

- Types of actions categorically excluded;
- Requests previously received by the Secretary of Transportation for new CEs that are not currently in regulation; and
- Requests for new CEs.

The Secretary sent the invitation to participate in the survey electronically to 1,511 individuals from SDOTs, transit authorities, MPOs, and federally recognized Tribal Governments. The survey period ran from September 5, 2012, through October 9, 2012.

Responses were collected online and through email. Respondents were encouraged to provide electronic documents and other materials to supplement their answers. Five hundred twenty-two individuals responded to the questionnaire. The SDOT respondents represented 40 States, the District of Columbia, and Puerto Rico.

The FHWA and FTA have compiled the responses and completed the MAP-21 survey report. The purpose of this notice is to comply with the publication requirement for the survey report. The report is available online at [www.fhwa.dot.gov/map21](http://www.fhwa.dot.gov/map21) and <http://www.fta.dot.gov/map21>.

**Authority:** Sec. 1318(a)(2), Pub. L. 112-141, 126 Stat. 405 (2012).

Issued on: December 7, 2012.

**Victor Mendez,**

*Administrator, Federal Highway Administration.*

**Peter Rogoff,**

*Administrator, Federal Transit Administration.*

[FR Doc. 2012-30085 Filed 12-12-12; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0309]

#### Agency Information Collection Activities; New Information Collection Request: Driver and Carrier Surveys Related to Electronic On-Board Recorders (EOBRs), and Potential Harassment Deriving From EOBR Use

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

**ACTION:** Notice and request for information.

**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. The purpose of

this new ICR is to broadly examine by the collection of survey data, the issue of driver harassment and determine the extent to which Electric On-Board Recorders (EOBRs) used to document drivers' hours of service could also be used by motor carriers or enforcement personnel to harass drivers and/or monitor driver productivity. The survey will also collect information on the extent to which respondents believe that the use of EOBRs may result in coercion of drivers by motor carriers, shippers, receivers and transportation intermediaries. The proposed surveys for drivers and carriers collect information related to issues of EOBR harassment of drivers by carriers. FMCSA will publish a supplemental notice of proposed rulemaking on EOBRs and will consider survey results concerning the EOBR use by motor carriers including countermeasures or best practices to ensure that EOBRs are not used by carriers to harass or coerce drivers prior to the issuance of a final rule.

**DATES:** Comments must be received on or before February 11, 2013.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2012-0309 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier.* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m. e.t. Monday through Friday, except Holidays.

- Fax 1-202-493-2251.

To avoid duplication, please use only one of these four methods. Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal

holidays. The FDMS docket is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

#### FOR FURTHER INFORMATION CONTACT:

Albert Alvarez, Research Division, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. *Telephone:* (202 385-2387); email [albert.alvarez@dot.gov](mailto:albert.alvarez@dot.gov). Requests for additional information or copies of the information collection instrument and instructions should be directed to Gene Bergoffen, Principal, MaineWay Services, P.O. Box 166, Fryeburg, ME 04037. *Telephone:* 207 935-7948; email [bergoffen@roadrunner.com](mailto:bergoffen@roadrunner.com).

#### SUPPLEMENTARY INFORMATION:

##### Background

Motor carrier management and oversight of drivers' hours-of-service (HOS) is one of the fundamental concerns of FMCSA. Motor carriers began to look to automated methods of recording drivers' record of duty status (RODS) 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 RODS.

After conducting notice-and-comment on the rulemaking regarding automated methods of recording RODS, the Agency issued a final rule on September 30, 1988. The rule revised part 395 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 follows:

"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."

On April 5, 2010, FMCSA published a final rule to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in CMVs manufactured on or after June 4, 2012. The new rule also required installation of EOBRs meeting the new performance standards in CMVs operated by motor carriers found by the Agency to have serious HOS noncompliance. EOBRs would have been required to automatically record the CMV's location at each change of duty status and at intervals while the CMV is in motion. Current on-board recorders were not required to do this. To ensure a smooth transition from AOBDRs to EOBRs, the final rule would have required that for CMVs manufactured on or after June 4, 2012, devices installed by a manufacturer or motor carrier would need to have met the requirements of § 395.16. Commercial motor vehicles manufactured prior to June 4, 2012 could be equipped with an HOS recording device that met the requirements of either § 395.15 (AOBRD) or § 395.16.

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). At the time, a new rulemaking by FMCSA had been started that proposed to require certain motor carriers operating CMVs in interstate commerce to use EOBRs to document their drivers' HOS (76 FR 5537, February 1, 2011). Based on issues raised in the litigation on the April 2010 final rule, FMCSA published a notice requesting public comment on the harassment issue on April 13, 2011 (76 FR 20612). The Agency sought and received 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, 49 CFR part 395 and 49 U.S.C. 31105(a) to protect against carrier coercion; and
- Whether additional regulations or guidance from FMCSA are necessary to ensure that 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 court also noted that the Agency had not estimated the safety benefits of EOBRs currently in use and how much EOBRs increased compliance. The basis for the court's decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a). At the time of the court's decision, the statute read 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 that address the use of AOBDRs as in effect immediately before the court's ruling (49 CFR 395.15). These rules were not affected by the court's decision. On May 14, 2012, FMCSA rescinded the April 5, 2010 final rule, as amended September 13, 2010, in response to the court's decision to vacate the rulemaking. FMCSA had previously announced its intent to move forward with a rule on electronic logging devices with a supplemental notice of proposed rulemaking (SNPRM) (77 FR 7562 (February 13, 2012)). Congress subsequently mandated that the Secretary of Transportation adopt regulations requiring that commercial motor vehicles involved in interstate commerce, operated by drivers who are required to keep records of duty status (RODS), be equipped with electronic logging devices. (MAP-21, Pub. L. 112-141, § 32301(b), 126 Stat. 405, 786-788 (July 6, 2012), amending 49 U.S.C.

