

**REGULATORY EVALUATION OF THE FEES FOR THE  
UNIFIED CARRIER REGISTRATION PLAN  
February 19, 2010**

**1. INTRODUCTION**

This report evaluates the schedule of fees set by the Federal Motor Carrier Safety Administration (FMCSA) for the Unified Carrier Registration (UCR) Plan and Agreement. An important component of this evaluation was a review of the analysis conducted by the Board of Directors of the UCR Plan (“Board”) in developing its recommendation for annual fees and fee brackets under the UCR Agreement. As the FMCSA found that the fee structure recommended by the Board was inadequate in meeting the statutory requirements, the report compares the fee structure set by FMCSA and that recommended by the Board and points out the latter’s deficiencies. The report, in turn, explains FMCSA’s decision to set a different fee structure and its improvements upon the Board’s recommendation. The report also considers such factors as revenue generation, administrative costs, progressivity, and impacts on small entities.

**1.1 Background**

The UCR Agreement is established by 49 U.S.C. 14504a, enacted by section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 119 Stat. 1144, 1764 (2005) (SAFETEA-LU). The UCR Plan is “an organization ... responsible for developing, implementing, and administering the unified carrier registration agreement” [49 U.S.C. 14504a(a)(9)]. The UCR Agreement is “an interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, private motor carriers, brokers, freight forwarders and leasing companies....” [49 U.S.C. 14504a(a)(8)].

Congress also repealed the statutory provisions of 49 U.S.C. 14504 governing the single state registration system (SSRS) [SAFETEA-LU sec. 4305(a)<sup>1</sup>]. The legislative history indicates that the purpose of the UCR Plan and Agreement is both to “replace the existing outdated system [SSRS]” for registration of interstate motor carrier entities with the States and to “ensure that States don’t lose current revenues derived from SSRS” [S. Rep. 109-120, at 2 (2005)<sup>2</sup>].

The statute provides for a 15-member Board of Directors for the UCR Plan and Agreement who are to be appointed by the Secretary of Transportation. The establishment of this Board was announced in the Federal Register (FR) on May 12, 2006 (71 FR 27777). One of the activities and functions specified in the statute for implementing the new UCR Agreement is to set the fees to be paid by the various transportation providers covered by the statute. This process involves submission of a recommendation for the initial annual fees to the Secretary of Transportation<sup>3</sup> by

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<sup>1</sup> This repeal became effective on January 1, 2008, in accordance with section 4305(a) of SAFETEA-LU and section 1537(c), Pub. L. 110-53, 121 Stat. 467 (Aug. 3, 2007).

<sup>2</sup> The Senate bill’s provisions were enacted “with modifications” [H. Conf. Rep. No. 109-203, at 1020 (2005)].

<sup>3</sup> The Secretary’s functions under sec. 14504a have been delegated to the Administrator of FMCSA [49 CFR 1.73(a)(7), as amended, 71 FR 30833 (May 31, 2006)].

the UCR Plan's Board of Directors. The FMCSA then is directed to set the fees within 90 days after receiving the Board's recommendation and after notice with an opportunity for public comment [sec. 14504a(d)(7)(B)]. Subsequent adjustment to the fees and fee brackets must be adopted following the same procedure of recommendation by the Board and review and adoption by FMCSA after notice and an opportunity for public comment.

The statute specifies several relevant factors that must be considered by the Board and FMCSA in setting the fees (see 49 U.S.C. 14504a(d)(7)(A), (f)(1) and (g)). It specifies that fees are to be determined by FMCSA based upon the recommendation of the Board. The statute specifies that in making its recommendation for the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and FMCSA are to consider the following factors:

- (1) Administrative costs associated with the UCR Plan and Agreement.
- (2) Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the Board.
- (3) Provisions governing fees established in 49 U.S.C. 14504a(f)(1) which states that the fees charged must satisfy the following criteria:
  - a. Fees charged to a motor carrier, private motor carrier, or freight forwarder shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, private motor carrier, or freight forwarder.<sup>4</sup>
  - b. Fees charged to a broker or leasing company in connection with the filing of proof of financial responsibility under the UCR Agreement shall be equal to the smallest fee charged to a motor carrier, private motor carrier, and freight forwarder or equal to the smallest fee charged under the UCR Agreement.
  - c. The Board shall develop no more than six and no less than four brackets of carriers (including private motor carriers) based on the size of the fleet, i.e. the number of commercial motor vehicles owned or operated.
  - d. The fee scale is required to be progressive in the amount of the fee.
  - e. The registration fees for the UCR Agreement may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues. 49 U.S.C. 14504a(f)(1)(E).

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<sup>4</sup> The statute initially defined "commercial motor vehicles" for this purpose as including both self-propelled and towed vehicles (49 U.S.C. 14504a(a)(1)(A) and 31101(1)). The fees set in 2007, and applied as well in 2008 and 2009, were determined on that basis. However, § 701(d)(1)(A) of Pub. L. 110-432, Div. A., 122 Stat. 4848, 4906 (Oct. 16, 2008), amended the definition of "commercial motor vehicle" for the purpose of setting UCR fees for years beginning after December 31, 2009, to mean a "self-propelled vehicle described in section 31101."

As indicated, section 14505a(d)(7) requires that the fees achieve the revenue levels set by the Board. Section 14504a(g) pertains to the requirement for the revenues to be derived under the UCR Agreement and hence affects the size and allocation of the fees. It provides that a State that participated in the SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 (i.e., the 2004 registration year) is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in 2004. States that also collected intrastate registration fees from interstate motor carrier entities (whether or not they participated in SSRS) are also entitled to receive revenues under the UCR Agreement equivalent to the amount received of this type in the 2004 registration year. States which did not participate in SSRS in 2004, but which choose to participate in the UCR Plan, are to receive revenues not to exceed \$500,000 per year.

## 1.2 Types of Affected Entities

The entities affected by the UCR Agreement include for-hire motor carriers (both those subject to and those exempt from economic regulation by FMCSA), private motor carriers, brokers, freight forwarders, and leasing companies. Definitions of these categories are found in title 49 of the United States Code as follows:

Category	Definition in 49 U.S.C.
Motor Carrier	13102(14) and 14504a(a)(5)
Private Motor Carrier	13102(15)
Freight Forwarder	13102(8) [Freight forwarders that operate motor vehicles are treated as motor carriers - 13903(b) and 14504a(b)]
Brokers	13102(2)
Leasing Company	14504a(a)(4)

## 1.3 UCR Agreement History

On May 29, 2007, (72 FR 29472), FMCSA published a proposed rule in the Federal Register that proposed annual fees and a fee bracket structure for the Unified Carrier Registration Agreement. After receiving and evaluating public comments on the proposed annual fees and bracket structure, FMCSA published a final rule on August 24, 2007, (72 FR 48585) that established fees and a fee bracket structure for calendar year 2007.

On February 26, 2008, (73 FR 10157) FMCSA published correcting amendments to the final rule of August 24, 2007, clarifying that the fees and bracket structure established in the 2007 rule were established for each registration year unless and until the Board recommended an adjustment to the annual fees and the Board and FMCSA approved a new set of fees and fee brackets. The fees and brackets established for the 2007 calendar year therefore remained effective for 2008 and 2009.

On April 3, 2009, the Board submitted a recommended fee and bracket structure to the Secretary. After receiving requests from FMCSA for clarification on several points, the Board voted on two new options for fee structures, but was unable to reach consensus on either option. On July 15, 2009, the Board sent a letter to the Secretary noting this fact and asked FMCSA to proceed with the rulemaking process using the April 3 recommendation.

