

**Department of Transportation
Office of the Chief Information Officer**

SUPPORTING STATEMENT

**Driver and Carrier Surveys Related to Electronic On-Board Recorders (EOBRs), and
Potential Harassment Deriving from EOBR Use**

This is to request the Office of Management and Budget's (OMB) review and approval of a new Federal Motor Carrier Safety Administration (FMCSA) information collection request (ICR) entitled, "Driver and Carrier Surveys Related to Electronic On-Board Recorders (EOBRs), and Potential Harassment Deriving from EOBR Use." This ICR will be used for research to support revisions to FMCSA's Electronic On-Board Recorders (EOBR) Rule.

Section A. Justification:

1. Circumstances that make collection of information necessary.

Motor carrier management and oversight of drivers' hours-of-service (HOS) is one of FMCSA's fundamental concerns. Motor carriers began to look to automated methods of recording drivers' duty status records in the mid-1980s as a way to save drivers time and improve the efficiency of their compliance assurance procedures. In April 1985 the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the U.S. Department of Transportation (DOT), granted the first of 10 waivers to allow use of on-board computers in lieu of requiring drivers to complete handwritten records of duty status (RODS).

After conducting notice-and-comment rulemaking, the Agency issued a final rule on September 30, 1988. The rule revised part 395 (Attachment A) of the Federal Motor Carrier Safety Regulations (FMCSRs) by allowing motor carriers the flexibility to equip commercial motor vehicles (CMVs) with an automatic on-board recording device (AOBRD) in lieu of requiring drivers to complete handwritten RODS. The term "automatic on-board recording device" was defined under § 395.2 as "an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by §395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day."

During the next 20-plus years, the needs of motor carriers to monitor operational productivity led to significant changes in CMV and driver monitoring and on-board recording practices. At the same time, FMCSA's need to improve the efficiency and effectiveness of its HOS oversight also increased. On April 5, 2010, FMCSA published a final rule entitled, "Electronic On-Board Recorders for Hours-of-Service Compliance," (75 FR 17208) (Attachment B) that incorporated new performance standards for electronic on-board recorders (EOBRs) installed in CMVs manufactured on or after June 4, 2012. The new rule also called for mandatory installation of EOBRs meeting the new performance standards in CMVs operated by motor carriers found by the Agency to have serious HOS noncompliance.

The 2010 EOBR rule was challenged in court based in part on concerns that EOBRs could be used to harass drivers. *Owner-Operators Independent Drivers Association v. U.S. Department of Transportation*, 656 F.3d 580 (7th Cir. 2011) (Attachment C). Based on issues raised in the litigation, on April 13, 2011, FMCSA published a notice requesting public comment on the harassment issue (76 FR 20611) (Attachment D). The Agency sought and received some comments on the following items:

- Experiences drivers have had regarding harassment, including coercion by carriers to evade the HOS regulations;
- Whether such carrier activity would be permitted as productivity monitoring or would be barred by other statutory or regulatory provisions;
- Whether use of EOBRs would impact the ability of carriers, shippers, and other parties to harass or coerce drivers to violate HOS requirements;
- The effectiveness of mechanisms currently available under 49 CFR 392.3 (Attachment E), 49 CFR part 395 and 49 U.S.C. 31105(a) (Attachment E) to protect against carrier coercion; and
- Whether additional regulations or guidance from FMCSA are necessary to ensure EOBR devices are not used to harass vehicle operators.

On August 26, 2011, the U.S. Court of Appeals for the Seventh Circuit vacated the Agency's April 2010 final rule on the use of EOBRs. The Court stated that contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the Court's decision was FMCSA's failure to directly address a requirement in 49 U.S.C. § 31137(a) (Attachment F). The statute reads as follows:

USE OF MONITORING DEVICES. If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

As a result of the court's ruling, carriers relying on electronic devices to monitor HOS compliance are currently governed by the rules addressing the use of automatic on-board recording devices as in effect immediately before the court's ruling (49 CFR 395.15) (Attachment A). These rules were not affected by the Seventh Circuit's decision.

The objective of conducting the survey through this information collection request (ICR) is to examine the issue of driver harassment and determine the extent to which EOBRs are used to either harass and/or monitor driver productivity. The proposed survey will explore the relevant issues from the perspective of both drivers and carriers. The intention of this survey is to specifically respond, in part, to the Court's suggestion that the Agency examine the issue of harassment based on the use of the devices. The research questions which have guided the framing of the survey questionnaire are shown below:

1. What types of actions by motor carriers and others do CMV drivers consider harassment?
2. What is CMV driver harassment, in the context of HOS compliance or noncompliance?

