



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0407]

Agency Information Collection Activities; Approval of a New Information

Collection Request: National Consumer Complaint Database

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 new collection of information is for the National Consumer Complaint Database (NCCDB), which is an online interface allowing consumers, drivers and others to file complaints against unsafe and unscrupulous motor carriers and/or their employees. The NCCDB also allows complaints to be filed about shippers, receivers and transportation intermediaries. Complaints cover a wide range of issues, including but not limited to safety, driver harassment, coercion, movement of household goods (HHG), financial responsibility instruments for brokers and freight forwarders, and Americans with Disabilities Act (ADA) complaints.

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 quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2016-0407. 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: James Dubose, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone: (215) 656-7259; E-mail: james.dubose@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Federal Register Notice and Summary of Public Comment Received

On November 29, 2016, FMCSA published a notice in the Federal Register announcing a new Information Collection Request (ICR) pertaining to the National Consumer Complaint Database (NCCDB). 81 FR 86068 (November 29 Notice). FMCSA sought public comment on the ICR, including (1) input on whether the proposed collection is necessary to support the agency's mission, (2) comments on the accuracy of the agency's burden estimates, (3) suggestions for improving the quality, utility and

clarity of the collected information and (4) ideas on how the agency can minimize the collection burden without sacrificing the usefulness of the collected information.

On January 30, 2017, the Owner Operator Independent Drivers Association, Inc. filed a comment (OOIDA Comments) in response to the November 29 Notice.¹ In its comments, OOIDA acknowledged that “the ICR is necessary for the Agency to perform its mission....” OOIDA Comments, at 1. However, OOIDA indicated that FMCSA “must enhance the quality of the collected information, and thereby improve the effectiveness of the NCCDB, by addressing (1) the overall administration of the program, (2) the name of the program, and (3) the inefficiencies of the online portal.” *Id.* Moreover, OOIDA raised concerns about the agency’s response to complaints, follow-up with drivers after the filing of complaints and consistency and efficiency in complaint handling. *Id.* at 1-2. Finally, while OOIDA understood that estimates associated with coercion complaints could not be included in this ICR, it indicated that it “is aware of coercion complaints submitted to the NCCDB and recommends the Agency work quickly to include such data in future renewals for the NCCDB.” *Id.* at 9.

More specifically, OOIDA’s comment consists of the following sections: (A) Coercion complaint example, (B) Confirmation and tracking must be provided, (C) NCCDB Name, (D) The inefficiencies of the online portal and (E) Other Concerns. *Id.* at 2-9. FMCSA will address each section of OOIDA’s comments and provide its response.

A. Coercion Complaint Example

¹ Comments of the Owner Operator Independent Drivers Association, Inc.; In Response to an Agency Information Collection Request; National Consumer Complaint Database. No other comments have been filed in the docket.

OOIDA provided an example of a coercion² complaint which was entered into the NCCDB by a member of their association. *Id.* at 2-3. In its comments, OOIDA raised concerns with FMCSA's processing of the complaint. It indicated that "the Agency lacks the proper mechanisms to accurately track the status of a complaint, and second, that the Agency lacks appropriate measures to ensure that a vacant position does not lead to the improper management of a filed complaint." *Id.* at 3. FMCSA agrees with OOIDA that complaints need to be tracked and that complaints must be properly handled despite any staffing issues. In this particular situation, FMCSA determined that the tracking issues resulted from the complainant's initial filing of the complaint. To address the initial concern from OOIDA, FMCSA manually updated the NCCDB to include the coercion complaint. Ultimately, an FMCSA field office addressed the complaint.

B. Confirmation and Tracking must be Provided

In its comments, OOIDA indicates that "[o]ften times, driver do not receive a tracking number and are unaware of the status of their grievances." *Id.* at 3. OOIDA argues that "[t]he Agency should provide a confirmation that the complaint has been accepted as well as a specific tracking number or other case identifier to assist with follow-up." *Id.* at 4.

FMCSA has resolved OOIDA's concerns. Once a complaint is submitted, the system will assign and display the Complaint Identification Number and provide an option to print the complaint.