The Agency conducted an independent analysis of the UCR Plan formal recommendation, as well as alternative fee proposals considered by the Revenue and Fee Subcommittee of the UCR Board. FMCSA concluded that it could not base its own fee determination on the Board’s recommendation, and conducted an independent analysis of two issues in particular: 1) “bracket shifting,” i.e., motor carriers registering in a fee bracket that is different from that reflected in MCMIS, and 2) the number of motor carrier entities that could be expected to comply with the statute and register and the related issue of the States’ level of enforcement. Based on its independent analysis, FMCSA published a Notice of Proposed Rulemaking (NPRM) on September 3, 2009 (74 FR 45583) containing its own fee proposal. The 2010 fees that were proposed by FMCSA at that time are presented in Table 1.

**Table 1: Fees Under The Unified Carrier Registration Plan And Agreement Proposed For Registration Year 2010**

<b>Bracket</b>	<b>Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder</b>	<b>Fee per entity</b>
B1	0–2, (as well as brokers and leasing companies)	\$ 87
B2	3–5	\$ 258
B3	6–20	\$ 514
B4	21–100	\$ 1,793
B5	101–1,000	\$ 8,541
B6	1,001 and above	\$ 83,412

FMCSA received over 150 comments on the proposed rule from a wide variety of commenters. Sixteen State agencies and two State associations commented. Almost all of the State agencies and associations supported the fee proposal. Comments were received from 114 industry members, many of whom registered opposition to the proposed fees. In addition, 22 industry associations submitted detailed comments on the proposal. In general, they also opposed the fees proposed by FMCSA. After considering the comments, FMCSA has decided to change the way the fees are calculated in several ways. The effect of these changes is to lower the fees by about 12 percent on average. These changes result in fees that are lower than the fees shown in Table 1. The remainder of this regulatory evaluation describes the development of the revised fees.

## **1.4 Carrier Population and Collection of Fees**

The prospect for over-or under-collection of revenue from the UCR Agreement fee structure is dependent on the accuracy of the estimated population and the fleet size distribution of entities affected by the UCR Agreement that are required to pay the fees. Underestimation of the carrier population will lead to higher fees being imposed while overestimation will lead to the collection of inadequate revenue.

The effects of over-and under-collection are not symmetrical. The consequences of over-collection are that States would receive the revenues to which they are entitled, with excess revenues being held in reserve and used to distribute to States that have not met their revenue entitlement and to finance fee reductions in the following year. Under-collection, on the other hand, would result in a permanent loss of a portion of the revenues to which the States were entitled. Thus, the distributional consequences of overstating the number of fee-paying entities in the population and under-collecting revenues are more serious than the alternative.

## **1.5 Organization**

This report is divided into six sections in addition to this introduction. The second section discusses the Board's fee recommendation. The third section presents the results of FMCSA's analysis of the fee structure recommended by the Board. The fourth section discusses the fee structure set by FMCSA along with the approach implemented by FMCSA to derive its fee structure. The fifth section is a brief discussion of the impacts the recommended fee structure will have on small entities. The final section is the summary evaluation of the fee structure set by the FMCSA.

## **2. UCR BOARD FEE RECOMMENDATION**

This section describes the fee structure recommended by the Board along with the data sources and the methodology employed in developing the recommended fee structure. The complete recommendation transmitted to FMCSA by the Board on April 3, 2009 is publicly available in the Docket Management System of the Department of Transportation.

### **2.1 Carrier Population and Distribution**

The Board's recommendation for fees for 2010 is based on an approach to determining the carrier populations different from the approach used to establish the fees in effect for 2007 through 2009. In 2007, the Board's premise was that revenues would be generated from all motor carrier entities involved in interstate commerce.

In 2007, to estimate the number of carriers subject to the UCR Agreement, the Board sought an approach that would provide a number of carriers for which active status could be estimated to allow for a conservative universe of interstate carriers. The Motor Carrier Management Information System (MCMIS) and the License and Insurance System (L&I) maintained by FMCSA house information about the known universe of the motor carrier industry (in MCMIS) and brokers and freight forwarders (in L&I). Carriers that operate commercial motor vehicles in

interstate commerce are required to register with FMCSA by providing carrier census data and acquiring a USDOT number. The carrier census data resides in MCMIS, and similar information on brokers and freight forwarders is in the L&I System. The States have access to data derived from MCMIS through the SafetyNet system. To determine an estimate of the active population of motor carriers for the 2007 fees the Board used the SafetyNet system maintained by the State of New York to identify carriers. The Board filtered data from the SafetyNet database to exclude carriers that had not updated their MCS-150 census file <sup>5</sup>, had no inspection, crash, safety audit, or compliance review recorded within the past 12 months (March 1, 2006, through February 26, 2007). Applying the filters to approximately 730,000 carriers listed in the database, the Board filtered out almost 380,000 carriers, leaving an estimated total number of active interstate carriers of 350,698 (considering both power units and trailers). The Board then considered freight forwarders and brokers. The total number of these entities listed in the Licensing and Insurance (L&I) System, as provided by FMCSA, was approximately 19,000. Freight forwarders that also operate commercial motor vehicles were excluded to avoid double counting, because they are already included in SafetyNet. After excluding the entities with a USDOT number in the L&I System, the Board estimated the total number of freight forwarders and brokers as 14,575. Summing the 350,698 active interstate carriers and 14,575 freight forwarders and brokers, the Board arrived at a total affected population of 365,273.

In making its fee recommendation for 2010, the Board took into account two factors that had changed from 2007. First, Congress in 2008 in Public Law 110-432 specified that the definition of “commercial motor vehicle” was amended by deleting towed units (e.g. trailers) for purposes of determining fleet size for years beginning after December 31, 2009. Thus, 2010 fees must be based on the number of power units owned or operated by a motor carrier rather than on the number of power units and trailers. Second, the Board now has information, based on the experience gained in administration of the UCR between 2007 and 2009, about the number of motor carriers actually registering and paying fees. The approach selected by the Board for establishing the 2010 fees reflects the experience that not all carriers in the MCMIS database registered for UCR. The Board therefore adopted a fee-setting approach that adjusts the estimate of the carrier population, considering only power units, to reflect the percentage of carriers in each bracket that registered in 2008.

To establish its carrier population estimate for 2010, the Board began with the MCMIS database for February 4, 2009, and applied a filtering approach consisting of the following parameters: active carrier or broker, and, within the last 15 months, had an inspection, reportable crash, a MCS-150 update <sup>6</sup>, or UCR registration—to ensure the carriers had some recent activity. For 2010, the Board also added whether the carrier had registered under UCR to the set of filters. Information about active brokers and freight forwarders was obtained as before from the Licensing and Insurance database as of September 10, 2008 and filtered to avoid double counting. This process yielded an estimate for 2010 of the full universe of carriers, brokers and freight forwarders of 433,535.

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<sup>5</sup> Pursuant to § 390.19 Motor carrier identification report, a motor carrier must file its update of the MC-150 form every 24 months.

<sup>6</sup> Ibid.

The Board then adjusted the estimated full universe by the percentage of entities that had actually registered in each of the six brackets, compared to the number of entities that the Board had determined were potential registrants in each bracket. This approach yielded a total estimated population of 260,466 carriers, brokers and freight forwarders, as illustrated by the following table, which contains the information in Figures 13 and 14 from the Boards recommendation and provides the percentages used by the Board to adjust its population estimates.

