for the purposes of commerce, complaints, or emergency notification.

The proposed rule would eliminate the existing requirement under 49 CFR 390.303(f) for the temporary marking of leased commercial passenger vehicles. The proposed rule would therefore amend the OMB-approved information collection titled ''Commercial Motor Vehicle Marking Requirements,'' OMB No. 2126–0054. In the currently approved information collection, the temporary marking of leased commercial passenger vehicles was assumed to have *de minimis* time burden, and therefore no separate time burden was estimated for that element of the passenger-carrying commercial motor carrier marking requirements. Because of this, in the proposed revision to this information collection, there is no change in time burden due to program change, and the estimated changes in time burden from the currently approved information collection are due to adjustments related to factors such as revised estimates of the population of passenger-carrying motor carriers and industry growth rate. There is a small reduction in the annual cost burden, however, related to the elimination of the cost of materials (paper and adhesive tape) estimated to be used for the temporary vehicle markings that are proposed to be eliminated.

*Title:* Commercial Motor Vehicle Marking Requirements.

*OMB control number:* 2126–0054.

*Summary of the collection of information:* Under the information collection, freight-carrying commercial motor carriers, passenger-carrying commercial motor carriers, and intermodal equipment providers mark their vehicles to display the USDOT number and the legal name or a single trade name of the carrier or intermodal equipment provider. This vehicle marking occurs when a new vehicle is purchased, when a used vehicle is purchased and requires re-marking, and when a vehicle is retained by the owner but the existing label reaches the end of its useful life.

*Need for information:* Vehicle marking requirements are needed to ensure that FMCSA, the NTSB, and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies. These marking requirements also provide the public with beneficial information that could assist in identifying carriers for the purposes of commerce, complaints, or emergency notification.

*Proposed use of information:* The USDOT number is used to identify all motor carriers in FMCSA's registration and information systems, is used as the key identifier in the PRISM system, and is used by the public with beneficial information that could also assist in identifying carriers for the purposes of commerce, complaints, or emergency notification.

*Description of the respondents:* Freight-carrying commercial motor carriers, passenger-carrying commercial motor carriers, and intermodal equipment providers.

*Number of respondents:*

IC–1 (freight carriers) number of respondents: 204,390

IC–2 (passenger carriers) number of respondents: 5,007

IC–3 (intermodal equipment providers) number of respondents: 11

Total number of respondents: 209,408

*Frequency of response:*

IC–1 (freight carriers) frequency of response: 7.9 responses per year, per respondent

IC–2 (passenger carriers) frequency of response: 20.4 responses per year, per respondent

IC–3 (intermodal equipment providers) frequency of response: 1,910 responses per year, per respondent

Overall average frequency of response: 8.3 response per year, per respondent

*Burden of response:*

IC–1 (freight carriers) burden of response: 0.43 hours

IC–2 (passenger carriers) burden of response: 0.43 hours

IC–3 (intermodal equipment providers) burden of response: 0.43 hours

Overall average burden of response: 0.43 hours

*Estimate of Total Annual Burden:*

IC–1 (freight carriers) burden: 699,902 hours

IC–2 (passenger carriers) burden: 44,300 hours

IC–3 (intermodal equipment providers) burden: 9,108 hours

Total annual burden: 753,310 hours

The Agency's lease and interchange of vehicles regulations ensure that truck and bus carriers are identified (and in some cases protected) when they agree to lease their equipment and drivers to other carriers. These regulations also ensure that the government and members of the public can determine who is responsible for a CMV. Prior to these regulations, some equipment was leased without written agreements, leading to disputes and confusion over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle. These recordkeeping requirements enable the general public and investigators to identify the passenger carrier responsible for safety, and ensure that FMCSA, our State partners, and the NTSB are better able to identify the responsible motor carrier and therefore correctly assign regulatory violations to the appropriate carrier during inspections, investigations, compliance reviews, and crash studies.

The proposed rule would reduce the scope of the lease and interchange requirements for motor carriers of passengers. Furthermore, those passenger carriers and passenger-carrying CMV trips for which the proposed rule would remain applicable would be subject to lease and interchange requirements that are reduced from the current requirements. The applicability of the existing lease and interchange requirements for motor carriers of passengers under 49 CFR 390.301 would be revised, resulting in a substantial reduction of approximately 75% in the number of passenger carriers and passenger-carrying CMV trips that would be subject to the lease and interchange requirement for motor carriers of passengers. For those motor carriers of passengers that would remain subject to the lease and interchange requirements under the proposed rule, the existing requirements under 49 CFR 390.303(e) for lease receipt copies would be eliminated, and the existing requirements under 49 CFR 390.305 for charter party notification would also be eliminated.