C. NCCDB Name

² The Coercion rule prohibits motor carriers, shippers, receivers, or transportation intermediaries or their respective agents, officers or representatives from threatening drivers with loss of work or other adverse employment actions or taking action to punish drivers for refusing to operate a commercial motor vehicle in violation of certain provisions of the Federal Motor Carrier Safety Regulations, Hazardous Materials Regulations, and Federal Motor Carrier Commercial Regulations. 80 FR 74695 (Nov. 30, 2015)

OOIDA indicates that the term “National Consumer Complaint Database” is causing confusion about the types of complaints that can be filed. OOIDA argues that the title does not support the Agency’s safety mandate. *Id.* at 4-5. OOIDA submits that FMCSA can improve its outreach to drivers about the NCCDB to make “sure they are aware that the NCCDB is a beneficial tool that can promote safety and eliminate bad actors from the industry. OOIDA would look forward to working with and helping the Agency achieve this objective.” *Id.* at 5.

FMCSA is open to considering a name change for the complaint database. Given that many stakeholders file complaints, such a name would need to cover complaints from all stakeholders. FMCSA looks forward to working with OOIDA on outreach to drivers about the NCCDB.

D. The Inefficiencies of the Online Portal

OOIDA provides recommendations for modifications to the NCCDB online portal. According to OOIDA, “[t]hese changes would improve the portal’s efficiency and the overall experience for the user.” *Id.* at 5.

Sequence of Information

OOIDA states a typical OOIDA member would select the category of “Driver” to file a complaint on the NCCDB home page. OOIDA also states the home page does not clarify the heading of “Truck Complaint” or its category for “Truck Safety.” OOIDA states a driver could follow the prompts and spend considerable time typing an incident description to discover they did not select the correct category. This could result in a driver giving up on the complaint filing process. *Id.* at 5-6.

FMCSA acknowledges OOIDA's concern and will work to improve future releases of the NCCDB system to address the issue.

Knowledge of DOT Number

OOIDA states that it is problematic for a driver to know the USDOT number of a motor carrier when attempting to file a complaint. It states that if the individual does not know the USDOT number of the entity he/she is filing against, the next step may be to enter the Company Information. OOIDA explains that upon completing the relevant information, the logical step would be to click the "NEXT" button. However, it states the required action is to click "Add Company" and suggests this sequence implies that a driver enter another company. OOIDA recommends changing this language to "Select this Company" or "Use This Company Information" as the next logical step. OOIDA further suggests that the heading "Complaint on Carrier(s)" be changed to "Company You Have Entered" or some similar language. *Id.* at 6.

FMCSA acknowledges the proposed amendments to the language and agrees with the recommendations. FMCSA will work with OOIDA on its suggestions and make the changes referenced above in a future release of the NCCDB.

Lack of Consistent Language

OOIDA states the language in the NCCDB is inconsistent in the complaint filing process. At one step, the term "Company Information" is used; however, in the next step, the term "Complaint on Carrier(s)" is used. *Id.* at 6. According to OOIDA, since complaints could also involve brokers, the term "Company Information" is the most appropriate choice. *Id.* at 6-7.

FMCSA looks forward to working with OOIDA on its suggestions and will incorporate this recommendation in a future release of the website.

Selecting the Company

OOIDA points out a number of issues associated with a complainant searching the NCCDB by USDOT number. In particular, OOIDA points out that redundant information appears after a complainant clicks on the “Select” option after the search result appears. OOIDA recommends that the heading “You Have Selected” followed by the company name and associated information be substituted for the redundant information. *Id.* At 7.

FMCSA accepts this recommendation and will incorporate in a future release of the NCCDB. The Agency is also committed to working with OOIDA on other concerns it raises in this portion of its comments.

Acceptable Media Files

While OOIDA notes that the NCCDB permits “a variety of file types to be uploaded, it is missing critical file types such as MP4 video.” *Id.* at 7. Moreover, OOIDA raises a concern that FMCSA’s 10-megabyte file size limit is too low. According to OOIDA, “[u]sing common smart phones, OOIDA staff found that a video would exceed 10 megabytes after only 6 seconds of footage.” *Id.* at 8.

FMCSA has updated its capabilities to accommodate up to 20-megabyte file sizes and video formats that are compatible with NCCDB software.

