



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

SEP 11 2013

1200 New Jersey Avenue, SE
Washington, DC 20590

Refer to: MC-ECS

Mr. Thomas Marino III
Sharp Auto Transport
180 Weeden Street Suite 2
Pawtucket, RI 02860

Dear Mr. Marino:

I want to thank you for your comments in response to Docket FCMSA-2013-0050: Agency Information Collection Activities; Proposals and Submissions and Approvals: Lease and Interchange of Vehicles. In your comments you raised the following concerns;

“The elimination of these written requirements for leasing agreements is a direct, unequivocal attack on the requirements of freight intermediaries contained in MAP-21.”

The Federal Motor Carrier Safety Administration (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.

“It will make the enforcement of these provisions impossible.”

The Paperwork Reduction Act of 1995 and OMB regulations at 5 CFR 1320 prohibit FMCSA from enforcing part 49 CFR part 376. If FMCSA has not received OMB approval for the information collection requirements in part 376, the 60-day notice was the first public step in getting OMB to approve the part 376 estimates of time and cost burdens to for-hire freight motor carriers to collect such information during lease negotiations and document the lease, receipts, and other paperwork required by 49 CFR part 376. This 30-day notice is the second public step in getting OMB to approve the part 376 estimates.

“By muddying the waters of leasing agreements, which this proposal will absolutely do, the sum is a defiance of the will of Congress contained in MAP-21 related to requiring bonding/surety instruments by all transportation intermediaries.”

As the responses above show, this comment statement is based on the commenter’s faulty reasoning. FMCSA is following the will of the 1995 Congress in seeking OMB approval for the information collection requirements in part 376.

“This proposal will result in freight carriers continuing to act as brokers, a violation of regulation that FMCSA continually refuses to investigate.”

Part 376 does not address brokers, so FMCSA believes this comment is also based on the commenter’s faulty reasoning.

“Freight brokers are prohibited by regulation from taking freight into their possession. Despite this fact, through case law brokers have been found vicariously liable for the actions of freight carriers while under contract by a broker. The elimination of the leasing and interchanging documentation regulations will create further confusion in determining what constitutes a safe interstate carrier.”

As stated above FMCSA has not proposed elimination of written leasing and interchange documentation. FMCSA is merely attempting to comply with the Paperwork Reduction Act of 1995 requirements and 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.

“Lastly, by removing the leasing and interchange documentation regulation America's roads will be more dangerous. Without documentation requirements for leasing and interchange, carriers and their leased partners have no formal agreement required. This can lead to a renaming of the relationship after the fact. Carriers who lease equipment and driver services can then claim, after an incident, that they only contracted with the carrier, but did not lease. The chain of liability can easily be fabricated, leaving potential victims with a diffuse collection of entities to pursue potential civil matters. If carriers have this ability to defer liability through sheer confusion, hiring quality will decrease.”

Commenter’s predictions are based on the commenter’s faulty reasoning and misunderstanding of the requirements of the Paperwork Reduction Act of 1995 and OMB regulations at 5 CFR 1320.

“This proposal would defy the will of Congress, hurt small business in both carriers and intermediaries make liability allocation further confusing and make America's roads more dangerous by virtue of a reduction of hiring quality.”

Commenter’s predictions are based on the commenter’s faulty reasoning and misunderstanding of the requirements of the Paperwork Reduction Act of 1995 and OMB regulations at 5 CFR 1320.

Thank you again for taking the time to comment on this initiative.



Paul Bomgardner
Acting Chief, Compliance Division