



U.S. Department  
of Transportation

**Federal Motor Carrier  
Safety Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

Refer to: MC-RRR

Mr. James J. Johnston  
Senior President  
1101 30<sup>th</sup> Street, N.W., Suite 300  
Washington, DC 20007

APR 17 2013

Dear Mr. Johnston:

Thank you for your comments concerning the Federal Motor Carrier Safety Administration's (FMCSA) New Information Collection Request regarding Driver and Carrier Surveys Related to Electronic Onboard Recorders (EOBRs) and Potential Harassment Deriving From EOBR Use [Docket No. FMCSA-2012-0309].

This survey collection will aid FMCSA in its EOBR (also known as Electronic Logging Device (ELD)) rulemaking by broadly examining through the collection of survey data, the issue of driver harassment and determine the extent to which 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.

FMCSA understands that Owner-Operator Independent Driver's Association (OOIDA) indicates it supports the goals of the proposed survey, but raises questions as to whether the survey process will reflect concerns of drivers. The OOIDA comments also suggest some content for the surveys themselves.

OOIDA raised concerns about the composition of the research team and question whether drivers are adequately represented at this stage. Given the contentious nature of this issue, FMCSA chose a team of consultants and academic researchers with expertise in the motor carrier industry and survey design. Nonetheless, we are looking forward to working with OOIDA, as well as other parties from the driver and carrier community, to optimize the effectiveness of this survey.

The following table responds to OOIDA's suggestions in response to four questions in the notice of December 13, 2012. Additionally, it is important to note that the surveys were developed after intensive review of OOIDA's earlier submissions and comments relating to potential EOBR regulations, as well as review of the complete docket of comments, which includes driver input from public listening sessions held in 2012. In addition, FMCSA also considered public input provided at a subcommittee meeting of the Motor Carrier Safety Advisory Committee, of which, an OOIDA official is a member.

As part of the survey development there will be interviews of randomly selected drivers and fleets on the survey instruments. The purpose is to test the survey before it is used on drivers and fleet carriers.

Responses to OOIDA's concerns, noted in italics, are provided in regular text the chart below.

Page/reference of OOIDA comment	
6; III-A-2	<p><u>OOIDA commented: Without knowing the number of questions and the scope of the discussions that FMCSA interviewers intend to conduct, it is difficult to judge whether the estimated time burden in the notice is accurate.</u></p> <p>Reply: The truck drivers' intercept survey is estimated to have a burden of 20 minutes per interview. A series of questions focuses on 14 different interactions between drivers and their supervisors. Drivers are asked the following about them: the frequency with which they occur; which, if any, they consider harassment; which, if any, they see as coming from the existence of an EOBR (if their truck has one); and which, if any, are rooted in other truck functionality. In addition, information is gathered about coercion and management reactions to driver's reluctance to obey management's instructions. The draft list of interactions is as follows:</p> <p>Schedules:</p> <ul style="list-style-type: none"> <li>A. Ask you to meet a customer load schedule you viewed as unrealistic.</li> <li>B. Ask a customer to adjust a load schedule so it was realistic for you.</li> </ul> <p>Fatigue:</p> <ul style="list-style-type: none"> <li>C. Ask you to operate when you judged you were fatigued.</li> <li>D. Ask that you shut down if you felt fatigued.</li> </ul> <p>Logging and breaks:</p> <ul style="list-style-type: none"> <li>E. Ask you to log inaccurately to get more work time or delay a break.</li> <li>F. Ask you to log accurately when you could have had more work time or delayed a break by being inaccurate.</li> <li>G. Change your log record after it was made to give you more work time or delay a break.</li> <li>H. Ask you to take sufficient time off duty to recover from fatigue.</li> </ul> <p>Communications:</p> <ul style="list-style-type: none"> <li>I. Interrupt your off-duty time with a message that woke you up.</li> <li>J. Contact you promptly about a new job task so you didn't have to wait without pay.</li> </ul>

