Department of Transportation
Office of the Chief Information Officer

SUPPORTING STATEMENT
Lease and Interchange of Vehicles

INTRODUCTION: This is to request the Office of Management and Budget's (OMB) approval of a new information collection request (ICR) entitled, "Lease and Interchange of Vehicles," which will enable the Federal Motor Carrier Safety Administration (FMCSA) to document the burden associated with the former ICC regulations now codified in 49 CFR part 376, "Lease and Interchange of Vehicles,"(Attachment 1). These regulations require certain for-hire motor carriers to have a formal lease when leasing equipment. They require less documentation for other leasing arrangements involving for-hire carriers.

<u>Part A. Justification</u>.

1. CIRCUMSTANCES THAT MAKE COLLECTION OF INFORMATION NECESSARY.

The rules were adopted to ensure that small trucking companies were protected when they agreed to lease their equipment and drivers to larger for-hire carriers. They also ensure that the government and members of the public can determine who is responsible for a property-carrying commercial motor vehicle. Prior to the regulations some equipment was leased without written agreements, leading to disputes over which party to the lease was responsible for charges and actions and, at times, who was legally responsible for the vehicle. Under 49 U.S.C. 14102(a), (Attachment 2) FMCSA "may require a motor carrier providing for-hire transportation that uses motor vehicles not owned by it to transport property under an arrangement with another party to —

> (1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;
> (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;
> (3) inspect the motor vehicles and obtain liability and cargo insurance on them; and
> (4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier."

The Secretary has delegated authority pertaining to leased motor vehicles to FMCSA pursuant to 49 CFR part 1.87(a)(6) (Attachment 3). The Agency's regulations governing leased motor vehicles are at 49 CFR Part 376.

The rules specify what must be covered in the lease, and to some degree, responsibilities of the motor carrier. The parties to the lease determine much of the details between themselves.

This ICR supports the Department of Transportation's strategic goal of economic competitiveness by promoting economic opportunities for freight operations in surrounding communities.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED.

The government collects no information with this ICR. The leases and other agreements are developed and held by the lessor (e.g., those granting use of equipment) and lessee (e.g., party acquiring equipment). They are used to assign duties and responsibilities. The information may also be used by law enforcement to determine legal responsibility in the event that a leased vehicle is in violation of the regulations or is involved in an accident.

3. EXTENT OF AUTOMATED INFORMATION COLLECTION.

Leases may be created and maintained electronically. FMCSA estimate that 50% of the leases are electronic.

4. EFFORTS TO IDENTIFY DUPLICATION.

FMCSA knows of no duplicative regulations.

5. EFFORTS TO MINIMIZE THE BURDEN ON SMALL BUSINESSES.

The purpose of the rule is to protect small businesses by ensuring that the terms under which they lease their equipment to other motor carriers are specified in a legal document. Relatively few of the small trucking firms (less than 4 percent) lease vehicles from other carriers. The lessors, however, are almost all small businesses.

6. IMPACT OF LESS FREQUENT COLLECTION OF INFORMATION.

Not applicable.

7. SPECIAL CIRCUMSTANCES.

There are no special circumstances related to this information collection.

8. COMPLIANCE WITH 5 CFR 1320.8.

On March 27, 2013 (78 FR 18666) (See Attachment 4), FMCSA published a notice in the Federal Register requesting public comments on this proposed new ICR. FMCSA received three comments in response to this notice from the Owner Operator Independent Drivers Association, Inc. (OOIDA), Transportation Intermediaries Association (TIA), and Sharp Auto Transport (See Attachment 5). Comments and responsive considerations are as follows:

OOIDA provided detailed comments, though they concluded that the burden estimates are justified and the burden of compliance with truck rules are "minimal."

OOIDA asked several questions. First, OOIDA asked why FMCSA initiated a request for comments on this ICR, as well as who, or what prompted the ICR, and what is the ICR's purpose.