3. How often does HOS-related driver harassment take place and how severe is it?
4. Is there a statistically significant difference in the actions that drivers consider harassment between users and non-users of HOS monitoring devices (HOS-MDs)?
5. Are there differences in the level of reported driver harassment by type of HOS-MD?
6. How are HOS-MDs used by motor carriers to monitor and improve driver productivity?
7. What measures of productivity are used and how extensive is their use?
8. How does the use of these productivity metrics differ between users and non-users of HOS-MDs?
9. Is there a statistically significant difference in the use of these measures between users and non-users of HOS-MDs?
10. What is the level of driver acceptance associated with these measures of productivity?
11. Are there notable distinctions in the way HOS-MDs are used to monitor versus harass drivers?
12. What are various ways to ensure that HOS-MDs are not used by motor carriers, shippers and others in the transportation chain to harass drivers?
13. How effective are mechanisms currently available under 49 CFR 392.3 (Attachment E), 49 CFR part 395 (Attachment A) and 49 U.S.C. 31105(a) (Attachment F) to protect against carrier coercion?
14. What actions could FMCSA take to address situations where a motor carrier has been found by FMCSA to harass drivers?

2. How, by whom, how frequently, and for what purpose the information is used.

The focus of the ICR and the surveys is to inform FMCSA in its planned regulation relating to the use of EOBRs in commercial vehicle operations, including the potential countermeasures or best practices that will ensure that EOBRs are not used by carriers for driver harassment.

This ICR has been disaggregated into two information collections (ICs) as follow:

1. IC-1: Carriers:
 MCSA-5877, Qualitative Discussion Guide One-on-One In Depth Interview with Carriers.
 MCSA-5878, Qualitative Discussion Guide One-on-One In Depth Interview with Carriers Recruitment Questionnaire.
 MCSA-5879, Web Survey with Carriers.
 MCSA-5885, Non-Response Survey with Carriers (Telephone).
2. IC-2: Drivers:
 MCSA-5880, Qualitative Discussion Guide One-on-One In Depth Interview with Drivers Main Questionnaire.
 MCSA-5881, Qualitative Discussion Guide One-on-One In Depth Interview with Drivers Recruitment Questionnaire.
 MCSA-5882, Intercept Survey with Drivers.

Hand Cards: Sheets drivers can read from, which will speed the interview.

Permission and Acknowledgement Cards: Acknowledgement that the interview is understood to be voluntary.

The information collection is a one-time period event, including surveys of carriers and individual drivers. The survey method with an appropriate design is included hereunder:

1. Qualitative, in-depth interviews conducted on the telephone with 7 truck drivers (Form MCSA-5880 and 2 carriers (Form MCSA-5877), each lasting 30 minutes on average.
2. A pilot study of the planned carrier survey, using a mail-web methodology. 200 carriers from the MCMIS data base will be solicited to participate in an online survey (Form MCSA-5878), using a recruitment letter, a reminder postcard, and a second follow-up letter. The web survey is expected to average 20 minutes to complete, and its response rate will inform expectations for the full survey with carriers. Our initial expectation is that 10% of the 200 (20) will complete the pilot study survey on the web. The burden analysis is based on this figure of 20.
3. A full carrier survey, using a mail-web methodology (Form MCSA-5879). 4,000 carriers from the MCMIS data base will be solicited to an online survey, using a recruitment letter, a reminder postcard, and a second follow-up letter. Our initial expectation (which will be refined through the pilot study) is that 10% of the 4,000 (400) will complete the survey on the web. The burden analysis is based on this figure of 400. The web survey is expected to average 20 minutes to complete.
4. A non-response follow-up survey (Form 5885) will be conducted on the telephone with 100 carriers who did not participate in the web survey.
5. Intercept surveys with truck drivers (Form MCSA-5882), conducted at 25 truck stops. The truck stops will be selected from 1,465 truck stops in the United States within 20 miles of a Metropolitan Statistical Area (MSA) with minimum population of 500,000 on a route with average daily truck traffic of at least 5,000. The interview is expected to average 20 minutes; participating drivers will be given \$10 as compensation for their time; those who do not participate will be asked a brief series of questions to allow for non-response analysis. Limits will be placed on the number of truck drivers who do not use EOBRs and are interviewed, in order to increase the number of EOBR-using drivers who are included in the sample. In total, we expect 510 drivers to participate; the burden analysis is based on the 510 drivers, and does not include drivers who are screened out.

