



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0087]

Agency Information Collection Activities; Renewal of Existing 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.

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-2018-0087-0001. 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: Crystal Frederick, Transportation Specialist, Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone: 202-366-2904; E-mail Address: crystal.frederick@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: 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” and passenger carrier regulations codified at 49 CFR part 390, subpart F, “Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles.” These regulations require certain motor carriers to have a formal lease when leasing equipment. The FMCSA requests approval to renew an ICR titled, “Lease and Interchange of Vehicles.”

Title: Lease and Interchange of Vehicles.

OMB Control Number: 2126-0056.

Type of Request: Renewal of information collection.

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

Estimated Number of Respondents: 5,213,193 [18,820 lessees (IC-1) + 18,820 lessors (IC-1) + 5,175,552 carrier representatives (IC-2)].

Estimated Time per Response: Varies from 5 to 30 minutes.

Expiration Date: August 31, 2018.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,136,114 hours [18,820 master lease (ICR Component 1 (IC-1)) + 62,236 standard statement (IC-1) + 13,478 master lease (ICR Component 2 (IC-2)) + 862,592 negotiation (IC-2) + 143,190 documentation (IC-2) + 0 (negligible) copying (IC-2) + 35,798 charter group notification (IC-2)].

BACKGROUND: The Secretary of Transportation (Secretary) is authorized to require a motor carrier that uses commercial 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 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 based on exemptions set forth in 49 CFR 376.11, which cross references other provisions in part 376. Section 376.11 requires that authorized carriers (a person or persons authorized to engage in the transportation of property as a motor carrier under the provisions of 49 U.S.C. 13901 and 13902) may perform authorized transportation using equipment it does not own only when the following conditions are met: (1) There shall be a written lease granting the use of the equipment and meeting the requirements contained in 376.12; and (2) Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given; and (3) The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service.

These property and passenger carrier provisions account for the burden in this information collection.

This program change increase of 527,214 estimated annual burden hours (1,136,114 proposed estimated annual burden hours—608,900 currently approved estimated annual burden) is due to updated estimates of the number of respondents and responses. Previous estimates were based on 2014 data. Current estimates are based on September 26, 2017, Motor Carrier Management Information System and Safety Measurement System snapshots. The data pulled for the current ICR shows an increase in the overall number of carriers since the data used in the previous ICR. The increased carriers resulted in an increase in the overall burden hours associated with this ICR.

FMCSA received a total of 13 comments concerning the Leasing ICR, 12 in the appropriate docket and 1 misfiled in another docket in response to the 60-day comment Federal Register, 83(17884), published on April 24, 2018. Comments were received from the following organizations and/or individuals: Academy Bus, Adirondack Transit Lines, American Bus Association, Connecticut Bus Association, Elite Coach, FTI Coach Lines, Greyhound Lines, Jefferson Lines, Burlington Trailways, Anderson Coach & Travel, Owner-Operator Independent Drivers Association (OOIDA), Trans-Bridge Lines, and Tim Watson from an unnamed carrier.

The majority of the comments received made points against the Leasing rule that include the following: 1) the ICR will present a significant paperwork burden to carriers, 2) there is a shift in liability from the lessor to the lessee without explanation, 3) the Leasing rule will negatively impact carrier operations and businesses, and 4) the ICR should not be approved because the Leasing rule itself needs to be repealed. Additional,

less frequently cited points include: 1) the rule will negatively impact safety, 2) the definition used for the term, “lease” is inconsistent with other organizations and governments, and 3) FMCSA will make changes to the Leasing rule so close to the pending compliance date that there will be insufficient time to address potential remaining issues with the rule.

First, based on FMCSA’s estimates, we do not believe there is a significant burden represented by this ICR as the estimated time per response is between 5 and 30 minutes and the collection frequency is estimated to be occasionally. Second, the remainder of the comments are out of scope as they speak to the leasing rule itself and not the collection request represented in this ICR.

One commenter, OOIDA, expressed support of the Leasing rule. OOIDA made the following points: 1) The Leasing rule ensures that motor carriers take more responsibility in the lessor/lessee relationship and diminishes abuse of that relationship, 2) the burden for complying with the rule will not be significant, and 3) the Leasing rule supports safety by permitting owner-operators to manage their business and not drive when tired. Additionally, OOIDA also commented specifically on the collection outlined in the ICR, indicating the following: “Although it is fair to estimate that the information that the Rules require to be disclosed may fit on a single page, some carriers choose to express the required lease provisions in more lengthy documents. Leases are often multiple pages because they also contain contractual provisions beyond those required by the rules. That factors leans toward a higher burden (at the choice of motor carriers) than estimated by the Agency. The typical lease is for a term of one year, and such leases are regularly self-renewing and not recreated and affirmed on an annual basis. Therefore, in these instances, the burden of issuing copies of leases would be less.” While FMCSA appreciates these points on

the length of documents and self-renewal, without specific numbers on document length or frequency of self-renewals we have no specific basis to adjust the numbers in the ICR and intend to keep the estimates proposed at this time.

As FMCSA announced in a notice titled, Proposal in response to petitions for reconsideration; request for public comments, dated June 16, 2017, it intends to publish a notice of proposed rulemaking (NPRM) to revise the 2015 final rule, reducing the burdens generally it would have imposed on motor carriers of passengers [82 FR 27768]. Currently, FMCSA is working on the NPRM and expects to publish it later in 2018. The compliance date of the 2015 rule, currently January 1, 2019 [82 FR 27766], will be extended and ultimately replaced by a new compliance date adopted upon completion of the forthcoming rulemaking. For the purpose of this ICR all of the burden from the existing regulations must be assessed.

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: August 8, 2018.

G. Kelly Regal,
Associate Administrator for Office of
Research and Information Technology.

[FR Doc. 2018-17683 Filed: 8/15/2018 8:45 am; Publication Date: 8/16/2018]