

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-2012-0103]

RIN 2126-AC07 and 2126-AC22

Lease and Interchange of Vehicles; Motor Carriers of Passengers

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

ACTION: Final rule.

SUMMARY: FMCSA amends its May 27, 2015, final rule on *Lease and Interchange of Vehicles; Motor Carriers of Passengers* (2015 final rule) in response to petitions for rulemaking . This final rule narrows the applicability of the 2015 final rule by excluding certain contracts and other agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with FMCSA from the definition of lease and the associated regulatory requirements. For passenger carriers that remain subject to the leasing and interchange requirements, FMCSA returns the bus marking requirement to its July 1, 2015, state with slight modifications to add references to leased vehicles; revises the exception for the delayed writing of a lease during certain emergencies; and removes the 24-hour lease notification requirement.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and supersedes the 2015 final rule in its entirety.

Compliance date: As of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the compliance date for the requirements in subpart G of 49 CFR part 390 (§§ 390.401 and 390.403) is January 1, 2021.

Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. OMB must receive your comments by this date in order to act quickly on the information collection request.

Petitions for reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments on the collection of information should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2012-0103. Interested persons are invited to submit written comments on information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via:

- **Electronic mail:** oira_submission@omb.eop.gov.
- **Fax:** 1-202-395-6974.
- **Mail:** Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

To avoid duplication, please use only one of these three methods.

Petitions for reconsideration of this final rule must be submitted in accordance with 49 CFR 389.35 and submitted to the FMCSA Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001.

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.

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I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA-2012-0103 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. 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.dot.gov/privacy.

II. EXECUTIVE SUMMARY

A. Purpose of the Final Rule

FMCSA revises its regulations governing the lease and interchange of passenger-carrying commercial motor vehicles (CMVs). This rule excludes from the lease and interchange requirements motor carriers that operate CMVs and have active operating authority registration¹ with FMCSA to transport passengers – hereafter called “authorized carriers” or “carriers with operating authority” for the sake of simplicity. This rule also excludes financial leases.² For leases between authorized carriers, the assignment of responsibility for regulatory compliance requires no additional regulatory obligations because FMCSA believes their identity can be determined by other means, principally because each authorized for-hire motor carrier must conduct the transportation in its own name, under its own authority, with its owned, leased, or borrowed vehicles, and is therefore responsible for compliance with the FMCSRs.

B. Summary of the Major Provisions

The rule (1) revises the definition of *lease* to exclude authorized carriers that grant the use of their vehicles to each other; (2) removes the May 27, 2015, final rule’s marking requirements and reinstates the previous vehicle marking requirements with slight modifications; (3) revises the provision allowing a delay in the completion of a lease

¹ Operating authority registration is defined in 49 CFR 390.5. The phrase “means the registration required by 49 U.S.C. 13902 [*Registration of motor carriers*], 49 CFR part 365 [*Rules Governing Applications for Operating Authority*], 49 CFR part 368 [*Application for a Certificate of Registration to Operate in Municipalities in the United States on the United States-Mexico International Border or Within the Commercial Zones of Such Municipalities*], and 49 CFR 392.9a [*Operating authority*].” “Active” in the context of *operating authority registration* means FMCSA has granted the motor carrier operating authority registration through issuance of a valid certificate, permit, or license as provided in §§ 365.115(b) or 368.6(d), and FMCSA has not suspended or revoked that certificate, permit, or license for various statutory or regulatory reasons.

² See § 390.301(b)(1) of the 2015 final rule and § 390.401(b)(2) of this final rule.

during certain emergencies; and (4) removes the requirement that motor carriers chartered for a trip who lease a CMV from another carrier to provide the transportation must notify the tour operator or group of passengers about the lease and the lessor.

C. Costs and Benefits

The Agency estimates that an annual average of 8,366 motor carriers of passengers and 547,034 passenger-carrying CMV trips will experience regulatory relief under this final rule. Approximately 75 percent of these passenger carriers and CMV trips will experience full regulatory relief and will 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 will 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 rule will result in a cost savings of \$76.5 million on an undiscounted basis, \$67.7 million discounted at 3 percent, and \$58.5 million discounted at 7 percent over the 10-year analysis period, expressed in 2016 dollars. On an annualized basis, this equates to a 10-year cost savings of \$7.9 million at a 3 percent discount rate and \$8.3 million at a 7 percent discount rate. This final rule has total costs less than zero, and is therefore a deregulatory action under Executive Order 13771.

**Table 1: Summary of the Total Cost of the Rule
(in thousands of 2016\$)**

Year	Passenger Carriers Experiencing Regulatory Relief Under the Rule	Passenger-Carrying CMV Trips Experiencing Regulatory Relief Under the Rule	Undiscounted			Discounted	
			Lease and Interchange Costs ^(a)	Charter Party Notification Costs	Total Costs ^(b)	Discounted at 3%	Discounted at 7%
2021	8,046	526,111	(\$25,747)	(\$1,189)	(\$26,936)	(\$26,152)	(\$25,174)
2022	8,116	530,654	(\$4,114)	(\$1,199)	(\$5,315)	(\$5,009)	(\$4,642)
2023	8,186	535,237	(\$4,150)	(\$1,210)	(\$5,360)	(\$4,906)	(\$4,376)
2024	8,256	539,859	(\$4,187)	(\$1,220)	(\$5,407)	(\$4,804)	(\$4,125)
2025	8,328	544,521	(\$4,224)	(\$1,231)	(\$5,453)	(\$4,704)	(\$3,888)
2026	8,400	549,224	(\$4,260)	(\$1,241)	(\$5,500)	(\$4,607)	(\$3,665)
2027	8,472	553,967	(\$4,296)	(\$1,252)	(\$5,548)	(\$4,511)	(\$3,455)
2028	8,545	558,751	(\$4,333)	(\$1,263)	(\$5,596)	(\$4,417)	(\$3,257)
2029	8,619	563,576	(\$4,370)	(\$1,274)	(\$5,644)	(\$4,326)	(\$3,070)
2030	8,693	568,443	(\$4,409)	(\$1,285)	(\$5,693)	(\$4,236)	(\$2,894)
Total			(\$64,089)	(\$12,363)	(\$76,453)	(\$67,672)	(\$58,546)
Annualized					(\$7,645)	(\$7,933)	(\$8,336)

Notes:

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

The regulatory evaluation for the 2015 final rule addressed the potential safety benefits of lease and interchange requirements for motor carriers of passengers.³ There was 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

³ U.S. Department of Transportation (DOT), FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Docket ID# FMCSA-2012-0103-0022. Available at: <https://www.regulations.gov/contentStreamer?documentId=FMCSA-2012-0103-0022&attachmentNumber=1&contentType=pdf> (accessed June 3, 2019).

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 for the benefits of the rule to exactly offset the estimated costs of the rule.

In considering the potential impact to safety benefits from this final rule, the Agency notes that there remains insufficient data and empirical evidence to 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 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 this rule are a less costly and burdensome regulatory approach than the requirements of the 2015 final rule, yet still enable safety officials and the public to identify the passenger carrier responsible for safety because each authorized for-hire motor carrier must conduct the transportation in its own name, under its own authority, with its owned, leased, or borrowed vehicles, and is therefore responsible for compliance with the FMCSRs. The Agency does not anticipate any change to safety benefits as a result of the rule.

III. ABBREVIATIONS

1935 Act	Motor Carrier Act of 1935
1984 Act	Motor Carrier Safety Act of 1984
2015 final rule	May 27, 2015, <i>Lease and Interchange of Vehicles; Motor Carriers of Passengers</i> final rule, 80 FR 30164
ABA	American Bus Association
BLS	Bureau of Labor Statistics

CMV	Commercial Motor Vehicle
DART	Data Analysis and Reports Team
DOL	United States Department of Labor
DOT	United States Department of Transportation
ECEC	Employer Costs for Employee Compensation
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
ICCTA	ICC [<i>Interstate Commerce Commission</i>] Termination Act of 1995
L&I	Licensing and Insurance
MCBOA	Minnesota Charter Bus Operators Association
MAP-21	Moving Ahead for Progress in the 21 st Century Act
MCMIS	Motor Carrier Management Information System
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
UMA	United Motorcoach Association
U.S.C.	United States Code
VIN	Vehicle Identification Number

IV. LEGAL BASIS

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)).⁴

The 1984 Act confers on DOT authority to regulate drivers, motor carriers, and CMVs. “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 section, or chapter 51 or chapter 313 of this title” [49 U.S.C. 31136(a)(5)].⁵

⁴ See <https://www.gpo.gov/fdsys/pkg/USCODE-2017-title49/pdf/USCODE-2017-title49-subtitleVI-partB-chap315.pdf> (accessed June 3, 2019).