**Table 2: Summary of Board Population Estimate for 2010**

Bracket	Fleet Size	2008 Full Universe (A)	2008 Registered (B)	2008 % Registered (C)=B/A	2010 Full Universe (D)	2010 Population (E)=D x C
1	Brokers & Forwarders	16,457	2,630	16.0%	16,457	2,630
1	0-1	202,415	116,163	57.4%	194,425	111,578
2	2-5	89,773	56,489	62.9%	145,266	91,408
3	6-20	85,015	57,946	68.2%	65,155	38,275
4	21-100	30,716	23,566	76.7%	17,350	13,311
5	101-1,000	8,118	6,800	83.8%	3,590	3,007
6	1,001 -More	785	690	87.9%	292	257
<b>Totals</b>		<b>433,279</b>	<b>264,284</b>		<b>433,535</b>	<b>260,466</b>

The Board contended, in adopting this approach, that it was unreasonable to expect the States to register and collect fees from all potential registrants. The Board also believed that the approach it was adopting increased the likelihood of collecting the target revenues, although the approach was potentially vulnerable to under-collection if carriers registered in brackets different from those that they would be expected to belong to, based on MCMIS data. The Board recognized that the approach benefited potential registrants who had been and continued to be noncompliant.

## 2.2 Revenue Target

The Board's revenue target for 2010 is \$113,340,945, which is composed of \$107,777,060 for State revenue entitlement, an estimated \$5,000,000 for administrative expenses, and \$563,885 for what the Board termed a revenue reserve. These components of the revenue target are discussed in detail below.

### *2.2.1 State Revenue Entitlement*

To develop a nationwide figure for the replacement revenues needed under the UCR Agreement, the Board asked those States that either had participated in SSRS or had intrastate registration revenues allowed to be included to provide information on the revenues they received for the registration year 2004. This is the year specified in the statute for establishing the amount of revenues they were entitled to receive under the UCR Agreement. In their responses, the States that agreed to participate under the UCR Agreement certified their revenue figures for 2004. The total certified State revenue figure for UCR for 2008 and subsequent years is \$106,777,059.81, as shown in Table 3.

SAFETEA-LU caps the maximum revenue figure for UCR States that did not participate in SSRS at \$500,000 per year (49 U.S.C.14504a (g)(3)). Because two non-SSRS States have agreed to participate in the UCR for registration year 2010 (Alaska and Delaware), the Board added \$1,000,000 to the total entitlement figure, bringing the total State revenue requirement for 2010 under the UCR to \$107,777,060.



**Table 3: Revenue Requirement as Calculated by UCR Board Based on Total Revenue Received in Calendar Year 2004 plus Administration Expenses and Revenue Reserve**

State	CY 2004 SSRS Revenue	Exempt Registrations	Renewable Interstate For-Hire Operating Intrastate	Renewable Interstate Private Operating Intrastate	Broker Registrations	Single Trip Interstate	Total Recorded Revenue
Alabama	2,933,718.00	6,246.00	0.00	0.00	0.00	0.00	\$2,939,964.00
Arkansas	1,817,360.00						\$1,817,360.00
California	1,220,909.00		910,801.00				\$2,131,710.00
Colorado	1,783,985.00	17,630.00		0.00	0.00	0.00	\$1,801,615.00
Connecticut	3,129,840.00	0.00	0.00	0.00	0.00	0.00	\$3,129,840.00
Georgia	2,581,560.00	78,500.00					\$2,660,060.00
Idaho	547,696.68	0.00	0.00	0.00	0.00	0.00	\$547,696.68
Illinois	3,083,064.00	58,264.00	373,940.00		1,725.00		\$3,516,993.00
Indiana	2,264,863.00	0.00	100,016.00				\$2,364,879.00
Iowa	432,042.00	42,700.00	0.00				\$474,742.00
Kansas	3,948,680.00	14,290.00	0.00	381,320.00	0.00	0.00	\$4,344,290.00
Kentucky	5,348,980.00	17,000.00					\$5,365,980.00
Louisiana	3,982,770.00	81,066.00	0.00	0.00	0.00	0.00	\$4,063,836.00
Maine	1,550,096.00	5,576.00					\$1,555,672.00
Massachusetts	2,053,714.00	2,550.00	226,623.00	0.00	0.00	0.00	\$2,282,887.00
Michigan	2,631,247.00	9,710.00	4,879,760.00				\$7,520,717.00
Minnesota	1,061,103.30	18,354.00	57,675.00				\$1,137,132.30
Missouri	2,323,370.00	11,810.00	6,820.00				\$2,342,000.00
Mississippi	4,322,100.00						\$4,322,100.00
Montana	1,049,063.00						\$1,049,063.00
Nebraska	635,970.00	106,004.00	0.00	0.00	0.00	0.00	\$741,974.00
New Hampshire	2,273,299.00	0.00	0.00	0.00	0.00	0.00	\$2,273,299.00
New Mexico	3,292,233.00	0.00	0.00	0.00	0.00	0.00	\$3,292,233.00
New York	4,414,538.00	0.00	0.00	0.00	0.00	0.00	\$4,414,538.00
North Carolina	350,438.00	21,569.00					\$372,007.00
North Dakota	2,010,434.00	0.00	0.00	0.00	0.00	0.00	\$2,010,434.00
Ohio	2,675,367.74	5,580.00	2,132,930.00				\$4,813,877.74
Oklahoma	2,122,052.00	4,977.00	330,767.00	0.00	0.00	0.00	\$2,457,796.00
Pennsylvania		1.00	4,945,526.00				\$4,945,527.00
Rhode Island	2,144,217.00	1,769.00	139,500.00	0.00	0.00	0.00	\$2,285,486.00
South Carolina	2,411,345.00	8,775.00					\$2,420,120.00
South Dakota	805,167.00	14,816.00	0.00	0.00	0.00	35,640.00	\$855,623.00
Tennessee	4,734,977.00	24,352.00					\$4,759,329.00
Texas	2,132,501.06	0.00	586,127.00	0.00	0.00	0.00	\$2,718,628.06
Utah	1,861,454.00	0.00	0.00	236,954.00	0.00	0.00	\$2,098,408.00
Virginia	4,852,865.00						\$4,852,865.00
Washington	2,428,900.00	38,471.00	0.00	0.00	600.00	0.00	\$2,467,971.00
West Virginia	1,374,796.00		56,931.03				\$1,431,727.03
Wisconsin	2,196,680.00						\$2,196,680.00
<b>Total</b>	<b>90,783,394.78</b>	<b>590,010.00</b>	<b>14,747,416.03</b>	<b>618,274.00</b>	<b>2,325.00</b>	<b>35,640.00</b>	<b>\$106,777,059.81</b>
Alaska							\$500,000.00
Delaware							\$500,000.00
Sub-Total							\$107,777,060.00
Administrative Expenses							\$5,000,000
Sub-Total							\$112,777,060
Reserve (.005)							\$563,885
Entitlement							\$113,340,945

### *2.2.2 Administrative Costs*

Under section 14504a(d)(7) of the statute, the costs incurred by the Board to administer the UCR Agreement are eligible for inclusion in the total revenue to be collected. The Board estimated \$5,000,000 for administrative expenses for 2010.

### *2.2.3 Revenue Reserve*

To offset the risk of under-collection of revenue, the Board envisioned creating a revenue reserve by raising its target by ½ of one percent of the State revenue entitlement and administrative expenses.