FMCSA Response:

In 2009, the National Transportation Safety Board (NTSB) recommended to FMCSA that the Agency require passenger motor carriers be subject to the same limitations on the leasing of equipment as interstate for-hire motor carriers of cargo (*NTSB Recommendation H-09-33*).[1] Since 2012, the OMB has published an FMCSA Unified Agenda entry entitled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," RIN 2126-AB44, addressing regulations governing the lease and interchange of passenger-carrying commercial motor vehicles similar to the leasing of equipment by interstate for-hire motor carriers of cargo.[2] FMCSA published a notice of public rulemaking (NPRM) entitled, "Lease and Interchange of Vehicles: Motor Carriers of Passengers," (bus carrier NPRM) under RIN 2126-AB44 on September 20, 2013 (78 FR 57822). The proposal for bus carriers to address the NTSB recommendation has similar information collection requirements as the truck leasing rules. Therefore, FMCSA will coordinate the bus and truck ICRs accordingly.

In addition, the bus carrier NPRM 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 action will enable the FMCSA, the NTSB and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash studies. It also provides the general public with the means to identify the responsible motor carrier at the time of motorcoach transportation.

"Why is FMCSA attempting to study an area of regulation that Congress largely left in the hands of private parties and that FMCSA has steadfastly refused to become involved in despite several entreaties by OOIDA in the past?"

FMCSA Response:

The detailed lease and interchange regulations for cargo-carrying vehicles have been in effect since 1950 and are not within the scope of the bus carrier NPRM. The ICR in this <u>truck leasing</u> ICR action will be coordinated with that of the bus leasing NPRM to eventually calculate a total burden for all regulations covering <u>all leases and interchanges of CMVs</u> regulated by FMCSA.

OOIDA correctly pointed out a mistake in the 60-day notice. "This ICR will enable FMCSA to document the burden associated with the ***marking regulations*** codified in 49 CFR part 376. FMCSA incorrectly identified a CMV marking notice instead of the lease and interchange regulations that are codified in 49 CFR part 376. This error has been corrected in this notice and the associated Supporting Statement for this ICR.

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1 National Transportation Safety Board. 2009. Motorcoach Rollover on U.S. Highway 59 near Victoria, Texas, January 2, 2008. Highway Accident Summary Report. NTSB/HAR-09/03/SUM. Washington, DC.

2 http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=2126-AB44.

Sharp Transport and TIA both believe the elimination of written lease and interchange requirements would be a mistake. TIA believes that leasing requirements alleviate concerns within the transportation industry of fraudulent entities in the supply chain, by placing safeguards in the industry. TIA believes if this requirement is eliminated it will make it easier for carriers who are illegally brokering to continue the detrimental practice. Sharp Transport believes removal of the provisions will make enforcement impossible.

<u>FMCSA Response</u>:

FMCSA has not proposed elimination of written leasing agreements. FMCSA is merely attempting to comply with the Paperwork Reduction Act of 1995 requirements and Office of Management and Budget (OMB) regulations at 5 CFR 1320 to calculate an accurate estimate of the time and cost burdens to for-hire freight motor carriers to collect information during lease negotiations and document the lease, receipts, and other paperwork required by 49 CFR part 376.

The three comments that were received in response to this notice generally supported this ICR. These comments will be used to improve the utility of this ICR. The Agency's replies to the comments received are provided at Attachment 6 and in the 30-day comment request Federal Register notice for this ICR.

FMCSA published a second notice on March 27, 2014 (79 FR 17226) (See Attachment 7) with a 30-day comment period that announced this information collection was being submitted to OMB for approval.

9. PAYMENT OR GIFTS TO RESPONDENTS.

Respondents are not provided with any payment or gift for this information collection.

10. ASSURANCE OF CONFIDENTIALITY.

Not applicable. The leases and other agreements are developed and held by the lessor and lessee.

11. JUSTIFICATION FOR COLLECTION OF SENSITIVE INFORMATION.

There are no questions of a sensitive nature.

12. ESTIMATES OF BURDEN HOURS FOR INFORMATION REQUESTED.

Part 376 applies only to certain motor carriers in interstate commerce and only to certain leasing situations. The rules cover leasing between a for-hire carrier that does not hold an operating authority and another for-hire carrier that does hold operating authority. To determine the number of affected carriers, FMCSA used data from its Motor Carrier Management Information System (MCMIS) database from September 2012. Because straight trucks generally operate locally, FMCSA focused on carriers that lease CMVs that pull one or more trailers. Because household goods carriers have relatively low mileage per CMV (20,000 to 35,000 miles/year), FMCSA included in its estimates all carriers that term-lease CMVs and average more than 20,000 miles per CMV. This approach is conservative because it is likely that many of the leased vehicles/drivers are being leased from carriers that hold their own operating authority.

