

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

**SUPPORTING STATEMENT**

**Passenger-Carrying Vehicle Leasing and Marking Regulation Requirements**

**INTRODUCTION**

The Federal Motor Carrier Safety Administration (FMCSA) requests the Office of Management and Budget's (OMB) clearance of a new information collection titled, "Passenger-Carrying Vehicle Leasing and Marking Regulation Requirements." This proposed information collection requirement (ICR) would be located at 49 CFR part 390, proposed subpart F, "Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles" and proposed § 390.21(f) as provided in the Notice of Proposed Rulemaking (NPRM) entitled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," (78 FR 57822) September 20, 2013 (See Attachment A).

**Part A. Justification**

**1.) CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY**

FMCSA proposes to adopt regulations governing the lease and interchange of passenger vehicles to: (1) require all interstate carriers of passenger-carrying commercial motor vehicles (CMVs) that enter into rental, lease, or interchange agreements, no matter how brief, to execute a written agreement similar to the written agreements of interstate carriers of property; (2) require all carriers of rented, leased, and interchanged passenger-carrying CMVs to have a copy of the signed agreement on the bus or motorcoach for the duration of the agreement period; and (3) require that all renters and lessors of passenger-carrying CMVs surrender control of a vehicle for the full term of the rental agreement or lease. The NPRM also requires carriers to give receipts specifically identifying the passenger-carrying CMV to be leased or otherwise temporarily obtained and stating the date and time of day possession is transferred; when possession of the passenger-carrying CMV is taken by the lessee; and when the lessee surrenders possession.

Additionally, the NPRM includes new marking requirements, i.e., that leased or interchanged vehicles must display the carrier's (lessee's) name and USDOT number on just one placard, sign, or other device, placed on the right (or curb) side of the bus on or near the front passenger door. The NPRM also includes a notification requirement for motor carriers of passengers that have been prohibited from operating in interstate commerce and which intend to lease, interchange, rent, or otherwise convey the use of some or all of its passenger-carrying commercial motor vehicles to another passenger carrier. This provision would require written notification of a planned transfer of control by e-mail or U.S. Mail to the FMCSA Division Administrator for the State in which the carrier has its principal place of business 3 business days by email or 5 business days by U.S. mail before the vehicles are transferred to the control of the other passenger carrier. The written notification shall include the name, address, telephone number, and USDOT number of the passenger carrier to which the passenger-carrying commercial motor vehicles are being leased, interchanged, rented, or otherwise conveyed, as well as the make, model, and vehicle identification number (VIN) of each vehicle so transferred.

The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. For example, if the OOS passenger carrier intended to lease its buses to a motor carrier that was itself undergoing an investigation or compliance review, was subject to an enforcement action, or was otherwise implicated in a serious safety matter, the Agency might wish to consider additional oversight of the proposed lessee. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays.

This action is necessary to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by operating under the authority of another carrier that exercises no actual control over those operations. This ICR supports FMCSA's strategic safety goal by ensuring that FMCSA, our State partners, and the National Transportation Safety Board (NTSB) are better able to identify the responsible motor carrier and therefore correctly assign regulatory violations to the appropriate carrier during inspections, investigations, compliance reviews, and crash studies.

This action would impose recordkeeping requirements consistent with the Motor Carrier Safety Act of 1984, as amended (49 U.S.C. 31136) and the Motor Carrier Act of 1935 (49 U.S.C.

31502(b) on for-hire and private passenger carriers that operate CMVs, in order to enable the general public and investigators to identify the passenger carrier responsible for safety. Passenger-carrying CMV power units and drivers are frequently rented, loaned, leased, interchanged, assigned, and reassigned with few records and little formality, thus obscuring the operational safety responsibility of many industry participants.

This ICR supports the Department of Transportation's (DOT) Strategic Goal related to "Safety" because the information concerns the safe operation of motor carriers of passengers by drivers who operate in interstate commerce on the nation's highways.

## **2.) HOW, BY WHOM, AND FOR WHAT PURPOSE IS THE INFORMATION USED**

In order to improve safety and the well-being of the public, the FMCSA proposes to: (1) require all interstate carriers of passenger-carrying CMVs that enter into rental, lease, or interchange agreements, no matter how brief, to execute a written agreement similar to the written agreements interstate carriers of property prepare; (2) require all lessors and lessees of rented and leased passenger-carrying CMVs to give receipts when possession of the CMV is transferred between the parties; (3) require all carriers of rented and leased passenger-carrying CMVs to have a copy of the signed agreement on the vehicle for the duration of the agreement period; (4) prohibit motor carriers subject to an operations OOS order from entering into lease agreements with any CMV owner or motor carrier, and (5) require that all renters and lessors of passenger-carrying CMVs surrender control of a vehicle for the full term of the rental agreement or lease. Additionally, the NPRM includes new marking requirements, i.e., that carriers operating leased or interchanged vehicles must display the carrier's (lessee's) name and USDOT number on just one placard, sign, or other device, placed on the right (or curb) side of the vehicle on or near the front passenger door.