## **2.3 Brackets and Allocation of Motor Vehicles**

As Table 1 illustrates, the Board recommended the same number of brackets in 2010 that it had recommended in 2007. In establishing the number and composition of the brackets, under the statute the Board had the option of choosing among four, five, or six brackets for the distribution of the entities it determined would be expected to pay the fee. The Board decided to use the maximum allowable number of brackets, thereby helping to reduce the range of sizes within individual brackets.

The Board maintained this approach in establishing its bracket recommendation for 2010. However, for its 2010 fee recommendation, as illustrated above in Table 1, the first bracket includes only one CMV, recognizing the large fraction of very small carriers. The Board's selection of one CMV rather than two as the top of the first bracket is a revision from the bracket structure used in 2007 through 2009; this change was made to reflect the elimination of towed units (trailers). Similarly, the second bracket was changed from 3-5 to 2-5. The Board retained brackets 3 through 6 as they had been established in 2007.

## **2.4 Selection of Fees for the Brackets**

As discussed above, the Board's target revenue figure with administrative costs for 2010 was \$113,340,945. To determine how to allocate that sum among the six brackets, the Board relied upon the same interactive model used for 2007 that calculated the number of entities in each bracket; the revenues generated by each bracket at different fee amounts; total revenues; and any surplus or deficit from the \$113,340,945 target figure. The Board also considered fairness in terms of fees per motor vehicle while assigning the fees for each bracket. The Board followed the approach it had adopted for the 2007 fees of making sure that the maximum fee per commercial motor vehicle in a given bracket would be no higher than the maximum fee per commercial motor vehicle in the next smaller bracket.

## **2.5 Recommended Fee Structure**

Using the model and the method outlined above, the Board developed the recommended fee structure (Table 4). The fees recommended by the Board range from a low of \$83 for carriers in

the lowest bracket (0 to 1 CMVs) to a high of \$82,983 (the 1,001-or-greater CMVs bracket). The Board estimated that this fee structure would generate \$113,338,310 in revenues, slightly below the target figure (with a projected deficit of \$2,635) for the UCR registration year 2010.

**Table 4: Recommended Bracket and Fee Structure**

Bracket	Motor Vehicles		Entities	Fee per Entity	Revenue
	From	To			
<b>B1</b>	0	1	114,208	\$83	\$9,467,843
<b>B2</b>	2	5	91,408	\$166	\$15,155,446
<b>B3</b>	6	20	38,275	\$497	\$19,037,985
<b>B4</b>	21	100	13,311	\$1,741	\$23,173,120
<b>B5</b>	101	1,000	3,007	\$8,373	\$25,177,310
<b>B6</b>	1,001	More	257	\$82,983	\$21,326,605
<b>Total</b>			<b>260,466</b>		<b>\$113,338,310</b>
				<b>Target</b>	<b>\$113,340,945</b>
				<b>(Deficit)*</b>	<b>(\$2,635)</b>

\* A deficit arises when rounding is not applied to the fees, otherwise the total revenue equals \$113,354,360, which leads to a surplus of \$13,415.

### **3. EVALUATION OF THE RECOMMENDED FEE BY FMCSA**

Section 14504a requires FMCSA and the Board to consider the relevant statutory factors laid out in detail above in the Background section. That statute also requires FMCSA to consider the recommendation of the UCR Board and the same statutory requirements in setting the UCR fees. FMCSA carefully examined the Board’s entire fee recommendation, including the methodology and specific findings of the Board. FMCSA also independently considered the factors specified in SAFETEA-LU, and reviewed and evaluated the data and analysis provided by the Board in its fee recommendation. Evaluation of each component of the statutory requirement is discussed in detail below.

#### **3.1 Participating Jurisdictions**

States chose to participate in the UCR Plan and Agreement for 2010 by submitting the State plan that complied with section 14504a(e) before the final deadline of August 10, 2008 for participation. Forty-one States chose to participate in the UCR Plan and Agreement for registration year 2010.

#### **3.2 Certification of State Revenues**

The Board’s calculation of the total revenue to be collected under the UCR was properly based upon the revenues collected by the participating States (both under SSRS and for intrastate registrations of interstate carriers) for the calendar year 2004. As shown in Table 3, it can be seen that the Board included the revenue collected by the States that participated in the SSRS, as well as those participating in the UCR Agreement that were not participants in SSRS. FMCSA has verified that the Board has accurately reflected in its recommendations the revenue

entitlements certified by each participating State for 2010. In accordance with 49 U.S.C. 14504a(g)(4), FMCSA will approve the amount of revenue under the UCR Agreement which each State participating in 2010 is entitled, as specified in Table 3 above.

### **3.3 Revenue Target**

The Board's calculation of the revenue target to be collected under the UCR was based on the revenues collected by the participating States for the calendar year 2004, plus \$500,000 for each non-SSRS State as required by the statute, plus administrative costs.

The Board's addition of a revenue reserve, equal to one-half of one percent of the State revenue entitlement and administrative costs, was intended in 2007 to offset the risk of faulty data, especially on trailers. After considering comments on the rule, FMCSA has decided to remove the revenue reserve component from the fee calculations in the final rule. As a result of experience gained by the Board over three years of administering the fees, as well as the elimination of trailers from the definition of CMVs, FMCSA believes that the initial uncertainties prompting inclusion of a revenue reserve have diminished. As a result, the Plan should face less uncertainty, negating the need for the revenue reserve. The elimination of the reserve reduces the revenue requirement by one-half of one percent. This change necessitates a downward revision of the fees. This is one of the small changes in how the fees are calculated alluded to in Section 1.3.

### **3.4 Administrative Costs**

In 2007 the Board provided an estimate of the administrative costs associated with the unified carrier registration plan and agreement, as required by section 14504a (d)(7)(A)(i). The Board's 2010 fee recommendation included the same amount of administrative costs; absent any additional information on actual administrative costs, FMCSA finds it reasonable to assume that the Board's earlier estimate was accurate.

### **3.5 Number of Fee Brackets**

The Board's recommendation satisfied the requirements of section 14504a (f)(1)(C) by specifying no fewer than four and no more than six brackets of carriers based on the size of the fleet.

### **3.6 Fee Levels for Each Bracket**

FMCSA found that the Board recommended a fee scale that is progressive in the amount of the fee, as required by section 14504a (f)(1)(D), when assessed from bracket to bracket. There are six brackets, each one defined by carrier size in terms of the numbers of CMVs. The fees per carrier clearly increase as the size of the carriers in the brackets increases, thereby meeting the Board's understanding of a fee scale that is progressive. The fee levels for brokers and leasing companies are based on the smallest fee charged under the UCR agreement, as specified by section 14504a (f)(1)(A)(ii).

### **3.7 Carrier Population**

FMCSA carefully reviewed the method the Board used to make the estimates of the carrier population likely to register in each bracket and pay UCR fees in 2010. This review revealed two major shortcomings: the Board assumed (1) that the total size of the population would be no greater than the number of carriers that registered in 2008 without any recognition of whether the enforcement and compliance efforts by the States were adequate; and (2) that carriers would use their fleet sizes as recorded in MCMIS to determine their brackets, and hence the fees they would pay. The effects of these assumptions, and the reasons the FMCSA found them to be unacceptable, are described below.