The proposed rule would therefore amend the OMB-approved information collection titled ''Lease and Interchange of Vehicles,'' OMB No. 2126–0056. In the proposed revision to this information collection, there is substantial reduction in time burden due to program change from the currently approved information collection as a result of the proposed rule.

*Title:* Lease and Interchange of Vehicles

*OMB control number:* 2126–0056.

*Summary of the collection of information:* Under the information collection, freight-carrying commercial motor carriers and passenger-carrying commercial motor carriers negotiate leases, prepare and sign lease documents, and produce copies of lease documents.

*Need for information:* The Agency's lease and interchange of vehicles regulations ensure that truck and bus carriers are identified (and in some cases protected) when they agree to lease their equipment and drivers to other carriers. These regulations also ensure that the government and members of the public can determine who is responsible for a CMV. These recordkeeping requirements enable the general public and investigators to identify the passenger carrier responsible for safety.

*Proposed use of information:* The government generally collects little information with this ICR. The leases and other agreements are developed and held by the lessor (*e.g.,* those granting use of equipment) and lessee (*e.g.,* party acquiring equipment). They are used to assign duties and responsibilities. The information may also be used by law enforcement to determine legal responsibility in the event that a leased vehicle is in violation of the regulations or is involved in a crash.

*Description of the respondents:* Freight-carrying commercial motor carriers, and passenger-carrying commercial motor carriers.

*Number of respondents:*

IC–1 (property-carrying CMVs) number of respondents: 35,902

IC–2 (passenger-carrying CMVs) number of respondents: 3,987

Total number of respondents: 39,889

*Frequency of response:*

IC–1 (property-carrying CMVs) frequency of response: 19.9 responses per year, per respondent

IC–2 (passenger-carrying CMVs) frequency of response: 152.4 responses per year, per respondent

Overall average frequency of response: 33.2 response per year, per respondent

*Burden of response:*

IC–1 (property-carrying CMVs) burden of response: 0.11 hours

IC–2 (passenger-carrying CMVs) burden of response: 0.11 hours

Overall average burden of response: 0.11 hours

*Estimate of total annual burden:*

IC–1 (property-carrying CMVs) burden: 77,554 hours

IC–2 (passenger-carrying CMVs) burden: 64,802 hours

Total annual burden: 142,356 hours

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FMCSA will submit a copy of this proposed rule to OMB for its review of the collection of information.

FMCSA asks for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help the Agency perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how FMCSA can improve the quality, usefulness, and clarity of the information; and how FMCSA can minimize the burden of collection.

*G. E.O. 13132 (Federalism)*

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

*H. E.O. 12988 (Civil Justice Reform)*

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

*I. E.O. 13045 (Protection of Children)*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

*J. E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this proposed rule in accordance with E.O. 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.

*K. Privacy*

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

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

determined that this rule would not result in a new or revised Privacy Act System of Records for FMCSA.

The E–Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (December 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

*L. E.O. 12372 (Intergovernmental Review)*

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

*M. E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this proposed rule under E.O. 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 order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

*N. E.O. 13783 (Promoting Energy Independence and Economic Growth)*

Executive Order 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources.[41] In accordance with E.O. 13783, the DOT prepared and submitted a report to the Director of OMB providing specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. The DOT has not identified this proposed rule as potentially alleviating unnecessary burdens on domestic energy production under E.O. 13783.

[41] Exec. Order No. 13783, 82 FR 16093 (March 31, 2017).

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

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

*P. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

*Q. Environment (NEPA and CAA)*

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(y)(2) and (6)(y)(7). The Categorical Exclusion (CE) in paragraph (6)(y)(2) covers regulations implementing motor carrier identification and registration reports. The Categorical Exclusion (CE) in paragraph (6)(y)(7) covers 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. The proposed requirements in this rule are covered by these CEs, and the proposed action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

FMCSA also analyzed this rule under section 176(c) of the Clean Air Act, as amended (CAA) (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.

**List of Subjects in 49 CFR Part 390**

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

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, subchapter B, part 390 to read 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, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 2. Amend § 390.5 as follows:
■ a. Lift the suspension of the section;
■ b. Revise the definition of ''*Lease,*'' ''*Lessee,*'' and ''*Lessor*'' in alphabetical order'';
■ c. Suspend § 390.5 indefinitely.