As stated above, this action will ensure that FMCSA, the NTSB, and our State partners are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies.

The FMCSA also strongly believes that the traveling public has a right to know the responsible motor carrier operating a bus or motorcoach and the FMCSA is actively promoting a consumer driven "SaferBus" application which enables a consumer to quickly access a passenger

carrier's safety record with FMCSA by entering the USDOT Number or the name of the carrier. By requiring lessees to temporarily mark a vehicle normally not under their control with their legal name and USDOT Number, the consumer will also have access to the correct carrier's safety record.

There currently are no regulations that require motor carriers of passengers who engage in the temporary lease of vehicles and/or drivers to document the lease for the purposes of identifying the controlling entity (motor carrier) for the duration of the lease.

Loaning, renting, leasing, interchanging, or otherwise obtaining a passenger vehicle from another motor carrier of passengers on a temporary or casual basis is a common industry practice, often performed informally over the telephone with no written agreement as to which carrier has the responsibility for operating the CMV or any other relevant information. The intent of this rule is to require all interstate carriers operating passenger-carrying commercial motor vehicles that enter into rental or lease agreements, no matter how brief, to execute a written agreement similar to the written agreements of interstate carriers of property and requires carriers to give receipts when possession of a passenger-carrying CMV is taken by the lessee and when the lessee surrenders possession. The receipts must specifically identify the passenger-carrying CMV being rented, leased or otherwise temporarily obtained and state the date and time of day possession is transferred. Additionally, the intent of this rule is to include new marking requirements, that rented, leased or interchanged vehicles must display the carrier's (lessee's) name and USDOT number on just one placard, sign, or other device, placed on the right (or curb) side of the CMV on or near the front passenger door. Both of these requirements will assist State and Federal inspectors and investigators in correctly identifying high risk motor carriers of passengers during roadside inspections as well as investigations.

### **3.) EXTENT OF AUTOMATED INFORMATION COLLECTION**

Motor carriers may use any automated methods at their disposal to document, maintain, transmit, and display the three main requirements in this information collection budget. The FMCSA requires that the motor carrier (lessee) maintain a copy of the lease or interchange agreement on board the vehicle for the duration of the arrangement and make the information available for review by an authorized representative of FMCSA or its State partners upon request and that the lessor and lessee retain a copy of the receipt and lease or interchange agreement at

their principal place of business for one year after its termination. The motor carrier must also display on permanent or removable devices, the operating carrier's name and USDOT number. This marking requirement can be met using either painted on information, removable media, such as paper or placards, or electronic message signs that meet the proposed requirements. Lessors and lessees will also be required to give and receive receipts when they transfer physical control of the vehicles. These receipts can be either paper or electronic. Motor carriers will not be subject to any requirements to report information to FMCSA as part of this rule. The NPRM also includes a notification requirement for motor carriers of passengers that have been placed OOS and intend to lease, interchange, rent, or otherwise convey the use of some or all of their passenger-carrying commercial motor vehicles to another passenger carrier. This provision would require written notification (by email or surface mail) to FMCSA of a planned transfer of control.

#### **4.) EFFORTS TO IDENTIFY DUPLICATION**

This rule and the associated record keeping requirement are new to the passenger-carrying segment of the CMV industry and would therefore be an unduplicated requirement. The general industry practice among small businesses is to enter into these rental, lease, and/or interchange arrangements informally without written documentation. The only possible exception would be interlining and revenue pooling or sharing arrangements unique to a limited number of large scheduled service passenger carriers, such as Greyhound Lines. The record keeping practices associated with interlining and revenue pooling agreements meeting this threshold are required and governed by the Surface Transportation Board (STB) primarily for financial purposes and go well beyond the scope of safety enforcement which is the intent of this rule. This rule would not duplicate the requirements of the STB or any other Federal agency.

#### **5.) EFFORTS TO MINIMIZE THE BURDEN ON SMALL BUSINESSES**

The rule will impose minimal burden on small business. For example, great flexibility is being proposed in meeting the temporary signage requirement. Satisfactory options range from a hand-written piece of paper affixed to the first row of the interior passenger window seat, to a self-stick material mounted externally that is not only commonly available, but economical and can be removed without damage to the surface of the vehicle. The carrier may choose among these and other options, based on their means. The lessees and lessors may also create and

transmit receipts electronically or by facsimile to reduce the burdens on small businesses. The record retention requirements imposed by this rule are minimal and would be considered a usual and customary business practice.