#### *3.7.1 Selection of the Set of UCR-Registered Entities Only*

FMCSA believes that selection of only UCR-registered entities, rather than the full universe of active entities, as a basis for population estimates underestimates the actual active population. FMCSA bases its best estimate of the active population covered by the UCR rule on population shown in its MCMIS database, filtered to exclude carriers that (1) are intrastate only; (2) are shown to have inactive status; or (3) show no signs of recent activity – such as crashes, inspections, MCS-150 updates, or UCR registration. After applying these filters, FMCSA finds that MCMIS contains 416,822 carriers; adding 16,457 brokers and freight forwarders shown in the L&I database yields a total affected population of 433,279 entities. The Board assumed, implicitly, that this population would change only slightly for 2010, rising to a total 433,535, when the fee will be collected; FMCSA considers that a reasonable presumption given the current state of the economy and the uncertainty that exists over when growth will resume.

The number of entities registering, however, was assumed to total only about 260,000, or about 62 percent of the population. If compliance with the UCR registration and fee requirements could be improved, the fees for the individual brackets could be reduced. Compliance rates to date, though increasing, have remained low, which suggests that the safest assumption would be that compliance rates will not increase for 2010. FMCSA believes, however, that setting fees on this basis would not give States the incentive to take steps to improve compliance, and would leave an inequitably high burden on those carriers that comply. FMCSA believes that, though no realistic level of enforcement would lead to 100 percent compliance, increased enforcement effort on the part of the participating states will be able to increase compliance rates to a significant degree. This belief is supported by an analysis conducted by FMCSA of the relationship of compliance rates to a simple measure of enforcement effort by the participating states.

#### *3.7.2 Assumption that carriers would register in the brackets indicated by the size data in MCMIS*

The UCR fees proposed by the Board were developed using the assumption that motor carriers subject to the registration requirements will determine the fee to be paid on the basis of the number of vehicles (fleet size) reported in the motor carrier identification report (Form MCS-150) required to be filed with FMCSA (and updated at least biennially) by 49 CFR 390.19. On that report, motor carriers are required to report separately the number of self-propelled vehicles

(i.e., power units) of various types and the number of towed vehicles (i.e., trailers), if any, that are owned or leased by the carrier, and then total “the number of each type of CMV that it uses in its U.S. operations.” See instructions for item 26, Form MCS-150 at <http://www.fmcsa.dot.gov/documents/forms/r-1/MCS-150-Instructions-and-Form.pdf>. That information is compiled by FMCSA into its Motor Carrier Management Information System (MCMIS) database. The data, including the number of self-propelled and towed CMVs operated by motor carriers, was and is made available to the UCR Plan to enable it to develop its fees and fee structure. The fees for the registration years 2007, 2008 and 2009 were developed by the UCR Plan on the assumption that each motor carrier that registered would pay a fee according to the bracket that is indicated by the number of vehicles owned and operated (both self-propelled and towed) reported in the MCMIS database. For 2010, because of the change in the applicable definition for CMV, the fleet sizes and applicable fees will be determined by the number of self-propelled CMVs.

Three years of experience with actual registrations with the UCR Plan, however, has shown that a significant proportion of motor carriers are paying fees on the basis of fleet sizes that are different than would be expected on the basis of the fleet sizes reported to FMCSA. Such shifts in fee brackets by registering motor carriers can be entirely appropriate under the statute, which has several different provisions that would allow them. The statute first states that the fees charged to a registering motor carrier or freight forwarder “shall be based on the number of commercial motor vehicles owned or operated ....” 49 U.S.C. 14504a(f)(1)(A)(i). A CMV is “owned or operated” by the motor carrier or forwarder if, during the registration year, it is either registered under Federal or State law (or both) or controlled under a “long term lease.” The UCR Plan has determined that a lease of a CMV must be for more than 30 days to be considered a long term lease. See <http://www.ucr.in.gov/MCS/2009%20UCR%20Instruction%20Sheet.doc>. However, FMCSA requires that all leased vehicles be reported on the MCS-150.

Next, a registering motor carrier or forwarder has the option of basing the number of CMVs owned or operated on either (1) the number reported on its most recently filed MCS-150; or (2) the total number owned or operated for the 12-month period ending on June 30 of the year preceding the registration year. 49 U.S.C. 14504a(f)(3). This number is determined for either option after excluding leased vehicles that are under lease terms of 30 days or less. <http://www.ucr.in.gov/MCS/2009%20UCR%20Instruction%20Sheet.doc>. A motor carrier may include in its calculation of fleet size “any commercial motor vehicle”; motor carriers and private motor carriers may elect not to include any CMV used “exclusively in the intrastate transportation of property, waste, or recyclable material.” 49 U.S.C. 14504a(f)(3). Because it can be legitimate for carriers to register in a bracket different from the one that the data in MCMIS would indicate means that bracket shift cannot be eliminated through tighter enforcement or auditing.

Tables 5 and 6 below reflect an analysis that shows the fee brackets that motor carriers selected when registering under the UCR Plan for registration year 2008, and compares the brackets selected to the brackets in which the carriers would have registered if the fleet size used was derived from the MCMIS database (and the MCS-150 reports submitted by the carriers).

A review of Tables 5 and 6 shows the impact of the registering carriers' bracket shifts on the revenue obtained by the UCR Plan. For example, of the 261,293 total number of carriers registered in 2008 (as of the date of the MCMIS run), 116,103 carriers appeared to have fleet sizes from the MCMIS data that indicated that they should have registered in the lowest UCR fee bracket. However, almost 9,000 carriers registered in a higher bracket, for a net revenue gain to the UCR plan of almost \$1 million. On the other hand, more than 26,000 carriers registered in the lowest bracket, although the MCMIS data indicated that they should be registered in a bracket with a higher fee. The result was a revenue yield that was over \$6.1 million less than expected. Similar patterns appear in the other brackets – some carriers are registering in higher brackets than expected, but significant numbers of carriers registered in lower brackets. For registration year 2008, as Table 6 shows, the net shrinkage in the expected revenue caused by bracket shifting is \$23,857,920 – just over 25 percent of the total revenue that would have been collected if the carriers had all registered in the brackets that the data in MCMIS indicated that they would. This amount is a substantial portion of the total revenue shortfall of \$38 million experienced by the UCR Plan for registration year 2008. Similar shortfalls in 2007 and 2009 are apparently due to a similar phenomenon.

**Table 5: 2008 UCR Registration**

		PAID:						Totals
		1	2	3	4	5	6	
<b>MCMIS</b>	<b>1</b>	107,277	7,109	1,617	94	6	0	116,103
	<b>2</b>	18,732	33,518	4,002	108	5	0	56,365
	<b>3</b>	6,132	10,390	40,086	1,191	18	2	57,819
	<b>4</b>	1,092	1,026	5,968	15,264	174	0	23,524
	<b>5</b>	253	112	429	1,714	4,265	21	6,794
	<b>6</b>	45	4	19	50	182	388	688
	<b>Totals</b>	133,531	52,159	52,121	18,421	4,650	411	<b>261,293</b>
	<b>Revenue (1,000s):</b>	\$5,208	\$6,050	\$12,040	\$14,847	\$17,856	\$15,413	<b>\$71,414</b>

**Table 6: Percentage Reduction in Revenue due to Bracket Shift \***

		PAID:						Totals
		1	2	3	4	5	6	
<b>MCMIS</b>	<b>1</b>	\$0	(\$547)	(\$310)	(\$72)	(\$23)	\$0	(\$953)
	<b>2</b>	\$1,442	\$0	(\$460)	(\$75)	(\$19)	\$0	\$889
	<b>3</b>	\$1,177	\$1,195	\$0	(\$685)	(\$65)	(\$75)	\$1,548
	<b>4</b>	\$838	\$708	\$3,432	\$0	(\$528)	\$0	\$4,449
	<b>5</b>	\$962	\$417	\$1,548	\$5,200	\$0	(\$707)	\$7,420
	<b>6</b>	\$1,686	\$150	\$708	\$1,835	\$6,126	\$0	\$10,504
	<b>Reduction in Revenue (1,000s):</b>	<b>\$6,105</b>	<b>\$1,922</b>	<b>\$4,917</b>	<b>\$6,204</b>	<b>\$5,492</b>	<b>(\$781)</b>	<b>\$23,858</b>
<b>Impact of Bracket Shift: % Reduction in Revenue:</b>								<b>25.04%</b>

\* Numbers in parentheses are positive, as they represent negative reductions (i.e., increases in revenue).