The revised text reads as follows:

**§ 390.5 Definitions.**

* * * * *

*Lease,* as used in subpart G of this part, means a contract or agreement in which a motor carrier of passengers 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, whether or not compensation for such use is specified or required, when one of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901–13902. 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 G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle through a *lease* as defined in this section, 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 G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle through a *lease* as defined in this section, 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 § 390.5T by revising the definitions of ''Lease,'' ''Lessee,'' and ''Lessor'' in alphabetical order to read as follows:

**§ 390.5T Definitions.**

* * * * *

*Lease,* as used in subpart G of this part, means a contract or agreement in which a motor carrier of passengers 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, whether or not compensation for such use is specified or required, when one of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901–13902. 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 G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle through a *lease* as defined in this section, 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 G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle through a *lease* as defined in this section, 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.

* * * * *

■ 4. Amend § 390.21 as follows:
■ a. Lift the suspension of the section;
■ b. Revise paragraph (e);
■ c. Remove paragraph (f);
■ d. Redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively;
■ e. Suspend § 390.21 indefinitely.

The revised text reads as follows:

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

* * * * *

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v), the CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters ''USDOT'' is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee by FMCSA, preceded by the letters ''USDOT,'' if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following information may be shown in a rental agreement:

(*1*) Whether the motor carrier is engaged in ''interstate'' or ''intrastate'' commerce; and

(*2*) Whether the renting motor carrier is transporting hazardous materials in the rented CMV;

(C) The sentence: ''This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental CMV''; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* The passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

* * * * *

■ 5. Amend § 390.21T by
■ a. Revising paragraph (e);
■ b. Removing paragraph (f);
■ c. Redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

The revision to read as follows:

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

* * * * *

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the

rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v), the CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters ''USDOT'' is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee by FMCSA, preceded by the letters ''USDOT,'' if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following information may be shown in a rental agreement:

(*1*) Whether the motor carrier is engaged in ''interstate'' or ''intrastate'' commerce; and

(*2*) Whether the renting motor carrier or lessee is transporting hazardous materials in the rented or leased CMV;

(C) The sentence: ''This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental or leased CMV''; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* The passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

* * * * *

## Subpart F—[Removed and Reserved]

■ 6. Remove and reserve subpart F of part 390., consisting of §§ 390.301 through 390.305, to read as follows:

■ 7. Add subpart G, consisting of §§ 390.401 and 390.403, to read as follows:

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

Sec.

390.401 Applicability.
390.403 Lease and interchange requirements.

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

### § 390.401 Applicability.

(a) *General.* Except as provided in paragraphs (b)(1) and (2) 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 of passenger-carrying commercial motor vehicles between motor carriers.

(b) *Exceptions*—(1) *Contracts and agreements between motor carriers of passengers with active passenger carrier operating authority registrations.* This subpart does not apply to contracts and agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with the Federal Motor Carrier Safety Administration when one such motor carrier acquires transportation service(s) from another such motor carrier(s).

(2) *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 allowing the motor carrier to use the passenger-carrying commercial motor 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 or interchange agreement, or pursuant to a lease or interchange agreement that fails to meet all applicable requirements of subpart G, both motor carriers shall be subject to a civil penalty.

### § 390.403 Lease and interchange requirements.

Except as provided in § 390.401(b) 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) *Lease or agreement required.* There shall be in effect either:

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

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

(2) *Exception.* When an event occurs (*e.g.,* a crash, the vehicle is disabled) that requires a motor carrier of passengers immediately to obtain a replacement vehicle from another motor carrier of passengers, 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. However, during that 48-hour (or shorter) period, the driver of the vehicle must carry, 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 390.403(a)(2).''

(b) *Contents of the lease.* The lease or interchange agreement required by paragraph (a) 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 or interchange agreement.

(2) *Parties.* The legal name, USDOT number, and telephone number of the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the legal name, USDOT number, 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 or interchange agreement begins and ends.

(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 agreement, and assumes complete responsibility for operation of the vehicle and compliance with all applicable Federal regulations for the duration of the agreement.

(ii) In the event of a sublease between motor carriers, all of the requirements of this section shall apply to a sublease.

(c) *Copies of the lease.* A copy shall be on the passenger-carrying commercial motor vehicle during the period of the lease or interchange agreement, and both the lessee and lessor shall retain a copy of the lease or interchange agreement for 1 year after the expiration date.

Issued under the authority delegated in 49 CFR 1.87 on: September 11, 2018.

**Raymond P. Martinez,**

*Administrator.*

[FR Doc. 2018–20162 Filed 9–19–18; 8:45 am]

**BILLING CODE 4910–EX–P**