Based on the MCMIS data, FMCSA estimates that about 16,500 for-hire carriers lease 311,000 CMVs annually.

Section 376.11 requires a for-hire carrier to do the following when the carrier (lessee) leases equipment from a person (lessor) that does not hold its own operating authority and that is not a private carrier:

- The lessor and lessee enter into a formal lease that specifies the terms and conditions (49 CFR 376.12).
- The lessee provides the lessor with receipts specifying the equipment being leased at the beginning of the lease and at the end of the lease if required by the lease.
- The lessee shall ensure that either a copy of the lease or a statement certifying its use is on each piece of leased equipment.
- The lessee shall prepare and keep documents for each trip for each piece of leased equipment. It should also carry papers on the equipment documenting each trip and retain the records; a master lease and freight documents can replace these records.

Most authorized carriers that lease equipment lease both power units and drivers, often from a (lessee) driver who owns a single CMV, and sometimes from many such drivers. The leasing carrier, or lessee, is assumed to have a master lease that it uses for all lessors rather than negotiating the terms with each lessor. Given this standardization, FMCSA assumes that time the lessor spends reviewing the lease is negligible in the trucking context. The lease or statement to be carried in the tractor will be standard documents that, once created, impose no additional burden. Because trip records can be met by freight records, which are generated in the ordinary course of business, they impose no additional burden. Similarly, receipts for the possession of the equipment are necessary documents that would be generated to establish legal responsibility at specific points in time. Therefore, the burden associated with § 376.11 is the following:

- The creation of master leases by for-hire carriers that lease equipment and drivers from people without operating authority.
- Creation of a statement or copy of the lease to be carried in each leased tractor/truck.

The analysis assumes that all impacted carriers will engage in lease negotiation leading to a 'master lease' or repeat leases.[3] The Agency believes this impact is minimal because several leases can be combined and negotiated as one (master) lease and many lease forms are available online and do not require legal assistance. Lease negotiation and documentation are assumed to be a burden of 30 minutes (0.5 hours) of a transportation manager's time. This cost is applied to both the lessee and the lessor.

The number of statements issued to lessors annually is uncertain because some leases may be open-ended or self-renewing. Therefore, the burden of issuing copies of leases would be less for a motor carrier with a large percentage of owner-operators who automatically stay longer than

3 For multiple or complex lease agreements, it is assumed that such leases are already negotiated and finalized in writing. The CMV industry leasing practices differ between the trucking and busing sectors. The recently proposed rulemaking entitled, "Lease and Interchange of Vehicles: Motor Carriers of Passengers," NPRM (78 FR 57872) (RIN 2126-AB44) dated September 20, 2013 and the related ICR contain different burden calculations based on variables such as number of leases utilized annually and the burden allocated to lessors versus lessees.

one year. Conversely, the trucking industry regularly reports annual driver turnover rates around the 100 percent mark for large truckload fleets, which may lead to a greater number of leases per year, thus, lease statements. With many trucking carriers automatically renewing annual leases and many new lessors joining the industry, the Agency assumes that these two effects equally offset each other. For the purpose of this analysis, each lease has a term of 1 year, so that a new statement is issued annually, on average. A standard leasing statement will incur the burden of preparing the written documentation of the requisite information and signature of the lease agreement, which is undertaken in 5 minutes (0.083 hours). This cost is applied to both the lessee and the lessor.

Based on MCMIS data, FMCSA estimates that there are about 16,500 for-hire carriers that lease 311,000 CMVs. Therefore, motor carriers are estimated to spend about 16,500 hours (16,500 carriers × 0.5 hours × 2 = 16,500 hours, rounded to nearest hundred) on average, every year to develop a master lease. Approximately 51,600 hours (311,000 power units × 0.083 hours × 2 entities = 51,626 hours, rounded to nearest hundred) will be spent annually on the creation of a copy of the standard leasing statement—this results in a total annual burden of about 68,100 hours (16,500 hours + 51,600 hours) for leasing and interchange of vehicles.