#### 4. FEES SET BY FMCSA

Because the FMCSA's independent analysis indicates that the Board did not consider adequately all required factors specified by SAFETEA-LU, FMCSA did not set 2010 fees identical to the Board's recommendation. FMCSA has, however, developed an approach based on analysis conducted by the Board subsequent to its February report, and closely based on an alternative offered by the Board's Revenue and Fees Subcommittee. This alternative was voted on by the Board, but failed on a tie vote. The following sections discuss the two alternatives voted on but not adopted by the Board after new analysis to correct these inadequacies, and slight modifications made by FMCSA in one of those alternatives. The modified alternative, which is FMCSA's set fee structure, is then presented and justified.

In order to fulfill the statutory objective of ensuring that the revenues derived from the fees are sufficient to provide the revenues to which the participating States are entitled (see 49 U.S.C. 14504a(f)(1)(E)(i)), adjustments need to be applied to the current fees to recognize the occurrence of incomplete compliance and bracket shifting.

After the Board submitted its fee recommendation, its Revenue and Fee Committee developed a straightforward procedure to derive alternative 2010 fees for the existing brackets, taking into account the new information about the population, compliance rates, and bracket shifts.<sup>7</sup> The sections below describe this procedure as applied by the Board in developing its own alternatives, and then as modified by FMCSA to derive its set schedule of fees.

The Board started with the revenue requirement, calculated (as described above) to be \$113,340,945. Then, an estimate was made of the *maximum* revenue that would be collected if the 2009 fees were left in place but the definition of CMV were modified to eliminate towed vehicles. Table 7 shows this calculation as performed by the Board for a population similar to but not exactly the same as the full population used by FMCSA for its own calculations. The number of entities falling into each bracket is based on a MCMIS run, filtered as described earlier to include only active interstate carriers. The number in each bracket assumed (1) that every active interstate carrier will register and pay the fee; and (2) that carriers will register in the bracket indicated by the fleet size shown in MCMIS – i.e., that there would be no non-compliance and no bracket shift. The fees for each bracket are those in place for 2009. Multiplying the number of entities in each bracket by the fees per entity yields the total revenues for each bracket, as shown in the third column from the left. Summing across all six brackets yields the maximum total revenue that could be collected in 2010 without changing the fees – just over \$70 million. FMCSA found a very similar result after performing these calculations after scaling up the population used by the Board to the exact 2008 population estimate. Obviously, this total is well short of the \$113 million revenue requirement; the primary reason is that, with the elimination of trailers from the definition of CMV, most carriers' fleets fall considerably. With smaller fleets, many carriers drop into a lower bracket and pay less. Thus, even with full compliance and no bracket shift, existing fees would be inadequate, and would have to be increased to bring in enough to meet each State's revenue requirement. The Board noted that increasing each fee by a factor of approximately \$113/\$70 would be enough to raise

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<sup>7</sup> This discussion is based on the procedure described in "UCR Fees – 2010 Another Approach" by Board Member David Lazarides, a set of briefing slides dated June 23, 2009.



\$113 million after the change in the CMV definition. A more exact version of this adjustment is shown in the final two columns on the right – the fees have been increased by \$113,340,945/\$70,054,131 (a factor of almost 1.618) and then rounded to the nearest dollar. The totals for the brackets are shown to be very close to the revenue requirement of \$113,340,945.

**Table 7: Board’s Derivation of Fees Needed to Generate the Full Revenue Requirement With 100% Compliance and No Bracket Shift**

<u>Bracket</u>	<u>Current Fee</u>	<u>Carriers</u>	<u>Revenue</u>	<u>Current Fees Times Adjustment Factor of almost 1.618*</u>	<u>Revenue</u>
0-2	\$39	267,144	\$10,418,616	\$63	\$16,830,072
3-5	\$116	76,499	\$8,873,884	\$188	\$14,381,812
6-20	\$231	56,321	\$13,010,151	\$374	\$21,064,054
21-100	\$806	17,260	\$13,911,560	\$1,304	\$22,507,040
101-1000	\$3,840	3,513	\$13,489,920	\$6,213	\$21,826,269
1001+	\$37,500	276	\$10,350,000	\$60,671	\$16,745,196
Total		421,013	\$70,054,131		\$113,354,443

\*The exact adjustment factor used for this table was \$113,340,945/\$70,054,131, which is slightly more than 1.617905. The fees were then rounded to the nearest dollar.

Because these calculations exclude any consideration of the effect of either imperfect compliance or bracket shift, they show an unrealistically high collection of revenue. The fees would have to be set higher in order to overcome these additional factors affecting overall revenue. However, it is also clear, as even the motor carrier industry interests recognize, that an increase of more than 61 percent is necessary just to account for the statutory change.

The Board, in response to FMCSA’s suggestion that enforcement could be improved, proposed a goal of 90 percent compliance in participating States. For carriers in the States not participating in UCR, however, the Board did not consider a compliance target of 90 percent to be feasible. Because those States do not receive revenues through the UCR system, they will not have the incentive to exert effort on enforcement, and compliance rates could well remain low. For this reason, the Board offered a lower goal of 80 percent compliance.

FMCSA agrees with this concept of setting fees based on an assumption of significantly improved compliance that is still below 100 percent. It represents a reasonable compromise between fairness to compliant carriers and giving incentives to States on the one hand, and maximizing the chance of meeting the States’ revenue requirements in a world of imperfect compliance on the other.

FMCSA, however, believes that the compliance target proposed by the Board’s Revenue and Fees Committee for carriers in non-participating States is unrealistically high in light of the limited leverage that the participating States have over enforcement beyond their borders. Recent figures show compliance rates of only about 40 percent among carriers based in non-participating States; to expect that rate to double to 80 percent in absence of enforcement effort by the non-participating States is probably over-optimistic. FMCSA considers a target of 59 percent to be more reasonable, based on the potential for additional participating States to conduct roadside enforcement that might identify non-compliant out-of-state CMVs for

enforcement. Currently, 28 of the 41 participating States, or just over two-thirds, perform this kind of enforcement, and 13 do not. If all participating States conducted roadside UCR enforcement, and FMCSA’s supposition that this enforcement tool determines compliance rates among carriers in non-participating States, compliance might reasonably be expected to rise to  $41/28 * 40$  percent, or 59 percent.