⁵ See <https://www.gpo.gov/fdsys/pkg/USCODE-2017-title49/pdf/USCODE-2017-title49-subtitleVI-partB-chap311-subchapIII-sec31136.pdf> (accessed June 3, 2019).

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)).⁶

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 public to identify the passenger carrier responsible for safety. Although the USDOT number serves a similar function, it does not assign responsibility when CMVs are exchanged between two or more parties, leaving an information gap filled by this rule. Currently, many passenger-carrying CMVs and drivers are rented, loaned, leased, interchanged, assigned, and reassigned with few records and little formality, thus obscuring the operational safety responsibility of certain industry participants. The more accurate, targeted enforcement allowed by this rule will help the Agency meet the mandate of 49 U.S.C. 31136(a)(1) to ensure that passenger-carrying CMVs, like other vehicles, are “operated safely.” The rule does not address the requirements of 49 U.S.C. 31136(a)(2)-(4). 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 (49 U.S.C. 31136(a)(5)).

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 discussed in this final rule.

⁶ See <https://www.gpo.gov/fdsys/pkg/USCODE-2017-title49/pdf/USCODE-2017-title49-subtitleVI-partB-chap311-subchapIII-sec31133.pdf> (accessed June 3, 2019).

V. DISCUSSION OF PROPOSED RULEMAKING AND COMMENTS

A. Proposed Rulemaking

FMCSA published a notice of proposed rulemaking (NPRM) on September 20, 2018 (83 FR 47764) (2018 NPRM), that proposed several changes to the lease and interchange requirements added to 49 CFR part 390 by the 2015 final rule (80 FR 30164). The proposals included narrowing the applicability of the rule, excluding certain contracts and other agreements between motor carriers of passengers with operating authority from the definition of lease and the associated regulatory requirements, excluding financial leases⁷, and returning the § 390.21(e) marking requirement to its July 1, 2015, state with slight modifications to add references to leased vehicles. The NPRM also proposed to revise the delayed writing of a lease during certain emergencies; remove the 24-hour lease notification requirement; and extend the compliance date for the 2015 final rule to January 1, 2021, to give the Agency sufficient time to complete this final rule.

B. Comments and Responses

Eighteen comments to the 2018 NPRM were received from the following parties: American Bus Association (ABA), United Motorcoach Association (UMA), Greyhound Lines, Coach USA, Adirondack Trailways, Annett Bus Lines, Southern Tier Stages, Northwest Motorcoach Association, Peter Pan Bus Lines, Jefferson Bus Lines, Plymouth & Brockton Street Railway Company, Academy Bus, DeCamp Bus Lines, Burlington

⁷ *Financial lease* (however designated, e.g., lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, demonstration or loaner vehicle, etc.) as defined in § 390.401(b)(2) means a contract between a motor carrier and a bank or similar financial organization or a manufacturer or dealer of passenger-carrying CMVs.

Trailways, FlixBus Inc., Pacific Coachways Charter Services, Thielen Bus Lines⁸, and a private citizen.

Extension of the Compliance Date

Extension of the compliance date was supported by ABA, Academy Bus, Coach USA, Adirondack Trailways, Annett Bus Lines, Southern Tier Stages, Inc., Northwest Motorcoach Association, Peter Pan Bus Lines, Jefferson Bus Lines, Plymouth & Brockton, DeCamp Bus Lines, Burlington Trailways, UMA, Greyhound, Thielen Bus Lines, and Pacific Coachways Charter Services.

FMCSA Response:

On December 4, 2018, FMCSA published a final rule extending the compliance date for the 2015 final rule to January 1, 2021 (83 FR 62505). This final rule will use the January 1, 2021 compliance date set by the December 2018 final rule.

General Applicability

The NPRM proposed revising the general applicability section to add two exceptions to the applicability requirements of the lease and interchange rule. Under the NPRM, section 390.401(b) would be modified in several ways. First, a new exception in paragraph (b)(1) would exclude from the rule contracts and agreements between passenger carriers with active passenger carrier operating authority registration⁹ when one such carrier acquires transportation services from another such carrier. Second, the

⁸ The commenter states he is a board member of the Minnesota Charter Bus Operators Association (MCBOA). He submitted comments on his own behalf, and as a representative of the other 32 members of the MCBOA.

⁹ Operating authority registration means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a as defined in 49 CFR 390.5. "Active" in the context of *operating authority registration* means FMCSA has granted the motor carrier operating authority registration through issuance of a valid certificate, permit, or license as provided in §§ 365.115(b) or 368.6(d), and FMCSA has not suspended or revoked that certificate, permit, or license for various statutory or regulatory reasons.

2015 exception for financial leases would be revised to remove the requirement that the bank or similar financial organization, manufacturer, or dealer must be a motor carrier to utilize the exception from the rule. This is because such entities are motor carriers if they move their vehicle inventory between business locations before purchases. Third, as proposed, the limited exception for passenger-carrying CMVs exchanged or interchanged between or among commonly owned and controlled motor carriers would be removed.

Fourth, as proposed, the limited exception 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 be removed. All passenger carriers that are commonly owned and controlled or participate in STB-approved revenue pooling agreements operate in interstate commerce and should have operating authority. Under the NPRM, an authorized carrier that obtains a vehicle from another commonly owned and controlled authorized carrier or another authorized participant in an STB-approved pooling agreement, would not be subject to the lease and interchange requirement. Accordingly, a separate exception for carriers operating under an STB-approved pooling agreement would no longer be necessary.

Greyhound Lines, Coach USA, Adirondack Trailways, Annett Bus Lines, Southern Tier Stages, Northwest Motorcoach Association, Peter Pan Bus Lines, Jefferson Bus Lines, Plymouth & Brockton Street Railway Company, Academy Bus, DeCamp Bus Lines, Burlington Trailways, FlixBus Inc., Pacific Coachways Charter Services, Thielen Bus Lines, ABA, and UMA supported the proposed general applicability section, including the proposed active operating authority registration exception, maintaining the

financial lease exception, and the removal of the two limited exceptions for commonly owned and controlled authorized carriers and STB-approved pooling agreements.

The UMA commented that the rule should not compel two or more carriers, all possessing the requisite valid Federal operating authority, to enter a lease they would not otherwise enter when engaging each other's services. UMA believes 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.

Academy Bus adds this “is a key issue to allow legally operating carriers to utilize the services of other legally operating carriers to meet demand fluctuations. Other carriers provide their buses and drivers to complete sub-contracted work. The recipient maintains their own operating authority, own insurance program and manage their own operations. The carrier sub-contracting the work has no input into the sub-contracted (recipient) carrier's operations. There is no ambiguity as to what buses on the road are operated by which company and/or authority. This is not a lease issue as there is no control over the other carrier's equipment or drivers.”

FMCSA Response:

The Agency adopts without change the proposed general applicability section to the leasing requirements for passenger carriers, including the proposed exception for passenger carriers with active operating authority registration, maintaining the financial lease exception, and the removal of the two limited exceptions for commonly owned and controlled authorized carriers and STB-approved pooling agreements. The lease and interchange regulations do not directly affect safety. Rather, they help FMCSA, the

National Transportation Safety Board (NTSB), and State safety officials to identify the passenger carrier responsible for safety and to assign inspection, compliance, crash, and enforcement data to the correct carrier and driver, allowing the Agency, NTSB, and the States to more accurately identify unsafe and high risk carriers and to take appropriate action. The changes made by this rule will not adversely affect safety because authorized carriers involved in chartering (or subcontracting) with each other assume responsibility for their own regulatory compliance, and are readily identifiable. In addition, banks or similar financial organizations, manufacturers, or dealers: (a) must not be a motor carrier in order to use the exception from this leasing rule; (b) will be deemed a private motor carriers of property when moving its empty passenger vehicle inventory between business locations before purchases; and (c) will have to comply fully with all 49 CFR parts 300 to 399 regulations during these moves of empty passenger vehicle inventory between business locations.

Definitions

The Agency proposed 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.¹⁰ Authorized carriers of passengers 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, will not meet the regulatory definition of a *lease* in this final rule. Authorized carriers or passengers that are hired by another authorized carrier of

¹⁰ This rulemaking does not change the definition of *lease* in the context of property-carrying vehicles in 49 CFR 376.2.

passengers have traditionally assumed responsibility for their own regulatory compliance and liability. This practice has long been acceptable to the insurance industry.

