

August 14, 2009

Via email to ginger.lemay@dhs.gov

Ms. Ginger LeMay
PRA Officer, Office of Information Technology
Transportation Security Administration
601 South 12th Street
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Re: OMB Control Number: 1652-0036: "Intent to Request Renewal from OMB of One Current Public Collection of Information: Highway Corporate Security Review"

The American Trucking Associations (ATA)¹ and the American Bus Association (ABA) submit these comments in response to the Transportation Security Administration's Intent to Request Renewal from the Office of Management and Budget of One Current Public Collection of Information: Highway Corporate Security Review.² ATA previously commented on the original information collection notice, suggesting that the Transportation Security Administration (TSA) better coordinate its Corporate Security Review (CSR) program with the Federal Motor Carrier Safety Administration's (FMCSA) Security Contact Review (SCR) inspections.³ Our organizations are disappointed that the recommendations, which would have both eliminated redundancies and saved taxpayer funds, were largely ignored. TSA now is presenting its information collection request to the Office of Management and Budget (OMB) unchanged.

We recommend that TSA reconsider its submission to OMB and work to ease the financial and administrative burdens on the taxpayer by adopting ATA's earlier suggestions:

¹ ATA is a federation of motor carriers, state trucking associations, and national trucking conferences that promotes and protects the interests of the trucking industry. Directly, and through its affiliated organizations, ATA represents more than 37,000 motor carriers of every size, type, and class in the U.S., Canada and Mexico.

² See 74 *Federal Register* 28264-5 (June 15, 2009).

³ See 74 *Federal Register* 9620 (March 5, 2009) for original Information Collection Notice. A copy of ATA's comments on that request is available online at <http://www.truckline.com/AdvIssues/Security/Documents/ATA%20CSR%20Comments%20FINAL.pdf>.

- TSA should review the data already collected through FMCSA's SCR and other FMCSA programs rather than replicate aspects of other federal security audit programs;
- TSA should leverage the resources identified in its October 2008 Memorandum of Understanding (MOU) with FMCSA and build upon its previous collaboration in the Missouri CSR Pilot project to appropriately incorporate security measures from FMCSA's SCR and other FMCSA-administered review programs; and
- If TSA believes that the SCR is not effective in certifying that trucking companies have established compliant security programs, then TSA should advise FMCSA as to the additional specific information that FMCSA needs to collect in the SCR process.

In addition to the justification offered in our earlier set of comments, we offer two further reasons that TSA should partner with FMCSA rather than compete with its sister agency. These matters go to the very the purpose underlying the OMB review of information collections, namely that the collection is unnecessary and undermines quality and accuracy of federal programs. The two further reasons are as follow:

A Separate Information Collection is Unnecessary

In their Notice, TSA states that they must continue to administer the CSR as a stand alone program in order to support their security mission. Specifically, TSA believes "the relationships these face-to-face contacts foster are critical to the Federal Government's ability to reach out to the surface transportation stakeholders affected by the CSRs."⁴ Despite this assertion, TSA has moved to train State police to perform the CSRs. If TSA conducts CSRs through State police, the agency will be subcontracting out any relationships with stakeholders before they can be formed, much less maintained. Secondly, these State police inspectors are the same personnel who administer the FMCSA's SCR inspections. Thus, TSA is asking the same personnel to inspect the same carriers for virtually the same criteria as a pre-existing FMCSA information collection.

The notice also states that TSA intends to conduct 400 CSRs yearly. According to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) 2008-2009 Registration Data, just under 40,000 companies are registered to transport hazardous materials by highway.⁵ Under this scenario, TSA will need 100 years to perform a CSR for every hazardous materials hauler registered with PHMSA, making return visits to companies that volunteer for CSRs roughly once a century. The frequency and manner in which CSRs are conducted is inadequate for TSA's stated intention of building relationships.

⁴ 74 *Federal Register* 28265 (June 15, 2009).

⁵ Pipeline and Hazardous Materials Safety Administration. Registration Data for 2008-2009. <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=d37d8490d52dc110VgnVCM1000009ed07898RCRD&vgnnextchannel=218a2b91769cc110VgnVCM1000009ed07898RCRD&vgnnextfmt=print>.

We also note that TSA has mischaracterized the burden associated with this information collection. The *Federal Register* notice states that each CSR takes two to three hours to complete and that the total annual cost to respondents is zero.⁶ Putting aside the actual time that each visit takes (which can easily exceed three hours), TSA representatives must be escorted by one or more employees while on-site and typically interview several additional employees during their visit. The costs associated with these activities are not zero. TSA must properly include the respondent's employees' costs in the cost burden associated with the CSRs.

Enforcement

TSA's insistence that the same inspectors administer different reviews under multiple programs has already created confusion on the enforcement front. One ATA member carrier reported that an inspector attempted to cite the company for "violating" TSA's *Voluntary Security Action Items* (SAI), a series of countermeasures recommended to motor carriers that undergo a CSR. When the company's security officer protested that the SAIs are not required by regulation, the inspector instead cited the company for failing to follow their site security plan—even though the SAIs were not incorporated into said plan. This is an example of TSA's failure to provide adequate training on the goals and scope of the program. When multiple programs are subcontracted to the same inspectors, such errors will only proliferate. Combining the programs reduces opportunities for confusion.

Conclusion

TSA and FMCSA are each inspecting motor carriers and each inspection program has significant overlapping criteria. These overlaps are a waste of scarce government resources and create additional administrative burdens for the regulated community. To eliminate these redundancies and waste, TSA should work with FMCSA to broaden the scope of the SCR program and should be privy to the data generated under the program. TSA should also retain the authority to conduct follow-up visits where necessary, but TSA should not be running a largely redundant inspection program. The areas of motor carrier safety and security are inextricably linked and government efforts to encourage safety and security improvements should be standardized to ensure maximum adoption. TSA has already taken the first step by enlisting the State police that assist FMCSA in their inspections. TSA simply needs to take the second step and work with FMCSA to align the security requirements for the two programs. GAO has also suggested this approach, stating:

By leveraging resources with FMCSA, TSA may be able to address other priorities, such as conducting additional vulnerability assessments,

⁶ *Id.* at 28265/1.

improving security mitigation programs beyond the hazardous materials sector, and addressing highway infrastructure protection.⁷

TSA should implement these suggested changes. By working with FMCSA, the State police through the Commercial Vehicle Safety Alliance, and the Highway Motor Carrier Sector Coordinating Council, a truly robust and effective program can be implemented.

Thank you for considering our concerns on this issue. Should you have any questions related to these issues, please contact ATA's Boyd Stephenson at 703-838-7982 or bstephenson@trucking.org or ABA's Norman Littler at 202-842-1645 or nlitter@buses.org.

Respectfully submitted,



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⁷ U.S. General Accounting Office. *Commercial Vehicle Safety: Risk-Based Approach Needed to Secure the Commercial Vehicle Sector*. 27 February 2009. <http://www.gao.gov/new.items/d0985.pdf>.