Back Button Warning

OOIDA notes that a “Back Button Warning” should be displayed when individuals file complaints in the NCCDB. Presently, when the back button is used, it returns the filer to the home page and the individual must reenter their complaint. *Id.*

FMCSA accepts OOIDA’s suggestion to include a “Back Button Warning” and will include this change in a future release of the NCCDB.

Conditional Logic is Needed

OOIDA indicates that when a complaint is being entered, the NCCDB should not allow the complainant to continue in the online process if any fields remain blank. A process such as this would have notified their member to complete the online process for a successful submission of the complaint. *Id.* FMCSA acknowledges OOIDA’s comments and implemented updates to the NCCDB that corrects this issue.

Ample Time

OOIDA states that one of the NCCDB’s stronger points is the ample time allowed before a user is automatically logged out of a session when there is a pause in data input. *Id.* at 8.

FMCSA will continue to maintain the current login time for entering complaints.

E. Other Concerns

OOIDA expresses concern that the ICR states, “[t]here is no complaint history for the recently added coercion and harassment complaint categories, or for complaints regarding financial responsibility instruments for brokers and/or freight forwarders.” *Id.* at 9. In response to the Agency’s statement in the November 29 Notice that “[t]his data will be collected and included in future renewals for the NCCDB,” 81 FR at 86069,

OOIDA indicates that it “recommends the Agency work quickly to include such data in future renewals for the NCCDB.”

FMCSA did not have data to provide in the November 29 Notice. The coercion, harassment, and the financial responsibility categories were, at that time, only recently added. However, in Fiscal Year 2016, complainants filed complaints in the NCCDB as follows: 362 financial responsibility; 96 harassment; and 224 coercion. This 2016 data is included in the cost calculation.

Background

The FMCSA maintains online information and resources to assist drivers, others in the motor carrier industry and members of the public in filing safety complaints regarding HHG carriers, hazardous materials (HM) carriers, property carriers, cargo tank facilities, and passenger carriers. There is also information pertaining to the filing of complaints regarding brokers, freight forwarders, and financial responsibility. Finally, there is information regarding consumer complaints, particularly regarding HHG transportation and ADA compliance. This online interface is known as the NCCDB. When effectively applied, the NCCDB can contribute to safer motor carrier operations on our nation’s highways and improved consumer protection.

The NCCDB grew out of a telephone hotline known as the Safety Violation Hotline Service. Congress mandated this hotline in Section 4017 of the “Transportation Equity Act of the 21st Century,” Pub. L. 105-178, 112 Stat. 107, June 9, 1998. The Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159, 113 Stat. 1748, December 9, 1999, created the FMCSA and section 213 of the Act expanded the Safety Violation Hotline Service to include a 24-hour operation. On August 10, 2005, Congress

enacted the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144. Section 4214 of SAFETEA-LU requires DOT to create a system to record and log aggregate complaint information regarding violations of the Federal Motor Carrier Safety Regulations.

The NCCDB fulfills the requirements of these mandates. Complaints will be accepted through the NCCDB in connection with other statutory mandates, including, but not limited to, protection of drivers against harassment and coercion under sections 32301(b) and 32911, respectively, of the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141, 126 Stat. 405. The NCCDB will also accept complaints from interested parties regarding third party intermediaries (brokers and freight forwarders) and their associated financial responsibility instruments.

Title: National Consumer Complaint Database OMB Control Number: 2126-NEW.

Type of Request: New information collection.

Respondents: Consumers, Drivers, and Others, Participants in the Motor Carrier Industry.

Estimated Number of Respondents: 12,165 respondents [8,030 Moving Complaint respondents + 3,449 Truck Complaint respondents + 685 Bus Complaint respondents].

Estimated Time per Response: 15 Minutes.

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

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,041 hours [8,030 Moving Complaint respondents × 15 minutes = 2,008 hours; 3,449 Truck Complaint respondents × 15 minutes = 863 hours; 685 Bus Complaint respondents × 15 minutes = 171 hours].

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 FMCSA to perform its functions;
- (2) the accuracy of the estimated burden; (3) ways for the 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 delegated in 49 CFR 1.87 on: January 23, 2018

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

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