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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0050]

Agency Information Collection Activities; Approval of a New Information Collection Request: Lease and Interchange of Vehicles

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval, and invites public comment. This ICR will enable FMCSA to document the burden associated with the for-hire truck leasing regulations codified in 49 CFR part 376, "Lease and Interchange of Vehicles." These regulations require certain for-hire motor carriers to have a formal lease when leasing equipment.

DATES: Please send your comments by **[Insert date 30 days after the date of publication of this notice in the Federal Register]**. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2013-0050. Interested persons are invited to submit written comments on the proposed 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 to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of

Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Office of Enforcement and Compliance, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001.

Telephone: 202-366-0073; E-mail: kenneth.rodgers@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Lease and Interchange of Vehicles.

OMB Control Number: 2126-XXXX.

Type of Request: New information collection.

Respondents: Motor carriers authorized by the Secretary to transport property that use leased equipment.

Estimated Number of Respondents: 32,100 for-hire motor carriers.

Estimated Time per Response: 2 hour 7 minutes [68,100 estimated annual burden hours/32,100 respondents = 2.121495327 or 2 hour 7 minutes].

Expiration Date: N/A. This is a new information collection.

Frequency of Response: One-time.

Estimated Total Annual Burden: 68,100 (16,500 carriers × 0.5 hours x 2 entities + 311,000 vehicles × 0.083 hours x 2 entities = 68,126 hours, rounded to the nearest hundred).

BACKGROUND:

The Secretary of Transportation (Secretary) is authorized to require a motor carrier that uses motor vehicles not owned by it to transport property under an arrangement with another party to make the arrangement in writing. This written lease agreement must specify its duration, the compensation to be paid by the motor carrier providing transportation subject to jurisdiction under 49 U.S.C. 14102(a), “Leased Motor Vehicles” and signed by the parties. The Secretary has delegated authority pertaining to leased motor vehicles to FMCSA pursuant to 49 CFR part 1.87(a)(6). The Agency’s regulations governing leased motor vehicles are at 49 CFR part 376.

The rules were adopted to ensure that small trucking companies were protected when they agreed to lease their equipment and drivers to larger for-hire carriers. They also ensure that the government and members of the public can determine who is responsible for a property-carrying commercial motor vehicle. Prior to the regulations, some equipment was leased without written agreements, leading to disputes over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle. Under 49 U.S.C. 14102(a), FMCSA “may require a motor carrier providing for-hire transportation that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

- (1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;
 - (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;
 - (3) inspect the motor vehicles and obtain liability and cargo insurance on them;
- and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.”

The rules specify what must be covered in the lease, but leave open how many responsibilities must be divided. The parties to the lease determine numerous details between themselves.

Part 376 applies only to certain motor carriers in interstate commerce and only to certain leasing situations. The rules cover leasing between a for-hire carrier that does not hold operating authority and another for-hire carrier that does hold operating authority. A for-hire motor carrier with or without operating authority that leases its equipment and drivers to a private motor carrier is not covered by the rule. A for-hire carrier with operating authority that leases its equipment to a non- for hire motor carrier and operates under its own authority is also not covered by the rule. Private carriers that lease their equipment to for-hire motor carriers and for-hire carriers with their own operating authority leasing to another such carrier are subject to lesser requirements. For-hire carriers in interstate commerce are exempt from the rules if they operate exclusively in commercial zones. Commercial zones, last set by the ICC in 1975, are generally defined as a municipality and a distance from the limits of the municipality that ranges from 3 miles for cities with populations less than 2,500 to 20 miles for cities of a million or more people. Some municipalities have additional areas defined for them.

Section 376.11 requires the following when the carrier leases equipment (Lessee) from a party supplying the equipment (Lessor), but does not hold its own operating

authority: (1) the lessor and lessee enter into a formal agreement that includes certain provisions (49 CFR 376.12); and (2) the lessee provides the lessor receipts specifying the equipment being leased at the beginning and end of the lease. These two provisions account for the burden in this information collection.