Table 1 presents the burden hours covered by this ICR.

Table 1. Annual Burden Hours

	Carriers	Vehicles	Hours	Entities (Lessee and Lessor)	Total Hours
Master Lease	16,500		0.5	2	16,500
Standard Statement		311,000	0.083	2	51,600
Total					**68,100**

Section 376.12 enumerates specific and detailed requirements regarding the provisions of contracts between carriers and owner-operators. When taken as a whole, the main thrust of § 376.12 is to achieve specificity and transparency in lease contracts and transactions governed by those contracts. These rules require that all relevant terms of the arrangement be made clear to lessors and that lessors be given sufficient information so that they can determine whether or not carriers are complying with contracts. The information burden associated with this section is that leases must specify that an authorized carrier must provide the lessor a copy of the freight bill upon request in circumstances where a lessor's revenue is based on a percentage of gross revenue for a shipment (49 CFR 376.12(g)). FMCSA has no basis for estimating how often such requests occur. Many long-haul drivers are paid by distance traveled and not by value of a shipment. For lessors paid a percentage of shipping charge, it is likely that the lessee would routinely provide documentation on the charges. FMCSA, therefore, has not estimated a burden for this requirement.

Section 376.22 requires that a for-hire carrier with operating authority or a private carrier leasing equipment to a for-hire carrier with operating authority have a written agreement between the parties that specifies which carrier is in control of the vehicle. A copy is carried on the equipment. The burden associated with this section is the creation of a copy to be carried in the vehicle. FMCSA has not estimated a burden for these copies because it is assumed to be included in the burden associated with the lease agreement, as that covers all term-leased CMVs estimated to be operating outside of commercial zones.

Estimated Average Total Annual Burden Hours: 68,100 (16,500 carriers × 0.5 hours × 2 entities + 311,000 vehicles × 0.083 hours × 2 entities = 68,126 hours, rounded to nearest hundred).

Estimated Annual Number of Respondents: 32,100 (16,500 lessees + 16,500 lessors).

Estimated Annual Number of Responses: 622,000 (311,000 lessee statements + 311,000 lessor statements).

13. ESTIMATE OF TOTAL ANNUAL COST TO RESPONDENTS

The estimated unit-cost of copying one lease agreement double-sided (i.e., a two page agreement) is $0.15 (incorporates cost per page of paper, ink used in printing, printer depreciation, etc.). The estimated unit-cost corresponding to the lease receipts is $0.30. This assumes two transactions, and hence two receipts: one for the delivery (or surrender) of the vehicle and one for the return of the vehicle. This cost is applied to both the lessee and lessor. An estimated 311,000 vehicles leased every year would require 311,000 lease statements; therefore, the total cost of generating copies of lease statements would be $93,300 (311,000 statements × $0.30 per page × 2 entities = $186,600).

The total annual cost of the information collection is shown in Table 2.

Table 2. Total Annual Cost of the Information Collection

	Unit Cost	Lease Statements	Entities (Lessee and Lessor)	Total Cost
Lease Statement Copy Generation	0.30	311,000	2	$186,600

Estimated Average Annual Cost to Respondents: $186,600 [311,000 lease statements x $0.30 per statement × 2 entities = $186,600].

14. ESTIMATE OF COST TO THE FEDERAL GOVERNMENT

None. These leases are maintained by the motor carriers and are not submitted to FMCSA.

15. EXPLANATION OF PROGRAM CHANGES OR ADJUSTMENTS

The program change increases of 34,100 annual burden hours and $186,600 annual cost to respondents are due to a new ICR.

16. PUBLICATION OF RESULTS OF DATA COLLECTION.

The results of this ICR will not be published.

17. APPROVAL FOR NOT DISPLAYING THE EXPIRATION DATE FOR OMB APPROVAL.

Not applicable.

18. EXCEPTION TO CERTIFICATION STATEMENT.

There are no exceptions to the certification statement.