3. Extent of automated information collection.

Automated information collection is limited to carriers; their recruitment letters will provide them with a PIN to allow them to access an online survey. Following standard survey protocol, the respondents will be informed that they may choose not to answer any question and that they may end the survey at any time. Further, the respondent will be offered the opportunity to begin the survey in one session and finish it in another session.

4. Efforts to identify duplication.

We have attempted to minimize burden by not asking questions whose answers are part of the MCMIS database. Otherwise, the FMCSA has investigated the availability of information regarding the research goals and has not found anything to suggest that the information gathered here is redundant.

5. Efforts to minimize burden on small businesses.

The intended driver population will be interviewed through intercepts at truck stops during off duty periods, and should have no business effect. The carrier population being targeted is generally large, not small business, operations.

6. Impact of less frequent collection of information.

The data for this research is intended to be collected only once. A delay will impact the implementation of rulemaking.

7. Special Circumstances.

There are no special circumstances related to this information collection.

8. Compliance with 5 CFR 1320.8.

The FMCSA published a notice in the Federal Register with a 60-day public comment period to announce this proposed information collection on December 13, 2012 (77 FR 74267) (see Attachment H). The Agency received 36 comments in response to this notice (see Attachment I). The comments focused primarily on the need for timely completion of the proposed surveys, use of EOBRs as a safety tool, possible impacts of EOBRs on drivers' desire for independence and management's oversight, and EOBRs as a tool for harassment by dispatchers. These comments will be considered during the conduct of the study. The FMCSA replies to the comments received are provided at Attachment J.

The FMCSA published a notice in the Federal Register on May 28, 2013 (78 FR 32001) with a 30-day public comment period that announced this ICR would be sent to OMB for its review and approval (see Attachment K).

9. Payment or gifts to respondents.

Drivers who participate in the intercept survey will be given \$10 to compensate them for their time. The average length of interview is expected to be 20 minutes, but for some it will be longer. Information from the Bureau of Labor Statistics suggests that on average, workers in transportation and warehousing are paid approximately \$22 per hour.¹ The compensation is offered to minimize response bias and add to the robustness of the findings; failure to take this step may lead to drivers who are most sensitive about their time to not participate in the research.

10. Assurance of Confidentiality.

¹ U.S. Department of Labor, Bureau of Labor Statistics, Table B-3. Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted (accessed from the following website as of August 2012: <http://www.bls.gov/webapps/legacy/cesbtabs3.htm>)

This collection will be kept private to the extent permitted under law. Data will be treated in a secure manner and will not be disclosed, unless the FMCSA is otherwise compelled by law. Respondents' identifying information will not be included on study materials. No contact information is requested from drivers. In addition, measures will be taken by the subcontractor, Abt SRBI, to remove key identifiers (e.g., name of company, name of individual, name of employer) prior to data analysis, so that individual responses or aggregate results, henceforth, cannot be linked to a specific individual or employer.

The survey data will be stored on an Abt SRBI computer that is protected by a firewall that monitors and evaluates all attempted connections from the Internet. Private information on each survey respondent (name and telephone number, only) will be maintained in a separate data file apart from the survey data so that it is not possible to link particular responses to individual respondents. Any data used for analysis by the contractor or the Department will be completely de-identified. Finally, access to any data with identifying information will be limited only to contractor staff directly working on the survey.

Participation in the survey is voluntary. All analyses, summaries or briefings will be presented at the aggregate level and it will not be possible to link specific responses to individual respondents in any way.

11. Justification for collection of sensitive information.

This information collection involves some data of a sensitive nature, such as potential violation of regulations, or practices that lead to such violations. These questions are essential to meet research objectives of identifying potential harassment effects and mitigation related to use of EOBR devices, so that FMCSA can treat these concerns in its proposed regulations and meet court-mandated requirements related to EOBR regulations. Additionally, participants will be informed that they do not have to answer any questions that they consider to be of a sensitive nature.

12. Estimates of burden hours for information requested.

This ICR will comprise two categories of burden, one associated with carrier interviews and the other associated with driver interviews. The Agency's contractor will conduct several types of interviews with carriers and drivers. These are described in detail in item 2 above. All of the estimated burden will occur once during a fifteen-month period. However, because information collection requests are approved for three years, these one-time burden estimates have been annualized by dividing by three.