	<p>Paid and Unpaid Time:</p> <p>K. Pay you for customer delays in picking up or delivering freight.</p> <p>L. Require you to wait for customer delays for more than 2 hours without pay.</p> <p>M. Arrange your loads so you had little delay time between loads.</p> <p>N. Require you to wait between loads for more than 2 hours without pay.</p> <p>Other situations that might be identified through the qualitative survey phase</p>
6; III-A-3-a	<p><u>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: a) collected sufficient data from drivers who operated an EOBR rather than just a random sample.</u></p> <p>Reply: We are aware that a minority of truck drivers use EOBRs. The plan for intercepts is designed to limit the number of truck drivers without EOBRs in order to oversample truck drivers with EOBRs. Quotas will be established throughout day-parts in order to ensure that drivers with and without EOBRs will be interviewed through the course of the day, limiting day-part bias.</p>
6; III-A-3-b	<p><u>OOIDA commented: FMCSA would enhance the quality usefulness, and clarity of the information collected if it: b) asked drivers whether they had experienced each of the examples of the type of harassment outlined in these comments.</u></p> <p>Reply: As noted above, drivers will be handed a list of interactions with their carriers, asked whether they have experienced them, and asked whether or not they consider them harassment.</p>
6; III-A-3-c	<p><u>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: c) guaranteed drivers' confidentiality to ensure candor without fear of retaliation or enforcement actions.</u></p> <p>Reply: Promises of confidentiality are made at the beginning of the survey. The language currently reads as follows: "All responses to this collection of information are voluntary and confidentiality will be provided to the extent allowed by law."</p>
7; III-A-3-d	<p><u>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: d) ensured the survey was broad enough to inquire to the types of harassment described in these comments.</u></p> <p>Reply: Please see the list of interactions listed above.</p>
7; III-A-4	<p><u>OOIDA commented: The burden of the survey would be reduced if drivers were asked whether they had specifically been harassed, rather than asking driver broad, nonspecific questions.</u></p> <p>Reply: We believe the list of interactions is specific.</p>
14	<p><u>OOIDA commented: Include law enforcement use or non-use of EOBRs.</u></p> <p>Reply: Regarding law enforcement use (or non-use) of EOBRs. Members of law enforcement are currently not included in the survey plan as respondents, but drivers' experiences with them are. Drivers with EOBRs are asked the following two questions:</p> <p style="padding-left: 40px;">Have you ever had a problem producing your electronic hours-of-service records for a law enforcement officer?</p>

	(If so :) Was this problem big enough that you felt harassed by the request to see your records? Carriers are not asked this pair of questions.
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OOIDA also expressed a concern regarding measures to prevent carriers from harassing drivers through the use of EOBRs. The qualitative questionnaires for both carriers and drivers ask participants what could be done to prevent this, either in the technology itself or in processes surrounding EOBR usage. Additionally, the issue is addressed in the quantitative surveys. Carriers and drivers are asked to identify (from a list) actions which they think are "good ideas" to prevent carriers from harassing their drivers. In addition, carriers and drivers are asked what FMCSA actions would be appropriate in response to carrier harassment. For specific examples of relevant questions regarding mitigation see: Qualitative, Carriers: 18b, 19; Qualitative, Drivers: 18; Quantitative, Carriers: 26, 27; and Quantitative, Drivers: 32, 33.

The survey comments submitted by OOIDA suggest they did not access the survey instruments and associated documents before their submission. These documents were, however, available upon request and stated in the 60-day notice (77 FR 74267, Dec. 13, 2012). If FMCSA receives a request for these instruments or documents, FMCSA will post them in the docket for this ICR.

**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, Maine Way Services, and P.O. Box 166, Fryeburg, ME 04037. Telephone: (207) 935-7948; email [bergoffen@roadrunner.com](mailto:bergoffen@roadrunner.com).

Neither Mr. Alvarez nor Mr. Bergoffen (the contacts noted above) were contacted by OOIDA regarding obtaining copies of the instruments. If OOIDA comments have not been addressed upon their review of this summary or table, they can request copies of the survey and associated documents from Albert Alvarez or Gene Bergoffen for their review.

FMCSA will publish a supplemental notice of proposed rulemaking on EOBRs and will consider survey results concerning the EOBR use by motor carriers to ensure that EOBRs are not used by carriers to harass or coerce drivers prior to the issuance of a final rule. OOIDA's comments are appreciated and will be taken into consideration as FMCSA reviews the findings of the survey project.

Sincerely,



Dr. Martin Walker  
Chief, Research Division