#### **6.) IMPACT OF LESS FREQUENT COLLECTION OF INFORMATION**

The temporary marking of vehicles under another carrier's control and the associated documentation required under this proposed rule would assist FMCSA to identify unsafe and, therefore, high risk motor carriers. This rule would also assist investigators to meet the burden of proof to prosecute carriers after a compliance review or other intervention, and help our State partners in determining the responsible motor carrier involved in a motorcoach crash. It is critical that each transaction be covered by the requirements for enforcement purposes. Occasional documentation of leases would defeat the purpose of the proposed rule.

#### **7.) SPECIAL CIRCUMSTANCES**

There are no special circumstances associated with this rule.

#### **8.) COMPLIANCE WITH 5 CFR 1320.8:**

The Agency will carefully analyze all comments received to this NPRM to ensure compliance with 5 CFR 1320.8, and will address the comments in the preamble to the final rule. Improvements in motor carrier safety arising from requiring passenger carriers to document their leased CMV exchanges, place a copy of the lease or agreement on the vehicle being operated, mark vehicles temporarily under their control, and issue and retain receipts are the primary motivations behind the proposed NPRM today.

#### **9.) PAYMENTS OR GIFTS TO RESPONDENTS**

There have been no payments or gifts to respondents.

#### **10.) ASSURANCE OF CONFIDENTIALITY**

The NPRM proposes only recordkeeping requirements and no reporting requirements. The proposed requirements to create and maintain a record would become effective when a lease, rental, or interchange of a passenger vehicle is arranged between separate passenger carriers. These records would not be submitted to the FMCSA. The Agency would not compile,

store, or release the elements of this proposed information collection. The proposed requirements would be limited to the creation and retention of records at the carrier's principal place of business for safety, the lessor's place of business, and on each passenger-carrying CMV operated under a lease, rental or interchange agreement. Enforcement personnel would examine these records during inspections and investigations, and sometimes make duplicate copies of records for enforcement purposes. The proposed records would not be confidential and would not require special protection.

## **11) JUSTIFICATION FOR COLLECTION OF SENSITIVE INFORMATION**

The information requested and collected is not of a sensitive nature.

## **12.) ESTIMATE OF BURDEN HOURS FOR INFORMATION REQUESTED**

The NPRM proposes three information-collection requirements for passenger carriers: (1) written lease agreements and receipts, (2) marking of leased passenger-carrying vehicles, and (3) electronic notification. The affected carrier population is 6,328, which is the number of interstate passenger carriers, with recent activity, as of March 23, 2012, that fall under the registration categories of carriers that are authorized for-hire, exempt for-hire, and private (business and non-business), with 8 + passenger capacity.

### Leasing

For documentation of the lease, the Agency estimates the cost of obtaining and preparing a standard generic template that is freely available on the internet, or through trade organizations or existing passenger carriers. The total number of pages of one such template is two, which is the number used in the Agency's estimate. The estimated annual number of burden hours depends on the estimated annual frequency of leasing. The Agency assumes that the average passenger carrier (10 power units) will engage in 96 lease agreements per year. This estimate consists of 12 leases per peak month (May through August) and 6 leases per off-peak month. The total annual number of leases is 607,488. The Agency assumes 5 minutes of documentation time per lease agreement. This amounts to 8 hours per carrier per year for an industry total of 50,624 [607,488 x 5 min. /60 min = 50,624]. This total is multiplied by two, since the cost

burden applies to both the lessees and the lessors. Thus, the total industry hours becomes 101,248.

Regarding documentation of receipts, the Agency estimates the cost of their transcription, but does not assign burden hours to the task. The receipts do not have to adhere to a certain format, length or complexity, as long as they meet the requirements of the NPRM. The receipts are sometimes replicas or portion of ‘master leases’, which make for easy and quick documentation.

### Marking

The NPRM requires every leased passenger vehicle to be properly marked with the name of the carrier prefaced with “operated by” and the carrier’s DOT number. The impacted number of passenger carriers is 6,328. The (paper) marking is required to be affixed on the right (curb) side of the bus on or near the front passenger door. The markings are intended to be temporary and removable, though some may be permanent or re-usable, depending on the length of the lease agreement and the make-up of the marking device.

For a paper marking option, i.e., two letter-size sheets or one legal-size sheet affixed with an adhesive tape, the burden hours of writing the signage and affixing it are negligible. Therefore, none are attributed to this rulemaking.