Furthermore, authorized carriers of passengers are readily identifiable to enforcement personnel, making a separate lease agreement assigning regulatory responsibility unnecessary.

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

The ABA, UMA, Jefferson Bus Lines, Plymouth & Brockton, Academy Bus LLC, DeCamp Bus Lines, Burlington Trailways, Thielen Bus Lines, and Coach USA support the Agency's proposal to exclude from the definition of lease chartering between or among authorized passenger carriers. ABA writes "This change is consistent with the Agency's stated goal of ensuring a lessor relinquishes all control of a passenger carrying commercial motor vehicle (CMV) for the full term of a lease. In the case of chartering or subcontracting, there is no surrender of the vehicle and thus these types of operations do not fit within definition of a lease. During a charter transaction, the vehicles remain within the control of the respective charter parties, each party is responsible for dispatching and maintaining its respective vehicles, and each party is responsible for regulatory compliance. Thus, in-line with FMCSA's underlying oversight philosophy,

each carrier in a charter transaction is held accountable for maintaining its own respective operating authority. This is the fundamental basis by which FMCSA conducts enforcement and can ensure carriers remain compliant. Alternatively, applying the same logic, for carriers with no operating authority, a lease requirement demonstrating the full surrender of the vehicle for the entire term of the lease also supports FMCSA's oversight philosophy by ensuring a responsible carrier with operating authority is always controlling the vehicles operating on the road, thereby limiting opportunities to circumvent the law."

FMCSA Response:

The Agency adopts without change the proposed exception to the leasing requirements for passenger carriers with active operating authority.

Marking of Self-Propelled CMVs and Intermodal Equipment

Before the 2015 rule, a motor carrier operating a CMV under a rental agreement 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 rented CMV during the full term of the lease. The 2015 final rule required that a motor carrier operating a passenger-carrying CMV under a lease must add an additional marking device on the CMV temporarily on the right (curb) side of the vehicle on or near the front passenger door. The 2015 rule's temporary device would show the legal or trade name and USDOT number of the carrier operating the vehicle, preceded by the words "operated by."

Industry commenters to the 2016 NOI and the 2017 proposal 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.

The 2018 NPRM proposed to eliminate 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 also proposed 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).

The ABA, UMA, Jefferson Bus Lines, Plymouth & Brockton, Academy Bus LLC, DeCamp Bus Lines, Burlington Trailways, Thielen Bus Lines, and Coach USA support removing the 2015 final rule's CMV marking requirements and restoring the previous § 390.21(e) with slight modifications to comport with the leasing requirements proposed under the 2018 NPRM. ABA noted that "This change addresses the industry's concerns with the impracticality of the 2015 final rule requirements while still providing enforcement officials with sufficient information to identify carriers for regulatory compliance. By restoring the marking requirements of the pre-2015 final rule, the Agency is addressing a major industry concern that threatened to severely restrict current operations, particularly at high-volume periods, leading to a reduction of capacity in the system without providing any additional safety benefit. As well, FMCSA's proposed modifications to 49 CFR 390.21(e), to address operations under a lease agreement, are

sufficiently tailored to ensure enforcement officials continue to have access to appropriate information in those circumstances.”

FMCSA Response:

The Agency agrees with these comments and implements the marking revision as proposed. Enforcement officials will be able to use the markings on the sides of the passenger CMV and the lease or the § 390.403(a)(2) summary document to determine the identity of the carrier responsible for safety and to assign inspection, compliance, crash, and enforcement data to the correct carrier and driver. FMCSA has therefore concluded that this change will not adversely affect safety.

Section 390.21 in this final rule is similar to the text in effect before the May 27, 2015, final rule. FMCSA removes the special marking regulations for leased and interchanged passenger-carrying CMVs in paragraph (f). Section 390.21 has been 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, unless the CMV is being operated for up to 48 hours under the emergency related provisions of § 390.403(a)(2).

If the motor carrier is operating a passenger-carrying CMV under a lease or rental agreement for more than 30 calendar days, the CMV must be marked with the lessee’s identification information. In a lease situation, the operating motor carrier is the lessee. These revised regulations 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 sets a compliance date of January 1, 2021, for passenger-carrying CMVs

subject to the lease and interchange rules, which is identical to the compliance date for the rules themselves. To be clear, a transaction involving a motor carrier operating a passenger-carrying CMV financed by a bank or similar financial organization, or provided by a manufacturer or dealership for demonstration purposes or to replace a vehicle being serviced or repaired, is not subject to the lease and interchange requirements in 49 CFR part 390 subpart G as provided by the 2015 final rule and retained in § 390.401(b)(2) *Financial leases*. None of these *financial lease* arrangements is considered to be a lease, interchange, or rental of a CMV under the definition of lease in § 390.5 because banks and other similar financial organizations do not operate passenger-carrying CMVs as a motor carrier. In these cases, the motor carrier that is granted use of the passenger-carrying CMV has full responsibility for the operation of such vehicle and compliance with the vehicle marking requirements in § 390.21 for the duration of the arrangement. However, it should also be noted that a motor carrier that obtained a passenger-carrying CMV through a loan from a bank or similar financial organization, may be responsible for compliance if it leases that vehicle to another motor carrier of passengers.

Customer Notification

The 2018 NPRM proposed to remove the requirement in the 2015 rule's § 390.305 to notify the passenger group or their representative within 24 hours after the primary contractor reassigns the transportation to a subcontractor.

The ABA, UMA, Jefferson Bus Lines, Plymouth & Brockton, Academy Bus LLC, DeCamp Bus Lines, Burlington Trailways, Thielen Bus Lines, and Coach USA support FMCSA's proposal to remove the 24-hour lease notification requirement for

subcontracted charter arrangements. Multiple commenters said that if this requirement remained in place it would be very difficult for motorcoach operators to maintain the flexibility required to address emergency situations and public necessity. They wrote that it would be impractical in terms of meeting customer needs when time schedules for charter customers often restrict motor carriers' ability to notify tour operators, unduly burdening the operator. Further, they wrote that such notifications would not necessarily provide any added safety benefit. Instead, they believe that FMCSA ensures a greater safety benefit when all carriers providing charter service have operating authority, either under their own USDOT number or established under a formal lease arrangement as proposed under the 2018 NPRM. UMA commented that "This provision was one of the least objectionable of the 2015 final rule by passenger carriers, indicative of the fact that most passenger carriers advise their customers and/or passengers of changes."

FMCSA Response:

The Agency removes the customer notification requirements, as proposed. The Agency agrees with the comments received that the notifications would have imposed burdens on the passenger carrier industry and is more about customer protection than directly linked to safety.

48-Hour Lease Delay Exception

When passengers are on a CMV and an emergency occurs that requires a replacement vehicle from another motor carrier, the 2015 rule 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.

Based on comments to the 2016 NOI and 2017 proposal, the 2018 NPRM adopted 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. FMCSA proposed 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.

ABA, UMA, Jefferson Bus Lines, Plymouth & Brockton, Academy Bus LLC, DeCamp Bus Lines, Burlington Trailways, Thielen Bus Lines, and Coach USA support the 2018 NPRM’s proposal. ABA writes, “this is a sound change that properly captures emergency situations for when passengers are and are not on a vehicle. It also provides added flexibility to address unexpected situations that have little lead time and require short-term replacement vehicles. Additional flexibility, when needing to meet customer needs both in the interest of safety and comfort, is critical in terms of successfully conducting passenger operations.”

UMA requested clarification in this final rule that “...the caveat that two or more passenger carriers possessing operating authority are not compelled to enter into a lease continues to apply.” UMA believes that the general exception from the leasing requirements for passenger carriers with active operating authority in proposed § 390.401(b)(1) supersedes the delayed-lease provision in proposed § 390.403(a)(2) when both carriers in a replacement vehicle scenario have operating authority.

FMCSA Response:

FMCSA implements the delayed-lease provision as proposed. UMA’s understanding is correct; an authorized carrier hiring a replacement CMV from another authorized carrier is not subject to the delayed-lease provision of § 390.403(a)(2).

As stated above, enforcement officials will be able to use the 48-hour lease delay exception summary document to determine the identity of the carrier responsible for safety and to assign inspection, compliance, crash, and enforcement data to the correct carrier and driver. This will allow the Agency to identify unsafe and high risk carriers and to take appropriate action. Because the exception's summary document must be signed and dated by the lessee's driver or available company official and carried on the replacement vehicle for the duration of the lease, the vehicle will be readily identifiable. FMCSA has concluded that this change will not adversely affect safety.