COMMENTS FROM THE PUBLIC

General Summary

FMCSA received three comments to the 60-day **Federal Register** notice published on March 27, 2013 (78 FR 18666), regarding the Agency's Information Collection Activities; New Information Collection: Lease and Interchange of Vehicles. Comments were received from the Owner Operator Independent Drivers Association, Inc. (OOIDA), Transportation Intermediaries Association (TIA), and Sharp Auto Transport. Comments and responsive considerations are as follows:

OOIDA provided detailed comments, though they concluded that the burden estimates are justified and the burden of compliance with truck rules are "minimal." OOIDA asked several questions. First, OOIDA asked why FMCSA initiated a request for comments on this ICR, as well as who, or what prompted the ICR, and what is the ICR's purpose.

FMCSA Response:

In 2009, the National Transportation Safety Board (NTSB) recommended to FMCSA that the Agency require passenger motor carriers be subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo (*NTSB Recommendation H-09-33*).¹ Since 2012, the OMB has published an FMCSA

¹ National Transportation Safety Board. 2009. Motorcoach Rollover on U.S. Highway 59 near Victoria, Texas, January 2, 2008. Highway Accident Summary Report. NTSB/HAR-09/03/SUM. Washington, DC.

Unified Agenda entry entitled “Lease and Interchange of Vehicles; Motor Carriers of Passengers,” RIN 2126-AB44, addressing regulations governing the lease and interchange of passenger-carrying commercial motor vehicles similar to the leasing of equipment by interstate for-hire motor carriers of cargo.² FMCSA published a notice of public rulemaking (NPRM) entitled, “Lease and Interchange of Vehicles: Motor Carriers of Passengers,” (bus carrier NPRM) under RIN 2126-AB44 on September 20, 2013 (78 FR 57822). The proposal for bus carriers to address the NTSB recommendation has similar information collection requirements as the truck leasing rules. Therefore, FMCSA will coordinate the bus and truck ICRs accordingly.

In addition, the bus carrier NPRM is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. This action will enable the FMCSA, the NTSB and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash studies. It also provides the general public with the means to identify the responsible motor carrier at the time of motorcoach transportation.

“Why is FMCSA attempting to study an area of regulation that Congress largely left in the hands of private parties and that FMCSA has steadfastly refused to become involved in despite several entreaties by OOIDA in the past?”

FMCSA Response:

The detailed lease and interchange regulations for cargo-carrying vehicles have been in effect since 1950 and are not within the scope of the bus carrier NPRM. The ICR

² <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=2126-AB44>.

in this truck leasing ICR action will be coordinated with that of the bus leasing NPRM to eventually calculate a total burden for all regulations covering all leases and interchanges of CMVs regulated by FMCSA.

OOIDA correctly pointed out a mistake in the 60-day notice. “This ICR will enable FMCSA to document the burden associated with the *marking regulations* codified in 49 CFR part 376. FMCSA incorrectly identified a CMV marking notice instead of the lease and interchange regulations that are codified in 49 CFR part 376. This error has been corrected in this notice and the associated Supporting Statement for this ICR.

Sharp Transport and TIA both believe the elimination of written lease and interchange requirements would be a mistake. TIA believes that leasing requirements alleviate concerns within the transportation industry of fraudulent entities in the supply chain, by placing safeguards in the industry. TIA believes if this requirement is eliminated it will make it easier for carriers who are illegally brokering to continue the detrimental practice. Sharp Transport believes removal of the provisions will make enforcement impossible.

FMCSA Response:

FMCSA has not proposed elimination of written leasing agreements. FMCSA is merely attempting to comply with the Paperwork Reduction Act of 1995 requirements and Office of Management and Budget (OMB) regulations at 5 CFR 1320 to calculate an accurate estimate of the time and cost burdens to for-hire freight motor carriers to collect information during lease negotiations and document the lease, receipts, and other paperwork required by 49 CFR part 376. The 60-day notice published on March 27,

2013 was FMCSA's first required step in getting OMB to approve the part 376 estimates of time and cost burdens. This 30-day notice is the second required step in the OMB approval process for the part 376 estimates.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87 on: March 12, 2014

Dr. G. Kelly Leone
Associate Administrator, Office of
Research and Information Technology
and Chief Information Officer

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