### Notification

The NPRM requires passenger carriers that have been placed OOS to notify FMCSA before leasing their vehicles to other passenger carriers. The primary purpose of the Agency notification provision is to allow FMCSA time to research the safety history of the prospective lessee, if necessary, before the lease occurs. Requiring the OOS carrier to provide at least 3 business days advance notice by email, or at least 5 business days advance notice by U.S. Mail, before the transfer of control occurs would give FMCSA adequate time to plan and implement any steps it deemed necessary. Business days are Monday through Friday, excluding Federal holidays. The estimated annual number of passenger carriers placed OOS is 163. It is assumed that virtually all of those carriers will elect to use the electronic notification option, since it is the most convenient, quickest, and least costly. The average number of notifications per year is



15,648 (163 x 96), which is the product of the number of OOS carriers and the average number of leases per year. This amounts to 8 hours per carrier per year for the 163 OOS carrier industry total of 1,299 [163 x 96 x 0.083333333 (5 min. divided by 60) = 1,304 hours].

## Summary

**Estimated Annual Number of Respondents: 6,328**

**Estimated Annual Number of Responses: 623,136** [607,488 responses for leasing + 15,648 responses for notifications = 623,136]

**Estimated Total Annual Burden Hours: 102,552** [101,248 hours for leasing + 1,304 hours for notifications = 102,552]

## 13. ESTIMATE OF TOTAL ANNUAL COSTS TO RESPONDENTS

### Lease Documentation

As stated above, the total annual burden hours attributed to lease documentation is 8 hours per carrier for an industry total of 101,248. The cost of these burden hours is calculated by applying the U.S. Department of Labor's Bureau of Labor Statistics median hourly wage rate for First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators (53-103) which is \$25.45, plus 50% markup for fringe benefits (for a total hourly wage of \$38.18).<sup>1</sup> The total annual cost of lease documentation is therefore \$3,865,649 (101,248 hours x \$38.18).

### Transcription

The Agency estimates the annual cost of transcribing lease agreements and vehicle exchange receipts at \$273,000. This estimate consists of \$91,000 for lease agreements and \$182,000 for receipts for an annual total number of leases of 607,488. Transcription of lease agreements assumes \$0.15 per page (double-sided two page standard agreement). Transcription of vehicle exchange receipts assumes \$0.30 per exchange (one page for each receipt) for each event (surrender of leased vehicle by lessor and return of vehicle to the lessor).

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<sup>1</sup>Occupational Employment and Wages, May 2011, at <http://www.bls.gov/oes/current/oes531031.htm>.

### Record Retention

The NPRM requires the retention of lease agreements for one year after their termination. The Agency finds that the cost of lease storage is negligible. The storage of work documents is a requisite part of doing business- the accommodation for which is assumed to pre-exist. Thus, the proposed requirement to retain a copy of the written lease agreement for one year after its termination does not impose a significant cost or burden on the affected carriers. A two-inch stack of 8 1/2" x 11" sheets of 200-pound paper (a ream) could amount to 500 double-sided copies of lease agreements. This would amount to more than one lease per day in a given a year. A single-sided stack of the same number would amount to a mere four inches on an existing office shelf or cabinet.

### Marking

The Agency estimates the annual cost of (paper) vehicle marking assuming a medium frequency rate of leasing at \$12,150. This estimate assumes \$0.02 per page (including the cost of adhesive) for a two-page temporary and removable sign. The Agency assumes one marking sign per lease agreement or leased trip (i.e., 607,488 lease agreements, as explained above).

### Notification

There is no capital or start-up costs associated with email notification messages to FMCSA. The acquisition, operation, and maintenance of electronic devices, such as computers, laptops, tablets, ePads, or smartphones, that would be used to send only electronic messages (email) to notify FMCSA that a carrier's vehicles will be leased to other motor carriers is considered a usual and customary business practice and is not calculated for this information collection burden estimate.

**Estimated Total Annual Cost to Respondents:** \$4,150,799 [\$3,865,649 for lease documentation + \$273,000 for transcribing lease agreements and vehicle exchange receipts + \$12,150 for marking vehicles = \$4,150,799]

#### **14. ESTIMATE OF COST TO THE FEDERAL GOVERNMENT**

None. The cost of educating the motor carriers, renters, lessors, and lessees of the requirements in this proposed rule, enforcing this rule at roadside, during crash investigations, and compliance investigations would be covered by existing personnel without further impact to the government.

#### **15. EXPLANATION OF PROGRAM CHANGES OR ADJUSTMENTS**

This program change increase of 102,552 estimated annual burden hours is due to a new ICR in a NPRM that will require 6,328 entities to temporarily mark vehicles obtained from other motor carriers, issue and retain leases or interchange agreements, and issue and retain receipt preparation of these transactions for one year following termination of the lease or agreement.

#### **16. PUBLICATION OF RESULTS OF DATA COLLECTION**

There will be no public reporting of records associated with this proposed rule.

#### **17. APPROVAL FOR NOT DISPLAYING THE EXPIRATION DATE OF OMB APPROVAL**

FMCSA does not request such approval for this rulemaking

#### **18. EXCEPTIONS TO CERTIFICATION STATEMENT**

There are no exceptions to the certification statement for this ICR.