Lease and Interchange Requirements

The lease and interchange requirements have been revised, as proposed, by moving § 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, to § 390.403(a)(1), which makes paragraph (a)(1)(iii) unnecessary.

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 signatures¹¹ 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.

¹¹ FMCSA allows the use of electronic signatures in accordance with the Government Paperwork Elimination Act (Pub. L. 105-277, Sec. 1703, 112 Stat. 2681-749, Oct. 21, 1998). See FMCSA's "Regulatory Guidance Concerning Electronic Signatures and Documents (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 16210, 16226-7).

Previous § 390.303(b)(4)(i)-(iii) was 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, namely to assign full responsibility for regulatory compliance to the lessee. As proposed in the 2018 NPRM, FMCSA makes this paragraph more concise, moves paragraph (b)(3)(ii) to § 390.403(b)(4)(ii), and retains only the last sentence of that provision. Paragraph (b)(4)(iii) in the 2015 final rule is a useful disclaimer, should questions arise about the status of the lessor (contractor or employee) in a tax context, but FMCSA does not believe it is essential. Therefore, FMCSA has shortened paragraphs (b)(4)(i) and (b)(4)(ii) and has removed paragraph (b)(4)(iii).

FMCSA removes the requirement in previous § 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.

Previous § 390.303(c) and (d) have been merged and made more concise and transferred to § 390.403(c), which states 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 retain the lease or interchange agreement for 1 year afterwards.

Previous § 390.303(e) regarding receipts has been 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. As proposed, FMCSA removes the requirements of

§ 390.303(f) for additional temporary markings of leased and interchanged passenger-carrying CMVs, and returns to the text of the marking rule in § 390.21(e) that was effective on July 1, 2015, with slight modifications. The modifications add references to leased passenger-carrying CMVs in paragraph (e) to provide an option similar to that for rented CMVs. This modification would eliminate 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.

No comments were received about these lease and interchange requirements in § 390.403 covering written agreements governing the renting, borrowing, loaning, or similar transfer of a passenger-carrying CMV from another party.

FMCSA Response:

As the Agency received no comments about the proposed § 390.403 lease and interchange requirements for passenger carriers, the requirements are adopted with a reference to the compliance date. FMCSA adds a January 1, 2021, compliance date for passenger-carrying CMVs subject to the lease and interchange rules to § 390.401's introductory phrase.

This final rule helps FMCSA, NTSB, and State safety officials to identify the passenger carrier responsible for safety and to assign inspection, compliance, crash, and enforcement data to the correct carrier and driver, allowing the Agency, NTSB, and other enforcement officials to more accurately identify the carrier for regulatory compliance, identify unsafe and high risk carriers, and to take appropriate action. FMCSA has concluded that the changes in the lease and interchange requirements of this final rule will not adversely affect safety.

Example of Proposed Rule Implementation

A private citizen, Lawrence F. Hughes, requested clarification of the implementation example for “Subcontracting Among Regular Route Authorized Carriers” [83 FR 47764, at 47773] and restated below under section VII. B. In the example, authorized carrier A hires authorized carrier B to continue authorized carrier A’s regular-route transportation service to carrier A’s regular-route trip destination. Mr. Hughes argues that the example lacks necessary details to be sufficiently clear as to the circumstances when it applies, and that the example fails to note when it does not apply and the rules for leases must be followed. He suggested either clarification of the example or a change in the method by which FMCSA registers motor carriers of passengers.

FMCSA Response:

First, changing the method by which FMCSA registers motor carriers of passengers is outside the scope of the 2018 NPRM.

Second, regardless of whether the active operating authority registration is of the subtype “regular route” or “charter and special transportation,” each authorized for-hire motor carrier must conduct the transportation in its own name, under its own authority, with its owned, leased, or borrowed vehicles, and is therefore responsible for compliance with the FMCSRs.

Third, the ICC Termination Act of 1995 (ICCTA) [Pub. L. 104-88, 109 Stat. 803, 880, Dec. 29, 1995, codified at 49 U.S.C. 13902] eliminated “regular route” or “charter and special transportation” limitations when registering most motor carriers of passengers. Before ICCTA, the statute required all for-hire motor carrier of passengers to

administratively register with the ICC as subtype “regular route” or “charter and special transportation” motor passenger carrier, and generally prohibited that motor carrier from doing the other subtypes of passenger transportation service, unless granted additional operating authority to do so. The ICCTA eliminated these administrative labels, except for registrations for motor carriers that are “public recipients of governmental assistance.”¹² Thus, a motor carrier of passengers previously issued “regular route” operating authority has general authority to perform “charter and special transportation,” whatever its certificate, permit, or license may say. Similarly, a motor carrier of passengers previously issued “charter and special transportation” operating authority also has general authority to perform “regular route” service. This elimination of administrative service terminology is similar to the ICCTA’s removal of the registration labels and transportation service limitations of “common” and “contract” motor carriers.¹³

However, if carrier A hires carrier B to conduct a regular-route passenger transportation service and at least one of the two carriers does not have active operating authority registraton, then the lease and interchange requirements of this final rule apply.

¹² See 49 U.S.C. 13902(b)(1) and (2), and 49 CFR 365.101(e).

¹³ Many instances of the terms “common” and “contract” were removed in the Unified Registration System (URS) final rules published in 2013, 2015, and 2016 (Final Rule, Unified Registration System, 78 FR 52608 (Aug. 23, 2013), amendments, corrections, and delayed effective and compliance dates published at 80 FR 63703, October 21, 2015, and 81 FR 49553, July 28, 2016.), and in the 2016 General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations final rule published at 81 FR 68336 (Oct. 4, 2016) many instances of the terms “regular route” and “irregular route,” as well as “common” and “contract” were also removed. See also Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes final rule published at 74 FR 2895 (Jan. 16, 2009).

Out-of-Scope Comment

Greyhound, Coach USA, and Adirondack Trailways asked FMCSA (1) to clarify that entities that lease buses or drivers and control their operations to the extent of control exercised by FlixBus, OurBus, and similar technology entities, are bound by the requirements of the rule; and (2) to determine that the services of these entities make them motor carriers “providing motor vehicle transportation for compensation” – not brokers – and subject them to the full range of FMCSA regulations. They argue that there is undisputed evidence FlixBus, OurBus, and similar entities should be subject to the 2018 NPRM and this final rule.

FlixBus, Inc. argued that the Agency should reject requests to make it subject to the 2018 NPRM’s proposed requirements and other FMCSA regulations as a “motor carrier.” FlixBus claims it is a transportation technology company that does not own, lease, or operate passenger-carrying CMVs. It does not employ drivers. It provides a consumer-facing platform travelers can use to purchase transportation provided by one of its bus partners.

FlixBus also argues FMCSA should disregard the Greyhound, Coach USA, and Adirondack Trailways requests because their comments are beyond the scope of this rulemaking. FlixBus argues this rulemaking addresses rules that will apply to motor carriers of passengers that lease and interchange vehicles; it does not attempt to address which entities are or should be regulated as “motor carriers.” “Petitioners cannot unilaterally expand the scope of this rulemaking through their comments, nor are those comments entitled to a substantive response.”

FMCSA Response:

FMCSA agrees with FlixBus that this issue is outside the scope of the 2018 NPRM. FMCSA reviewed FlixBus, OneBus, and other similar operations. At the time, these operations were not found to be motor carriers of passengers that lease or interchange vehicles. Thus, FlixBus and OneBus are not required to comply with the terms of this final rule. Changed operations or other business models may subject companies to this rule.

Additional Out-of-Scope Comment

Adirondack Trailways requested that its businesses be exempt from the marking requirements in § 390.21(b)(3).

FMCSA Response:

FMCSA did not propose any changes to § 390.21(b)(3) and this comment is thus outside the scope of the 2018 NPRM.

C. Examples of Final Rule Implementation

The following examples were published in the NPRM and remain applicable to this final rule.

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 final rule does 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. This final rule therefore does 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 final rule does 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)¹⁴ – 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

¹⁴ 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.

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. This final rule does 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 final rule does 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 final rule and is 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 this final rule and is 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 final rule and is 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 final rule and is 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 final 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, under 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.

VI. 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.

VII. SECTION-BY-SECTION DESCRIPTION OF THE RULE

A. Section 390.5 Definitions

Section 390.5 is amended to revise the definitions of *lease*, *lessee*, and *lessor* and these terms apply specifically to motor carriers of passengers.