31137). The legislation retained the requirement that regulations ensure such devices not be used to harass drivers of CMVs. MAP-21 also required that certain regulations governing CMV safety ensure that drivers of CMVs are not coerced into operating in violation of regulations to be promulgated (Pub. L. 112-141, § 32911. 126 Stat. at 818 (amending 49 U.S.C. 31136(a)).

The objectives of the proposed driver and carrier surveys through this ICR are to broadly examine the issue of driver harassment and coercion and determine the extent to which EOBRs could be used to either harass and/or monitor driver productivity. These surveys will explore the relevant issues from the point of view of both drivers and carriers towards the use of EOBRs. The survey results will inform FMCSA in its ongoing rulemaking on EOBRs, including potential countermeasures or best practices that will ensure that EOBRs are not used to harass or coerce CMV drivers. The purpose of these surveys is, in part, to respond to the court's suggestion that the Agency research the issue of driver harassment based on use of the device.

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

*OMB Control Number:* 2126-XXXX.

*Type of Request:* New ICR.

*Respondents:* Commercial motor vehicle drivers and carriers.

*Estimated Number of Respondents:* 1,039 [(2 carrier in-depth interviews + 20 carrier pre-test web interviews + 400 carrier main survey web interviews + 100 carrier non-response telephone follow up interviews) + (7 driver in-depth interviews + 510 driver intercept interviews) = 1,039].

*Estimated Time per Response:* 30 minutes for in-depth interviews of drivers and motor carriers; 20 minutes for carrier survey; 20 minutes for the driver survey; 10 minutes for the telephone interview of carriers with non-responses.

*Expiration Date:* N/A.

*Frequency of Response:* Once.

*Estimated Total Annual Burden:* 110.5 hours [(2 carrier in-depth interviews × 30 minutes/60 minutes + 20 carrier pre-test web interviews × 20 minutes/60 minutes + 400 carrier main survey web interviews × 20 minutes/60 minutes + 100 carrier non-response telephone follow up interviews × 10 minutes/60 minutes) + (7 driver in-depth interviews × 30 minutes/60 minutes + 510 driver intercept interviews × 20 minutes/60 minutes)/3 year approval] = 110.5].

*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 information to be collected; and (4) ways that the estimated annual burden could be minimized without reducing the quality of the collected information.

Issued on: December 3, 2012.

**Kelly Leone,**

*Associate Administrator for Office of Research and Information Technology.*

[FR Doc. 2012-30143 Filed 12-12-12; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0313]

#### Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Transportation of Household Goods; Consumer Protection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise an ICR entitled, “*Transportation of Household Goods; Consumer Protection.*” The information collected will be used to help regulate motor carriers transporting household goods (HHG) for individual shippers.

**DATES:** Please send your comments by January 14, 2013. 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-2011-0313. 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/Office of the Secretary,

and sent via electronic mail to <http://www.regulations.gov> or faxed to (202) 395-7245, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Mack, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202-366-8045; email [brodie.mack@dot.gov](mailto:brodie.mack@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Transportation of Household Goods; Consumer Protection.

*OMB Control Number:* 2126-0025.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* 6,000 household goods movers.

*Estimated Time per Response:* Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 12.5 minutes to distribute consumer publication.

*Expiration Date:* December 31, 2013.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 5,524,500 hours [Informational documents provided to prospective shippers at 43,500 hours + Written Cost estimates for prospective shippers at 4,620,000 hours + Service orders, bills of lading at 805,300 hours + In-transit service notifications at 22,600 hours + Complaint and inquiry records including establishing records system at 32,700 hours + Household Goods—Consumer Complaint Form MCSA-2P at 400 hours = 5,524,500].

*Background:* The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1749, December 9, 1999) authorized the Secretary of Transportation (Secretary) to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the former Interstate Commerce Commission and transferred the Commission’s jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Pub. L. 104-88). Prior to FMCSA’s establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA’s predecessor organization within DOT.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, 119 Stat. 1144,

Aug. 10, 2005) (SAFETEA-LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, “Transportation of Household Goods; Consumer Protection Regulation.” On July 16, 2012, FMCSA published a Direct Final Rule (DFR) entitled, “Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations; Household Goods Motor Carrier Record Retention Requirements,” in the **Federal Register** (77 FR 41699). The rule amends the regulations governing the period during which HHG motor carriers must retain documentation of an individual shipper’s waiver of receipt of printed copies of consumer protection materials. This change harmonizes the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amended the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services. The Agency did not receive any comments in response to the DFR.

*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. The Agency will summarize or include your comments in