The Board’s Revenue and Fee Committee combined the assumptions of 90 and 80 percent compliance in participating and non-participating States respectively, with approximate data showing the breakdown of carriers between these two groups of States, to generate a weighted average projected compliance rate of 88.85 percent. Exhibit 8 shows the calculation of a weighted average using more recent data and FMCSA’s alternative projection of compliance rates in the non-participating States – a weighted average projected compliance rate of 85.50 percent.<sup>8</sup>

**Table 8: Registration Percentage Reasonableness (RPR) Factor**

	Recent Population	FMCSA’s Estimated RPR	FMCSA’s Projected Registrations
Participating States	370,575	90%	333,518
Non-Participating States	62,960	59%	37,146
<b>Total</b>	<b>433,535</b>	<b>85.50%</b>	<b>370,664</b>

The Board’s Revenue and Fee Committee calculated that the effect of the RPR factor would limit the maximum revenue collectable with the 2009 fee structure to only 88.85 percent of \$70,054,131, or \$62,243,095, a loss of \$7,811,036. The effect of bracket shift, if it remained the same even after the redefinition of CMVs to exclude trailers, would be to reduce the maximum \$70,054,131 revenue by 25.04 percent, a loss of \$17,541,554. Subtracting both of these losses from \$70,054,131 yielded a reduced maximum revenue totaling \$44,701,541. The Revenue and Fee Committee then divided this value into the revenue requirement of \$112,777,060 to get a factor of about 2.52. Multiplying this factor by the 2009 fees for each bracket yielded a set of fees with a maximum of \$98 per CMV, as shown in Table 9 below.

**Table 9: Derivation of Fee for Fee and Revenue Committee Alternative**

Bracket	2009 Fee	2009 Fee Times 2.52
1	\$39	\$98
2	\$116	\$293
3	\$231	\$583
4	\$806	\$2,033
5	\$3,840	\$9,688
6	\$37,500	\$94,608

<sup>8</sup> Based on the rounded numbers provided by the Board, FMCSA had originally calculated this percentage as 86.42 percent. This is the second of the two small changes in the calculation of the fees alluded to in Section 1.3.

The Fee and Revenue Committee also looked at a case with a smaller bracket shift, which was hypothesized to be more appropriate in light of the elimination of trailers. Though FMCSA did not consider the justification of the hypothesized reduction in bracket shift to be strong enough to justify using the Committee's hypothesized value of 12.5 percent, the general concept of a lower bracket shift appears valid. FMCSA therefore used a bracket shift value of 15 percent in place of the higher value experienced when trailers were included in the calculation of carrier's fleet sizes.

FMCSA agrees with the basic principles of this fee proposal, but makes several adjustments. First, the Agency's approach adjusts the RPR factor and resulting compliance rate slightly – from 88.85 percent to 85.50 percent – to reflect the difficulty of increasing compliance in non-participating States. Second, the Agency's approach is based on a reconsideration of the effects of increasing the compliance rate. The alternative proposal's calculations assume that registering 88.85 percent of carriers would mean bringing in 88.85 percent of revenue. However, compliance rates measured as a percentage of carriers will not be directly proportional to revenues. This is because carriers with different fleet sizes pay different fees, and compliance rates vary by carrier size. As shown below, increasing revenue collection to 88.85 percent of the maximum available revenue would represent only a small increase from existing levels, and would not reflect the effect increased compliance at 80 or 90 percent of carriers would have on revenue. To address this issue, FMCSA developed an approach that calculates the effect of increased registration rates on revenue collection.

FMCSA's approach starts by estimating the total revenue that the existing UCR fee structure would bring in if there were (1) 100 percent participation using the 2008 carrier population; (2) no change in the definition of CMVs; and (3) no bracket shift. This estimate is made by multiplying, for each bracket, the current fee for that bracket by the total number of active carriers in the MCMIS database falling into that bracket, based on the previous CMV definition (which included both power units and trailers). Freight forwarders and brokers are included in the first bracket. Summing the products across all six brackets yields \$123,964,113 in revenue, as shown in Table 10. This amount represents the most that the UCR system could generate if no changes were made to the existing fees. (Note that this total is greater than the revenue target of \$112,777,060, because the bracket and fee structure was originally developed assuming a somewhat smaller active population.)

Starting with this maximum, FMCSA then estimated the effects of bracket shifting. Assuming that bracket shifting reduces revenue collection across the spectrum by the same 25.04 percent that the Board calculated for registered carriers, FMCSA found that the maximum revenue would be  $\$123,964,113 * (100\% - 25.04\%)$ , which is \$92,923,499. The actual amount of revenue collected in 2008 was \$76,617,155, which is about 82.5 percent of the maximum after bracket shift (as it existed when trailers were included in the definition of CMV) is taken into account. The difference between these two amounts, \$16,306,344, is the estimated loss of revenue resulting from non-compliance. FMCSA believes that some portion of this lost revenue could be recovered by increasing the participation rate.

**Table 10: Calculation of Maximum Revenue at Existing Fees**

<b>Bracket</b>	<b>Active Carriers (MCMIS)*</b>	<b>Current Fee per Entity</b>	<b>Maximum Revenue By Bracket</b>
1**	218,829	\$39	8,534,331
2	89,773	\$116	10,413,668
3	85,058	\$231	19,648,398
4	30,716	\$806	24,757,096
5	8,118	\$3,840	31,173,120
6	785	\$37,500	29,437,500
<b>Total</b>	<b>433,279</b>		<b>\$ 123,964,113</b>

\*population scaled down from 433,322 to the 2008 estimate of 433,279  
 \*\*includes brokers and freight forwarders

FMCSA’s approach estimates the amount that could be recovered by comparing the current participation (compliance) rate to the RPR developed by the Subcommittee and modified by FMCSA. The participation in 2008, the most recent full year of the UCR program, was 270,794 registrants out of a total population of 433,279, for a rate of 62.50 percent. (Notice that this rate is considerably lower than the rate of revenue collection – 82.5 percent of the maximum revenue available after the effect of bracket shift. This difference is due to the greater participation rate of larger entities, which raises revenue collections disproportionately to participation in terms of carriers.) A participation rate of 62.50 percent leaves 37.5 percent non-participating. Raising the participation rate to FMCSA’s RPR of 85.50 percent, then, would bring most of the current non-participants into the program. The increase from 62.50 percent participation to 85.50 percent means capturing 61.33 percent of all non-compliant carriers. (The increase in compliance by 23.0 percentage points out of the total of 37.50 percent non-participants means that the improvement in compliance represents 23.0/37.50 or 61.33 percent of all non-participants.)

The next step in FMCSA’s approach is to calculate how much of the \$16,306,344 in lost revenues would be brought in by capturing 61.33 percent of the non-participating carriers. This step is difficult because there are no data on the size of the carriers that would be brought in to reach the RPR. Nonetheless, it is likely that, just as with the carrier population as a whole, the carriers that are still unregistered after compliance is improved would be somewhat smaller than the new registrants. Thus, the percentage of currently uncollected revenues that still remain uncollected after compliance is improved will be smaller than the percentage of currently unregistered carriers that will still remain unregistered. FMCSA knows of no absolutely certain method to estimate the extent of this effect. It seems reasonable, though, to assume that the relationship between the percentage of uncollected revenues and the percentage of unregistered carriers after the increase in compliance will be similar to the relationship between the current percentage of uncollected revenues and current percentage of unregistered carriers. Currently, (100%-82.5%) or 17.5% of revenues are not being collected; the ratio of 17.5% to the 37.5% of carriers that are not registered is 0.468. With improved compliance, FMCSA believes that 61.33% of remaining carriers can be registered, leaving only 38.67% unregistered. Multiplying

0.468 by 38.67% yields 18.09%, which is FMCSA's estimate of the percentage of currently uncollected revenues that will still be uncollected after compliance improves. Thus, (100%-18.09%) or 81.90% of the currently uncollected revenues are assumed to be recoverable when 61.33% of the currently unregistered carriers are brought into URS. Multiplying the \$16,306,344 in currently uncollected revenues by 81.90% yields an increase of \$13,354,895.