B. Section 390.21 Marking of Self-Propelled CMVs and Intermodal Equipment

Section 390.21 is returned nearly to the form before the May 27, 2015, final rule's effective date. In the paragraph (e) header, FMCSA replaces "Rented property-carrying commercial motor vehicles" with the 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 adds paragraph (e)(2)(v)(A) to § 390.21 to allow the passenger-carrying CMV operating under

the 48-hour emergency exception pursuant to § 390.403(a)(2) to be excepted from paragraphs § 390.21(e)(2)(iii) and (iv), provided the lessor and lessee comply with the requirements of the provision in § 390.403(a)(2). FMCSA adds § 390.21(e)(2)(v)(B) to set a January 1, 2021, compliance date for the paragraph (e) requirements for passenger-carrying CMVs subject to the lease and interchange rules under subpart G (§§ 390.401 and 390.403). This date is identical to the compliance date in §§ 390.401 and 390.403.

FMCSA removes § 390.21(f) and redesignates paragraphs (g) and (h) as paragraphs (f) and (g), respectively, as they were on July 1, 2015.¹⁵

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

Subpart F, including §§ 390.300T, 390.301, 390.303, and 390.305, is removed and reserved.

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

Subpart G, consisting of §§ 390.401 and 390.403, is added. These sections include the applicability of the final rule, the two general exceptions, the civil penalties for failure to meet applicable requirements, and the requirements for every lease or interchange.

E. Section 390.401 Applicability

Paragraph (a) explains the general applicability of Subpart G. The compliance date of this section is January 1, 2021.

¹⁵ See https://www.ecfr.gov/cgi-bin/text-id.x?SID=b9ddca68b462ed0f3d5758839de97752&pitd=20150701&node=pt49.5.390&rgn=div5#se49.5.390_121 (accessed June 3, 2019).

Paragraph (b) provides two exceptions to the general rule. Paragraph (b)(1) makes the rules in §§ 390.401 and 390.403 inapplicable to contracts and agreements between motor carriers of passengers that have active FMCSA operating authority. This exception is applicable when one such motor carrier acquires transportation service(s) from another such motor carrier(s), whether those agreements are designated sub-charters, farm-out charters, subcontracts, pooling agreements approved by the U.S. Surface Transportation Board, or through-service¹⁶ agreements.

Paragraph (b)(2) makes the rules in §§ 390.401 and 390.403 inapplicable to *Financial leases* (however designated, e.g., lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, demonstration or loaner vehicle, etc.) between a motor carrier and a bank or similar financial organization or a manufacturer or dealer of passenger-carrying CMVs. This provision repromulgates the same section of the 2015 final rule.

Paragraph (c) provides that if the use of a passenger-carrying CMV is arranged between motor carriers subject to both rules in §§ 390.401 and 390.403 and either carrier fails to meet all applicable requirements of subpart G, both motor carriers are subject to a civil penalty.

F. Section 390.403 Lease and Interchange Requirements

Paragraph (a)(1) sets 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) beginning on the compliance date of this rule, January 1, 2021.

¹⁶ A through-service agreement involves a change in the operating provider of the transportation at a specified boundary on a regular schedule. This is usually accomplished at specific locations where equipment, drivers, or motor carriers are changed.

Paragraph (a)(2) allows the delayed writing of a lease or agreement after an emergency, such as a disabled vehicle, that disrupts or delays a trip, and, unlike the previous rule, does not limit the exception to times when passengers are on the bus.

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

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

VIII. 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 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)¹⁷). This rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801–808).

¹⁷ Although the recent DOT Order 2100.6 (Policies and Procedures for Rulemakings) that was published December 20, 2018, cancels and supersedes this DOT Order 2100.5, the newer DOT Order 2100.6 specifically notes that it “does not apply to any rulemaking in which a notice of proposed rulemaking was issued before the effective date of this Order,” which was December 20, 2018. Therefore, because the NPRM for this final rule was published September 20, 2018 (83 FR 47764), the newer DOT Order 2100.6 does not apply and therefore is not cited here.

The Agency received eighteen comments on the 2018 NPRM. None specifically addressed the regulatory analyses that were presented in the NPRM. The only substantive change made to the regulatory evaluation from the NPRM to this final rule is that the analysis time period has been updated to reflect the December 4, 2018, extension of the compliance date for the May 2015 final rule from January 1, 2019, to January 1, 2021 (83 FR 62505). Because this rule revises the regulations established in the 2015 final rule, that rule serves as the baseline against which the effects of this rule are evaluated. When the regulatory evaluation for the NPRM was performed, the compliance date for the 2015 final rule was January 1, 2019, and therefore the analysis period likewise began as of 2019. As noted, on December 4, 2018, the Agency extended the compliance date for the 2015 final rule to January 1, 2021. Therefore, the analysis period for this rule now begins as of 2021. The primary result of this change is a less than 2 percent increase in the annualized cost savings. This small increase is primarily a reflection of the slightly larger number of passenger carriers and CMV trips that experience regulatory relief in future years under the new analysis time period, consistent with the modest baseline annual industry growth rate projections used in the analysis.

As described earlier, the rule reduces 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 rule remains applicable are 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 rule still enable safety officials and the public to sufficiently identify the passenger carrier responsible for safety because each authorized for-hire motor carrier must conduct

the transportation in its own name, under its own authority, with its owned, leased, or borrowed vehicles, and is therefore responsible for compliance with the FMCSRs. Therefore, FMCSA estimates that the rule results in a cost savings, but will not result in any change to safety benefits.

The Agency estimates that the rule will result in a cost savings of \$76.5 million on an undiscounted basis, \$67.7 million discounted at 3 percent, and \$58.5 million discounted at 7 percent over the 10-year analysis period, expressed in 2016 dollars. On an annualized basis, this equates to a 10-year cost savings of \$7.9 million at a 3 percent discount rate and \$8.3 million at a 7 percent discount rate.

Key Inputs to the Analysis

The rule revises regulations established in the 2015 final rule, therefore the 2015 final rule serves as the baseline against which the effects of this rule are evaluated. Many of the key inputs to this analysis of the 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 this final rule, and, where applicable, the Agency cites that document in the analysis below.¹⁸ The analysis of this final rule utilizes a 10-year analysis period of 2021 to 2030, and all monetary values are expressed in 2016 dollars.

¹⁸ U.S. Department of Transportation (DOT), FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Docket ID# FMCSA-2012-0103-0022. Available at: <https://www.regulations.gov/contentStreamer?documentId=FMCSA-2012-0103-0022&attachmentNumber=1&contentType=pdf> (accessed June 3, 2019).

Number of Passenger Carriers Experiencing Regulatory Relief Under the Rule

The Agency estimates that an annual average of 8,366 motor carriers of passengers will experience regulatory relief under the 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 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 will experience full regulatory relief and are no longer subject to the lease and interchange requirements for passenger-carrying CMVs because of the rule. The remaining 25 percent of these passenger carriers will 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 Rule

Year	Passenger Carriers Experiencing Full Regulatory Relief Under the Rule	Passenger Carriers Experiencing Partial Regulatory Relief Under the Rule	TOTAL PASSENGER CARRIERS EXPERIENCING REGULATORY RELIEF UNDER THE RULE^(a)
2021	6,035	2,012	8,046
2022	6,087	2,029	8,116
2023	6,139	2,046	8,186
2024	6,192	2,064	8,256
2025	6,246	2,082	8,328
2026	6,300	2,100	8,400
2027	6,354	2,118	8,472
2028	6,409	2,136	8,545
2029	6,464	2,155	8,619
2030	6,520	2,173	8,693
ANNUAL AVERAGE	6,275	2,092	8,366

Notes:

(a) Values may not equal the sum of the components due to rounding.

To derive the estimates presented in Table 2 of the number of passenger carriers experiencing regulatory relief under the rule, FMCSA first estimated the number of passenger carriers that, in the absence of the 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 rule¹⁹ but updated to reflect more recently available data and information. The Agency used data from the FMCSA Motor Carrier Management Information System (MCMIS)

¹⁹ Further details regarding the specific data sources and methods can be found in U.S. DOT, FMCSA, "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 9 to 12.

and the FMCSA Licensing and Insurance (L&I) system 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.^{20,21}

Of this total population, the Agency estimates that, in the absence of this 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.²²

²⁰ U.S. DOT, FMCSA. Motor Carrier Management Information System (MCMIS), and Licensing and Insurance (L&I) system. Snapshots as of December 29, 2017 (Data Analysis and Reports Team (DART) request ID # 38883).