IC1: Carriers:

	Item	Minutes per Form	Responses and	Total Burden Hours	Total Annualized
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	Response	Respondents		Burden Hours (Total Burden ÷ 3)
In-depth interviews Form MCSA-5877 & Form MCSA-5878	30	2	1	0.3
Pilot study web interviews Form MCSA-5879	20	20	6.7	2.2
Main survey web interviews Form MCSA-5879	20	400	133.3	44.4
Non-response follow up interviews Form MCSA-5885	10	100	16.7	5.6
Total		522	157.7	52.6

IC2: Drivers:

Item	Minutes per Response	Responses and Respondents	Total Burden Hours	Total Annualized Burden Hours (Total Burden ÷ 3)
In-depth interviews Form MCSA-5880 & Form MCSA-5881	30	7	3.5	1.2
Intercept interviews Form MCSA-5882	20	510	170	56.7
Total		517	173.5	57.9

Estimated Total Annual Burden Hours: 110.5 hours (52.6 hours for IC1 + 57.9 hours for IC2)

Estimated Total Annual Responses: 1,039 responses (522 responses for IC1 + 517 responses for IC2)

Estimated Total Annual Respondents: 1,039 respondents (522 respondents for IC1 + 517 respondents for IC2)

Using a cost of \$22² per hour, the Agency estimates that the total annual labor cost of this ICR will be \$2,431, comprising \$1,157 for IC1 (52.6 × \$22) and \$1,274 for IC2 (57.9 × \$22).

13. Estimate of total annual costs to respondents.

There are no costs to respondents beyond those associated with the annual hourly burden (not to be included here).

² *Ibid.*

14. Estimate of cost to the Federal government.

The total Federal government budget for this information collection is \$460,000, and it is itemized in the following table.

COSTS TO FEDERAL GOVERNMENT

Tasks	Total costs by Task
Kickoff and Design Plan	\$ 72,000
Peer Review	\$ 14,000
Literature Review, Technology Scan	\$ 46,000
Collect Data	\$160,000
Conduct Analysis	\$ 52,000
Final Report and Peer Review	\$ 48,500
Presentation and 508 Compliance	\$ 30,500
Direct Costs, including Travel	\$ 37,000
TOTAL	\$460,000

The hours and costs, as noted above, were based on the agreed upon specific labor hours and rates between US DOT—FMCSA and MaineWay Services. The period of performance for data collection is 15 months.

15. Explanation of program changes or adjustments.

This is a new information collection

16. Publication of results of data collection.

The data collected through the proposed survey will be analyzed and the results obtained from data analysis will be used to produce the main study report. Data collection will be completed in 4 months, followed by basic and advanced statistical analyses. Both descriptive and analytical methods will be employed to analyzing the survey data. Statistical methods, such as regression type analysis will be adopted when appropriate. The results of this study will be used to write a technical report to be delivered to and maintained by FMCSA. This report would be available to the public at the FMCSA web site at www.fmcsa.dot.gov.

17. Approval for not displaying the expiration date of OMB Approval.

FMCSA is not seeking an exemption from displaying the expiration date on the information collection questionnaire.

18. Exceptions to certification statement.

None.

Attachments:

- A. Title 49 CFR § 395 titled, “Hours of Service of Drivers.”
- B. Final Rule entitled, “Electronic On-Board Recorders for Hours-of-Service Compliance,” April 5, 2010 (75 FR 17208).
- C. Owner-Operators Independent Drivers Association v. U.S. Department of Transportation, 656 F.3d 580 (7th Cir. 2011).
- D. Notice: Request for Comments entitled, “Electronic On-Board Recorders and Hours of Service Supporting Documents,” April 13, 2011 (76 FR 20611).
- E. 49 CFR § 392.3 titled, “Ill or fatigued operator.”
- F. 49 U.S.C. § 31105(a) titled, “Employee protections.”
- G. 49 U.S.C. § 31137(a) titled, “Use of monitoring devices.”
- H. 60-day Comment Request Federal Register Notice, December 13, 2012 (77 FR 74267).
- I. Comments Received in Response to 60-day Comment Request Federal Register Notice and FMCSA replies.
- J. FMCSA responses to Comments Received in Response to 60-day Federal Register Notice.
- K. 30-day Comment Request Federal Register Notice, May 28, 2013 (78 FR 32001).

Forms:

MCSA-5877, Qualitative Discussion Guide One-on-One In Depth Interview with Carriers
MCSA-5878, Qualitative Discussion Guide One-on-One In Depth Interview with Carriers
Recruitment Questionnaire
MCSA-5879, Web Survey with Carriers
MCSA-5880, Qualitative Discussion Guide One-on-One In Depth Interview with Drivers Main
Questionnaire
MCSA-5881, Qualitative Discussion Guide One-on-One In Depth Interview with Drivers
Recruitment Questionnaire
MCSA-5882, Incept Survey with Drivers
MCSA-5882, Hand Cards
Permission and Acknowledgement Cards