

action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 4, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 367

[Docket No. FMCSA-2009-0231]

RIN-2126-AB19

#### Fees for the Unified Carrier Registration Plan and Agreement

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

**ACTION:** Notice of Proposed Rulemaking; extension of comment period.

**SUMMARY:** FMCSA extends the time for submitting comments for an additional ten days in response to the notice of proposed rulemaking (NPRM) proposing fees for the Unified Carrier Registration Plan and Agreement published on September 3, 2009. The FMCSA received a request to extend the comment period from the five industry representatives on the Board of Directors of the Unified Carrier Registration Agreement (Board), which was supported by several other interested parties. The extension of the comment period will allow all interested parties additional time to submit comments to the proposed rule.

**DATES:** The comment period for the proposed rule published September 3, 2009 (74 FR 45583) is extended. Comments must be received on or before September 28, 2009.

**ADDRESSES:** You may submit comments, identified by docket number FMCSA-2009-0231 and/or RIN 2126-AB19, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

*Federal eRulemaking Portal:* Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the “Comment” or “Submission” section, type Docket ID Number “FMCSA-2009-0231”, select “Go”, and then click on “Send a Comment or Submission.” You will receive a tracking number when you submit a comment.

*Fax:* 1-202-493-2251.

*Mail, Courier, or Hand-Deliver:* U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Docket:* Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA-2009-0231, and are available for inspection and copying on the Internet at <http://www.regulations.gov>. You may also view and copy documents at the U.S. Department of Transportation’s Docket Operations Unit, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

*Privacy Act:* All comments will be posted without change including any personal information provided to the FDMS at <http://www.regulations.gov>. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). The Department of Transportation’s (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at <http://docketsinfo.dot.gov>. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366-0710, FMCSA, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590 or by e-mail at: [FMCSAregs@dot.gov](mailto:FMCSAregs@dot.gov).

#### SUPPLEMENTARY INFORMATION:

On September 8, 2009, the five industry representatives on the Board of Directors of the Unified Carrier Registration Agreement sent a request on behalf of themselves and their respective organizations including the American Trucking Associations, the National Private Trucking Council, the Owner Operator Independent Drivers Association, the Transportation Intermediaries Association, and Walmart for an extension of the comment period in the subject rulemaking proceeding.

Requests for extension of time to comment in a rulemaking proceeding

before FMCSA are governed by the provisions of 49 CFR 389.19. Extensions require a showing of good cause, and are granted if consistent with the public interest.

Petitioners contend that the agency is required to provide an extension because of the provisions of Executive Order No. 12866, 58 FR 51733 (Oct. 4, 1993), as amended by Executive Order No. 13258, 67 FR 9383 (Feb. 28, 2002). Section 6 of E.O. 12866 provides that:

Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.

In this matter, after the Board submitted its initial proposal for an adjustment of the UCR fees on April 3, 2009, FMCSA’s designated member of the Board responded by conducting a telephone conference on April 23 with the Board’s chairman and the chairman of Board’s revenue and fees subcommittee to discuss several issues presented by the proposal. Those issues were explained in more detail in a written set of questions to the Board transmitted immediately after the conference.

Over the next few months, in the course of public meetings of the board of directors in May 14, June 16 and 17, and July 9, the issues raised by FMCSA were discussed. At its June meeting, the Board voted by a majority to reconsider the proposal submitted on April 3. The revenue and fees subcommittee of the Board, which has members from the motor carrier industry, met thereafter to consider alternative proposals that might address the issues raised by FMCSA. Two such proposals to replace the April 3 proposal were put to a vote by the Board at its meeting on July 9; both proposals failed to be adopted because of a tie vote among the members of the Board present and voting. On July 15, the Board submitted a letter advising the agency of these facts and, in effect, requesting FMCSA to proceed with the rulemaking proceeding contemplated by 49 U.S.C. 14504a(d)(7). As indicated in that letter, the Board and FMCSA both consider that the 90-day statutory time period for completion of the proceeding commenced on July 15. Petitioners’

contention that the statutory time limit has already expired is not correct.

In any case, by seeking the involvement of the Board in addressing the issues raised by the agency, interested and affected members of the Board and the public at large have long been aware of both the nature of the various fee proposals and the issues raised by FMCSA. Those issues have now been presented for public comment in the notice of proposed rulemaking issued on September 3. Because the 90-day period specified by statute ends on October 15, 2009, FMCSA had no option other than providing a short time for submitting comments, in order to provide the agency sufficient time to consider the public comments and to

prepare a final rule. The 15-day comment period is the same comment period that was provided in 2007, without objection by any interested person, for consideration of the initial fees recommended by the Board. See 72 FR 29472 (May 29, 2007).

The provisions of E.O. 12866 quoted above do not require a 60-day comment period in every rulemaking, but instead clearly recognize that, in some cases, a shorter comment period is appropriate. Petitioners and other interested parties have had an opportunity for “meaningful participation” in the regulatory process over the last several months. Nonetheless good cause has been shown to grant a short extension of the comment period in this matter, in

order to allow petitioners and the general public an opportunity to provide comprehensive comments on the proposed fees and fee bracket structure included in the NPRM published by FMCSA on September 3, 2009.

FMCSA, in the public interest grants in part the petitioner’s request to extend the comment period. The Agency extends the comment period by ten days; comments must be received on or before September 28, 2009.

Issued: September 15, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

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