²¹ The total number of 13,386 passenger carriers as of the end of 2017 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 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.

²² U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 9 to 12.

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 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 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.
- (f) The total number of 13,386 passenger carriers shown 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 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 2021 to 2030 analysis period. The Agency developed these projections 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 U.S Department of Labor (DOL) Bureau of Labor Statistics (BLS) Employment Projections Program which, from 2016 to 2026, is

forecast to grow by 0.86 percent annually.²³ This results in a projection of the number of passenger carriers that, in the absence of this rule, would be subject to the 2015 rule each year over the 2021 to 2030 analysis period. In the absence of the rule, these passenger carriers would be subject to the 2015 rule. As discussed earlier, under the rule a large portion of these passenger carriers will no longer be subject to lease and interchange requirements, and the remaining carriers will be subject to reduced requirements. In Table 2, the column on the far right shows the projected number of passenger carriers that will experience regulatory relief under the rule over the 10-year analysis period of 2021 to 2030, which equals an annual average of 8,366 passenger carriers.

Table 2 also shows the subset of those 8,366 passenger carriers that under the rule will experience full regulatory relief and will no longer be subject to lease and interchange requirements. Over the 10-year analysis period, the Agency estimates that an annual average of 6,275 passenger carriers, or approximately 75 percent of the total number of carriers that will experience regulatory relief, will experience full regulatory relief. The Agency estimated this value by assuming that approximately 10 percent of authorized for-hire carriers will be subject to the lease and interchange requirements under this 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 will continue to be subject to the lease and interchange requirements under the rule, the same percentages as under

²³ U.S. DOL BLS. "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 June 3, 2019).

the 2015 final rule and 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 rule.²⁴ 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 8,366 passenger carriers that will 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 2,092 passenger carriers, or approximately 25 percent of the total, will experience partial regulatory relief. As noted earlier, however, these carriers will be subject to reduced requirements compared to those of the 2015 final rule.

²⁴ 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 this rule, as noted, the analysis assumes that only 10 percent of authorized for-hire carriers will 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 assumes that 100 percent of exempt for-hire carriers and 10 percent of private passenger carriers will continue to be subject to the lease and interchange requirements for passenger-carrying CMVs under the 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 will be subject to the lease and interchange requirements of passenger-carrying CMVs in 2017 under this final 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. Therefore, as a consequence of this final rule, there will be a 75 percent reduction in the number of passenger carriers subject to lease and interchange requirements.

Number of CMV Trips Experiencing Regulatory Relief Under the Rule

The Agency estimates that an annual average of 547,034 passenger-carrying CMV trips will experience regulatory relief under the 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.²⁵ The estimated number of passenger carriers that will experience regulatory relief under the rule (see Table 2) serves as the primary basis for the estimate of the number of trips that will experience regulatory relief under the rule. For each of the carriers in Table 2, the Agency assumed an estimated average of 64 trips per year would be operated with vehicles that would be considered leased or interchanged vehicles under the 2015 final rule. This is consistent with the assumptions used in the regulatory evaluation for the 2015 final rule.²⁶ The estimated number of trips that will experience regulatory relief under the 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,²⁷ and is based on data that Greyhound provided to FMCSA regarding trips with leased and interchanged vehicles in 2012.²⁸

²⁵ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Page 21, Table 6.

²⁶ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Page 21, Table 6.

²⁷ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 12 to 13.

²⁸ "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://www.regulations.gov/contentStreamer?documentId=FMCSA-2012-0103-0010&attachmentNumber=1&contentType=pdf> (accessed June 3, 2019). 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 projections for SOC Code 53-3021 (Bus drivers, transit and intercity).

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

Table 4: Estimated Number of Passenger-Carrying CMV Trips Experiencing Regulatory Relief Under the Rule

Year	Passenger-Carrying CMV Trips Experiencing Full Regulatory Relief Under the Rule	Passenger-Carrying CMV Trips Experiencing Partial Regulatory Relief Under the Rule	TOTAL CMV TRIPS EXPERIENCING REGULATORY RELIEF UNDER THE RULE^(a)
2021	394,583	131,528	526,111
2022	397,990	132,663	530,654
2023	401,427	133,809	535,237
2024	404,894	134,965	539,859
2025	408,391	136,130	544,521
2026	411,918	137,306	549,224
2027	415,475	138,492	553,967
2028	419,063	139,688	558,751
2029	422,682	140,894	563,576
2030	426,332	142,111	568,443
ANNUAL AVERAGE	410,276	136,759	547,034

Notes:

(a) Values may not equal the sum of the components due to rounding.

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 this 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 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.²⁹

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

²⁹ U.S. DOL BLS. "Occupational Employment Statistics (OES). National." May 2016. March 31, 2017. Available at: <https://www.bls.gov/oes/special.requests/oesm16nat.zip> (accessed June 3, 2019). The May 2017 BLS OES published in March 2018 did not report data for this BLS SOC code 53-1031. Therefore, the May 2016 data used in the analysis for the NPRM is used again here in the analysis for this final rule.

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.³⁰

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.³¹ 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 \div \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 will experience regulatory relief under the rule is \$54.91 per hour.

Costs

The rule will not result in any increase in costs. It revises the 2015 final rule, which serves as the baseline against which the effects of this rule are evaluated. Absent this rule, the Agency estimates that the baseline costs of the 2015 final rule over the 10-year analysis period of 2021 to 2030 would be \$10.6 million on an annualized basis at a 7 percent discount rate, expressed in 2016 dollars.³² As noted earlier, the Agency estimates

³⁰ U.S. DOL BLS. “Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, June 2016.” Available at: https://www.bls.gov/news.release/archives/ecec_09082016.pdf (accessed June 3, 2019).

³¹ 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 June 3, 2019).

³² This annualized cost estimate of \$10.6 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

that the rule will result in a cost savings of \$8.3 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 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 will remain subject to the lease and interchange rules.

Under both the 2015 rule and this 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 this rule are calculated based on the number of CMV trips that will experience regulatory relief under the 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 will experience regulatory relief under the rule for this cost category are the trips that will no longer be subject to the lease and interchange requirements. As presented earlier in Table 4, the Agency estimates that an annual average of 410,276 passenger-carrying CMV trips will 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

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 2021 to 2030).

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.³³ 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 rule will be \$21.7 million on an undiscounted basis over the 10-year analysis period, and \$2.9 million on an annualized basis at a 7 percent discount rate. For the remaining passenger carriers and passenger-carrying CMV trips that are still subject to the leasing and interchange requirements, the provision 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, is removed. Although in theory this 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 rule.

Lease documentation costs under the rule are calculated based on the number of CMV trips that will experience regulatory relief under the 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 will experience regulatory relief under the rule for this cost category are the same as above, an annual average of 410,276 trips that will no longer be subject to the lease and interchange requirements.

³³ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 16 to 17.

Consistent with the 2015 regulatory evaluation, for each trip that will experience regulatory relief under the 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.³⁴ This is valued at the total labor cost of \$54.91 per hour. The resulting savings in lease documentation costs under the rule will be \$37.6 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 rule are calculated based on the number of CMV trips that will experience regulatory relief under the rule for this cost category, and an estimated cost per copy. The number of trips that will experience regulatory relief under the rule for this cost category are the same as above, an annual average of 410,276 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.³⁵ The resulting lease copying cost savings under the rule will be \$1.2 million on an undiscounted basis over the 10-year analysis period, and \$0.123 million on an annualized basis at a 7 percent discount rate.

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

³⁴ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Page 17.

³⁵ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Page 17.

Lease receipt cost savings under the rule are calculated based on the number of CMV trips that will experience regulatory relief under the 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 rule will remove the receipt provision in its entirety, the cost savings will apply to all trips listed in Table 4, an annual average of 547,034 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.³⁶ The resulting lease receipt cost savings under the rule will be \$3.3 million on an undiscounted basis over the 10-year analysis period, and \$0.327 million on an annualized basis at a 7 percent discount rate.

Vehicle marking cost savings under the rule are calculated based on the number of CMV trips that will experience regulatory relief under the 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 adhesive tape. Because the rule will remove the marking provision in its entirety, the cost savings will apply to all trips listed in Table 4, an annual average of 547,034 trips. The resulting vehicle marking cost savings under the rule will be \$0.361 million on an undiscounted basis over the 10-year analysis period, and \$0.036 million on an annualized basis at a 7 percent discount rate.