This increase in revenue, added to the \$76,617,155 that was collected at current compliance rates, would bring collections to \$89,972,050 under the degree of bracket shift seen to date. Assuming that the impact of bracket shift will fall to 15% with the removal of trailers from the definition of CMV should increase these collections by a factor of  $(100\% - 15\%) / (100\% - 25.04\%)$  to \$102,024,052. However, this estimate does not take into account the change in the definition of CMV. Eliminating trailers from the carriers' fleets dropped many of them to lower brackets, where they pay lower amounts. In the absence of a change in fees, revenue would drop significantly. FMCSA estimates the size of this drop by comparing the maximum revenue available from the existing population, as recorded in MCMIS using the new CMV definition, to the maximum revenue available using the old definition. Comparing the maximum revenue derived using the new definition of CMV and the 2008 population of 433,279 (\$70,018,681) with the maximum revenue derived using the old definition (\$123,964,113) produces a ratio slightly more than 0.5648. (Note that the Subcommittee's estimate of that maximum, which was \$70,054,131, could not be used directly because it was based on a different population estimate. That estimate, from December 2008, totaled 421,013 carriers, apparently excluding brokers and freight forwarders. FMCSA adjusted the estimate of the total maximum revenue collection by adding 16,457 brokers and freight forwarders, scaling down the carrier population in each bracket to match that in FMCSA's estimated 2008 population, and multiplying by the 2008 fees. This adjustment resulted in a slight reduction in the maximum 2008 revenue from \$70,054,131 down to \$70,018,681.) Applying this factor to the figure we derived earlier by taking into account the RPR and bracket shifting (\$102,024,052) results in estimated revenues of only \$57,626,271 if the current fees were not increased. This revenue estimate, based on the 2008 population, would rise very slightly to \$57,660,319 after scaling up by  $433,535 / 433,279$  for the slightly larger 2010 population. In other words, after factoring in the RPR and bracket shifting, FMCSA estimates that the Plan would only collect \$57,660,319 if the fees are not adjusted.

This is far less than the revenue amount the States are entitled to receive by statute. Consequently, FMCSA's proposal includes an adjustment factor to remedy this shortfall. Dividing the revenue target (\$112,777,060) by the estimated revenue based on current fees (\$57,660,319) produces a shortfall adjustment factor of 1.95589. Applying this factor to the current fees yields FMCSA's set fee structure, as shown in Table 11.

**Table 11: Derivation of Fee for FMCSA Proposal**

Bracket	2009 Fee	2009 Fee Times 1.95589
1	\$39	\$76
2	\$116	\$227
3	\$231	\$452
4	\$806	\$1,576
5	\$3,840	\$7,511
6	\$37,500	\$73,346

FMCSA believes that this fee structure is likely to meet the statutory objective of ensuring that the fees are sufficient to provide the revenues to which the participating States are entitled. It adjusts the fees to reflect the statutory change in the applicable definition of commercial motor vehicle. It is based on a reasonable estimate of the number of active motor carrier entities subject to the UCR fees. It adjusts the fees to recognize the historical occurrence of revenue shortfalls occurring because of bracket shifting. Finally, it also establishes reasonable targets for compliance by the motor carrier industry to encourage enhanced enforcement efforts by the participating States.

## **5. IMPACTS ON SMALL ENTITIES**

In compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), (5 U.S.C. 601-612), FMCSA has considered the effects of this regulatory action on small entities. The fees being set in this rule would affect large numbers of small entities because the rule sets fees for hundreds of thousands of carriers of all sizes, and small entities are defined to include all entities that are not dominant in their industries. FMCSA identified for-hire cargo carriers with fewer than 148 power units (i.e., trucks or tractors) as small. FMCSA also identified passenger carriers with fewer than 47 power units as small. Thus, all of the carriers in Brackets 1 through 4 would be considered small, as would many of those in Bracket 5.

Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. Concerning truck power units, the Agency determined in the 2003 Hours of Service Rulemaking RIA<sup>9</sup> that a power unit produces about \$172,000 in revenue annually (adjusted for inflation)<sup>10</sup>. According to the SBA, motor carriers with annual revenue of \$25.5 million are considered a small business<sup>11</sup>. This equates to 148 power units (25,500,000/172,000). Thus, FMCSA considers motor carriers with 148 power units or less to be a small business for SBA purposes.

<sup>9</sup> Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule- Federal Motor Carrier Safety Administration. 68 FR 22456- Published 4/23/2003.

<sup>10</sup> The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

<sup>11</sup> U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. See NAIC subsector 484, Truck Transportation.

Concerning bus power units, the Agency conducted a preliminary analysis to estimate the average number of power units (PUs) for a small entity earning \$7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of \$150,000. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry (\$172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per power units as trucks<sup>12</sup>, and it is assumed therefore that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer (\$7,000,000 divided by \$150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or less). The results show that 28,838<sup>13</sup> (or 99%) of all active registered passenger carriers have 47 PUs or less. Therefore, the overwhelming majority of passenger carriers would be considered small entities.

After careful consideration, however, FMCSA has determined that the recommended UCR fee will, in every case involving a viable small entity, be well below the threshold level of one percent of revenues used for determining significant impacts. This conclusion is based on the observation that the maximum fee per vehicle is \$76, which is less than one percent of the \$14,500 annual salary of even a single employee working 40 hours per week for 50 weeks per year and earning the current Federal minimum wage of \$7.25.<sup>14</sup> Because an entity without sufficient revenues to pay even one employee per vehicle would not be viable, it is clear that the recommended UCR fees will not reach the threshold of one percent of revenues. Thus, FMCSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

## **6. SUMMARY EVALUATION**

The Unified Carrier Registration Act of 2005 within SAFETEA-LU provides for the determination of fees by the Secretary based upon the recommendation of the Board. In this process, the statute gives both the Board and the Secretary specific direction in several areas. They are to consider both administrative costs associated with the UCR Plan and Agreement and whether the fees will generate revenues at the levels set by the Board. The Act directs the Board and the Secretary to base the fees on the number of commercial vehicles owned or operated by the motor carrier, private motor carrier, or freight forwarder, setting fees no higher for a broker or leasing company than the smallest fee charged under the UCR Agreement. The fee structure is required to have no fewer than four and no more than six brackets, based on fleet size. Finally, the fee scale is to be progressive in amount.

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

<sup>13</sup> FMCSA MCMIS snapshot on 2/19/2010.

<sup>14</sup> The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. <http://www.dol.gov/esa/whd/flsa/>

FMCSA took both the States' revenue requirements and the administrative costs of the UCR program into account in establishing the revenue requirements for its fee structure. FMCSA modified the Board's recommendation to ensure that the fees generate adequate revenue by adjusting the base population to accurately reflect the number of affected entities and by increasing the fees to take bracket shift into account. FMCSA based the fees on the number of commercial vehicles owned or operated by the motor carrier, private motor carrier, or freight forwarder and also set the fees for brokers and leasing company to be equal to lowest fees, i.e. the fees in the lowest bracket. The fee structure set by FMCSA contains a total of six brackets. Under the FMCSA's approach, the fee per carrier increases as the size of the carrier increases. This clearly meets the definition of "progressive" as understood by the Board, thereby meeting the requirement of the statute. Through this evaluation, FMCSA has satisfied all the statutory requirements and thus fulfilled the Secretary's obligation in establishing fees.