Charter party notification cost savings under the rule are calculated based on the number of CMV trips that will experience regulatory relief under the rule for this cost category, and an estimated expenditure by passenger carrier employees of 5 minutes per

³⁶ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 17 to 18.

notification.³⁷ Because the rule will remove the notification provision in its entirety, the resulting cost savings will 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 547,034 passenger-carrying CMV trips listed in Table 4.³⁸ The resulting savings in charter party notification costs under the rule will be \$12.4 million on an undiscounted basis over the 10-year analysis period, and \$1.23 million on an annualized basis at a 7 percent discount rate.

In summary, and as presented in Table 5, the Agency estimates that the rule will result in a cost savings of \$76.5 million on an undiscounted basis, \$67.7 million discounted at 3 percent, and \$58.5 million discounted at 7 percent over the 10-year analysis period, expressed in 2016 dollars. On an annualized basis, this equates to a 10-year cost savings of \$7.9 million at a 3 percent discount rate and \$8.3 million at a 7 percent discount rate.

³⁷ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 24 to 26.

³⁸ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Pages 24 to 26.

Table 5: Total Cost of the Rule (in thousands of 2016\$)

Year	Undiscounted					Discounted	
	Lease and Interchange Costs			Charter Party Notification Costs	Total Cost ^(b)	Discounted at 3%	Discounted at 7%
	Lease Negotiation Costs ^(a)	Lease Documentation, Copying, & Lease Receipt Costs	Vehicle Marking Costs				
2021	(\$21,667)	(\$4,045)	(\$35)	(\$1,189)	(\$26,936)	(\$26,152)	(\$25,174)
2022	\$0	(\$4,079)	(\$35)	(\$1,199)	(\$5,315)	(\$5,009)	(\$4,642)
2023	\$0	(\$4,115)	(\$35)	(\$1,210)	(\$5,360)	(\$4,906)	(\$4,376)
2024	\$0	(\$4,151)	(\$36)	(\$1,220)	(\$5,407)	(\$4,804)	(\$4,125)
2025	\$0	(\$4,188)	(\$36)	(\$1,231)	(\$5,453)	(\$4,704)	(\$3,888)
2026	\$0	(\$4,224)	(\$36)	(\$1,241)	(\$5,500)	(\$4,607)	(\$3,665)
2027	\$0	(\$4,259)	(\$37)	(\$1,252)	(\$5,548)	(\$4,511)	(\$3,455)
2028	\$0	(\$4,296)	(\$37)	(\$1,263)	(\$5,596)	(\$4,417)	(\$3,257)
2029	\$0	(\$4,333)	(\$37)	(\$1,274)	(\$5,644)	(\$4,326)	(\$3,070)
2030	\$0	(\$4,371)	(\$38)	(\$1,285)	(\$5,693)	(\$4,236)	(\$2,894)
Total	(\$21,667)	(\$42,061)	(\$361)	(\$12,363)	(\$76,453)	(\$67,672)	(\$58,546)
Annualized					(\$7,645)	(\$7,933)	(\$8,336)

Notes:

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

(b) 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.)

Benefits

The regulatory evaluation for the 2015 final rule attempted to estimate the potential safety benefits of lease and interchange requirements,³⁹ 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.

³⁹ U.S. DOT, FMCSA. "Final Rule. Lease and Interchange of Vehicles; Motor Carriers of Passengers. Regulatory Evaluation." May 2015. Page 35 to 36.

Therefore, FMCSA followed the guidance of the Office of Management and Budget (OMB) in its Circular A-4 and performed a threshold analysis.⁴⁰ 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 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 rule will be a less costly and burdensome regulatory approach than the 2015 final rule, yet will still enable safety officials and the public to sufficiently identify the passenger carrier responsible for safety because each authorized for-hire motor carrier must conduct the transportation in its own name, under its own authority, with its owned, leased, or borrowed vehicles, and is therefore responsible for compliance with the FMCSRs. Therefore, the Agency does not anticipate any change to safety benefits because of the rule.

⁴⁰ 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 June 3, 2019).

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

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). E.O. 13771 requires that for every one new regulation issued by an Agency, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.⁴¹ Final implementation guidance addressing the requirements of E.O. 13771 was issued by the Office of Management and Budget (OMB) on April 5, 2017.⁴² The OMB guidance defines what is an E.O. 13771 regulatory action and what is an E.O. 13771 deregulatory action, provides procedures for how agencies should account for the costs and cost savings of such actions, and outlines various other details regarding implementation of E.O. 13771.

This final rule has total costs less than zero, and is therefore an E.O. 13771 deregulatory action.⁴³ The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2021 (the year that cost savings would first be realized), is \$104.4 million. On an annualized basis, these cost savings are \$7.3 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016.⁴⁴ In accordance with this requirement, the present value of the cost savings of this rule,

⁴¹ Executive Office of the President. "Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs." 82 FR 9339, Feb. 3, 2017. Section 1 (Purpose).

⁴² Executive Office of the President. Office of Management and Budget. "Memorandum M-17-21. Guidance Implementing Executive Order 13771." April 5, 2017.

⁴³ Executive Office of the President. Office of Management and Budget. "Memorandum M-17-21. Guidance Implementing Executive Order 13771." April 5, 2017. Q4 on page 4.

⁴⁴ Executive Office of the President. Office of Management and Budget. "Memorandum M-17-21. Guidance Implementing Executive Order 13771." April 5, 2017. Q25 on page 11.

measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is \$74.4 million. On an annualized basis, these cost savings are \$5.2 million.

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 50,000.⁴⁵ 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.

In the 2018 NPRM, in lieu of preparing an Initial Regulatory Flexibility Analysis under section 603(a) of the RFA to assess the impact of the rule, FMCSA performed a certification analysis under section 605(b) of the RFA. The threshold economic analysis that was performed determined that, although the rule will have an impact on a substantial number of small entities, the impact on these small entities will not be significant, and furthermore will be entirely beneficial. Therefore, FMCSA certified that

⁴⁵ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. § 601 et seq.).

the rule will not have a significant economic impact on a substantial number of small entities.

The Agency received eighteen comments on the 2018 NPRM, eight of which were from motor carriers of passengers that are classified as small entities.⁴⁶ All eight of these small entities expressed support for the 2018 NPRM. None of them, nor any of the other submissions received to the 2018 NPRM, specifically commented on the certification or its underlying threshold economic analysis that were presented in the NPRM. The Chief Counsel for Advocacy of the Small Business Administration did not file comments in response to the proposed rule.

As noted earlier in the Regulatory Analyses section, the only substantive change made to the regulatory evaluation from the NPRM to this final rule is that the analysis time period has been updated to reflect the December 4, 2018, extension of the compliance date for the May 2015 final rule from January 1, 2019, to January 1, 2021 (83 FR 62505). Because this rule revises the regulations established in the 2015 final rule, the 2015 final rule serves as the baseline against which the effects of this rule are evaluated. Therefore, the analysis period for this rule now begins as of 2021. As noted earlier in the Regulatory Analyses section, the primary result of this change in the analysis time period is a less than 2 percent increase in the annualized cost savings from this rule. This result has no substantive impact upon the certification or its underlying threshold economic analysis that were presented in the NPRM. Therefore, as also determined in the 2018

⁴⁶ The eight motor carriers of passengers classified as small entities that submitted comments to the 2018 NPRM include Adirondack Trailways, Annett Bus Lines, Southern Tier Stages, Inc., Plymouth & Brockton Street Railway Company, DeCamp Bus Lines, Burlington Trailways, Pacific Coachways Charter Services, Inc., and Thielen Bus Lines (the comment from Thielen Bus Lines (Docket ID# FMCSA-2012-0103-0162) was also submitted in representation of the more than 30 other passenger carriers that comprise the membership of the Minnesota Charter Bus Operators Association (MCBOA)).

NPRM, although FMCSA determines that this rule will have an impact on a substantial number of small entities, the Agency determines that the impact on these small entities will not be significant. Therefore, there is no change to the Agency's certification that this final rule will not have a significant economic impact on a substantial number of small entities. The threshold economic analysis is presented again below, now incorporating modest revisions where necessary resulting from the change in the analysis period, to again clearly demonstrate the Agency's reasoning and assumptions underlying its certification.

This rule will not result in any increase in costs or any increase in burden. The rule will 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 will 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 will continue to be subject to the lease and interchange requirements under the rule, the requirements will be reduced in comparison to the existing requirements. This will also result in a reduction in costs and burden experienced by these entities.

The regulated entities that will experience regulatory relief under this rule include all the passenger carriers that are subject to the existing lease and interchange requirements. Approximately 75 percent of this total number of passenger carriers will experience full regulatory relief, and will no longer be subject to lease and interchange requirements. The remaining 25 percent of these passenger carriers will 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 8,046 passenger carriers in 2021, the first year that the rule is anticipated to be in effect. Therefore, the Agency estimates that 8,046 passenger carriers will experience regulatory relief under the rule. The number of these 8,046 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).⁴⁷ The Agency estimates that the passenger carriers that will experience regulatory relief under the rule will 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 will experience regulatory relief under the rule, and details regarding the SBA size standards for those three industries are presented in Table 6.

⁴⁷ OMB. "North American Industry Classification System." 2017. Available at: https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf (accessed June 3, 2019).

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 June 3, 2019).

Data regarding the annual revenue earned by the estimated 8,046 passenger carriers that will experience regulatory relief under the rule is not collected by FMCSA and is not otherwise available from other sources. Therefore, the SBA size standard of \$15.0 million in annual revenue cannot be directly applied to determine how many of these passenger carriers 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.⁴⁸ We estimate that in the passenger carrier industry, the average annual revenue earned per motorcoach is

⁴⁸ 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).

approximately \$200,000.^{49,50,51} This means that the SBA size standard of \$15.0 million in annual revenue equates to a carrier size of 75 passenger vehicles. Therefore, carriers operating 75 passenger vehicles or fewer are 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 rule will disproportionately apply to either larger or smaller passenger carriers, and we therefore estimate that a similar 98 percent of the 8,046 passenger carriers that will experience regulatory relief under the rule, or approximately 7,885 passenger carriers, will be small entities. Therefore, as also determined in the 2018 NPRM, this rule will have an impact on a substantial number of small entities.

Although FMCSA has determined that this rule will have an impact on a substantial number of small entities, the Agency has determined that the impact on the small entities that will experience regulatory relief under the rule will not be significant.

⁴⁹ The information available regarding revenue for the passenger carrier industry is limited. The American Bus Association reported that for 2004, revenue per motorcoach was approximately \$160,000. Inflated from 2004 dollars to 2016 dollars using either the CPI-U or the Implicit Price Deflator for GDP, this value becomes approximately \$200,000 per vehicle.

⁵⁰ 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 June 3, 2019).

⁵¹ 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 <https://www.firstgroupplc.com/~media/Files/F/Firstgroup-Plc/indexed-pdfs/2017%20ARA/2017%20FirstGroup%20plc%20Annual%20Report%20and%20Accounts.pdf> (accessed June 3, 2019).

The rule will not result in any increase in costs or any increase in burden for passenger carriers that are small entities. The effect of the rule will be a reduction in costs and burden, and will be entirely beneficial to the passenger carriers that are small entities. As discussed in the Regulatory Analyses section, the Agency estimates that the rule will result in a total cost savings of \$76.5 million on an undiscounted basis over the 10-year analysis period used for the regulatory evaluation, or \$7.65 million on an annualized basis, expressed in 2016 dollars. As presented in Table 2, an annual average of approximately 8,366 passenger carriers will experience regulatory relief under the rule over the same 10-year analysis period, 98 percent of which are estimated to be small entities. The annual average cost savings per small carrier will therefore be at most \$914 (potentially even somewhat less, given that approximately 2 percent of passenger carriers that will experience regulatory relief under the 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 motorcoach. Therefore, as also determined in the 2018 NPRM, although FMCSA has determined that this rule will have an impact on a substantial number of small entities, the Agency has also determined that the impact on these small entities will 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 this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule will 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 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.⁵²

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. The Act requires agencies to prepare a comprehensive written statement for any final rule that

⁵² U.S. 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 June 3, 2019).

may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$161 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2017 levels) or more in any one year. Because this rule does not result in such an expenditure, a written statement is not required. However, the Agency does discuss the costs and benefits of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule amends two OMB-approved information collections under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), OMB Control No. 2126-0054, "Commercial Motor Vehicle Marking Requirements," and OMB Control No. 2126-0056, "Lease and Interchange of Vehicles." 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.

OMB Control No. 2126-0054 (Commercial Motor Vehicle Marking Requirements)

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, NTSB, and State safety officials can 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 final rule will eliminate the existing requirement under 49 CFR 390.303(f) for the temporary marking of leased commercial passenger vehicles. The final rule will 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 passenger-carrying CMVs was assumed to have *de minimis* time burden, and therefore no separate time burden was estimated for that element of the passenger-carrying CMV marking requirements. Because of this, in the 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 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 can 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 to 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: 317,041

IC-2 (passenger carriers) number of respondents: 7,816

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

Total number of respondents: 324,868

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: 3,962 responses per year, per respondent.

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

BURDEN PER RESPONSE:

IC-1 (freight carriers) burden per response: 0.43 hours

IC-2 (passenger carriers) burden per response: 0.43 hours

IC-3 (intermodal equipment providers) burden per response: 0.43 hours

Overall average burden per response: 0.43 hours

ESTIMATE OF TOTAL ANNUAL BURDEN:

IC-1 (freight carriers) burden: 1,085,658 hours

IC-2 (passenger carriers) burden: 69,151 hours

IC-3 (intermodal equipment providers) burden: 18,886 hours

Total annual burden: 1,173,695 hours

OMB Control No. 2126-0056 (Lease and Interchange of Vehicles)

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 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 final rule reduces the scope of the lease and interchange requirements for motor carriers of passengers. Furthermore, those passenger carriers and passenger-carrying CMV trips for which lease and interchange requirements remain applicable are subject to reduced requirements. The applicability of the existing lease and interchange requirements for motor carriers of passengers under 49 CFR 390.301 are revised and moved to § 390.401, resulting in a substantial reduction of approximately 75 percent in the number of passenger carriers and passenger-carrying CMV trips that will be subject to the lease and interchange requirement for motor carriers of passengers. For those motor carriers of passengers that remain subject to lease and interchange requirements, the existing requirements under 49 CFR 390.303(e) for lease receipt copies will be eliminated, and the existing requirements under 49 CFR 390.305 for charter party notification will also be eliminated.

The final rule therefore amends the OMB-approved information collection titled “Lease and Interchange of Vehicles,” OMB No. 2126-0056. In the revision to this information collection, there is substantial reduction in time burden due to program change from the currently approved information collection because of the 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 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 if 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: 36,001

IC-2 (passenger-carrying CMVs) number of respondents: 6,729

Total number of respondents: 42,730

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: 65.4 responses per year, per respondent.

Overall average frequency of response: 27.1 responses per year, per respondent

BURDEN PER RESPONSE:

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

IC-2 (passenger-carrying CMVs) burden per response: 0.13 hours

Overall average burden per response: 0.12 hours

ESTIMATE OF TOTAL ANNUAL BURDEN:

IC-1 (property-carrying CMVs) burden: 77,767 hours

IC-2 (passenger-carrying CMVs) burden: 58,520 hours

Total annual burden: 136,287 hours

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

FMCSA asked for public comment on the collection of information in the 2018 NPRM. No comments addressed the collection of information analysis to the NPRM.

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. No comments received addressed Federalism implications. 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 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 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 final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will 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 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, Pub. L. 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 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. 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 rule as potentially alleviating unnecessary burdens on domestic energy production under E.O. 13783.

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 rule 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 requirements in this rule are covered by these CEs, and the 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 amends 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 or more 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, with or without the driver, from another motor carrier, through a *lease* as defined in this section. 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, with or without the driver, to another motor carrier, through a *lease* as defined in this section. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier under an interchange or other agreement, 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, with or without the driver, to another motor carrier, for a specified period for the transportation of passengers, whether or not compensation for such use is specified or required, when one or more 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, with or without the driver, for a specified period, 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, with or without the driver, from another motor carrier, through a *lease* as defined in this section,. The term *lessee* includes a motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier under an interchange or other agreement, 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, with or without the driver, to another motor carrier, through a *lease* as defined in this section,. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier under an interchange or other agreement, 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.* (A) 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).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

* * * * *

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.* (A) A 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).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

* * * * *

Subpart F— [Removed and Reserved]

6. Remove and reserve subpart F of part 390, consisting of §§ 390.300T through 390.305.

5. 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.* Beginning on January 1, 2021, and 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, demonstration or loaner vehicle, etc.) between a motor carrier and a bank or similar 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.

Beginning on January 1, 2021, and 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 period, until the lease or agreement is written and provided to the driver, the driver must carry, and produce upon demand of an enforcement official, 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.

A handwritten signature in black ink, appearing to read 'R.P. Martinez', is written over a horizontal line.

Raymond P. Martinez
Administrator