

and the percent of driver logs by operating division found to be in violation of 49 CFR 395.8(e).

Furthermore, the support systems must provide a complete audit trail of edits (changes) made to "driving" time shown on driver duty status records.

#### *FMCSA Access to Safety Management Information System*

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

- (a) Driver records of duty status created by Werner's GPS and related safety management computer systems;
- (b) Driver-dispatch "message histories" and detailed position histories associated with driver records of duty status;
- (c) Driver payroll records associated with the driver records of duty status;
- (d) Driver shipping document records; and
- (e) Miscellaneous trip expense records.

#### *Reporting of Violations of Hours-of-Service Rules*

Werner must furnish FMCSA, upon request, a driver-specific report of violations of the requirements related to maximum driving time rules (49 CFR 395.3). With regard to falsification of records of duty status, information must be provided on violations of 49 CFR 395.8(e) for each individual driver requested. Werner must also agree to furnish upon request information indicating what disciplinary and/or remedial action, if any, was taken as a result of a driver's violation of rules set forth in 49 CFR 395.3 and 49 CFR 395.8(e).

#### *Reporting of Corrections or Amendments to Records*

Werner must agree to furnish, upon request, information indicating the number of times the "driving" time on driver records of duty status was changed for each driver, and identifying who authorized each altered record.

#### *Documenting Distance Traveled*

Werner would be required to ensure that the system for monitoring and recording drivers' hours of service has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations

that may underestimate the distance traveled.

#### *Enforcement of Hours of Service While the Exemption Is in Effect*

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8. FMCSA would, to the greatest extent practicable, communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption, if granted. FMCSA would continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event that FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA would review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA would reserve the right to conduct a sampling of records in accordance with FMCSA policies applicable to all motor carriers, and Werner would retain the right to contest the validity of the sampling used.

Notwithstanding the additional recordkeeping requirements of the quarterly compliance reports that Werner must prepare (*see Quarterly Reports* above), the agency would not hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting investigations of complaints or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles would continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. Werner must ensure that its drivers cooperate with

Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

#### **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA is requesting public comment from all interested persons on the agency's intent to grant Werner an exemption to allow the use of GPS technology and related safety management computer systems to document its drivers' hours of service. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and considered to the extent practicable, but FMCSA may grant or deny the exemption at any time after the close of the comment period. In addition to late comments, FMCSA also will continue to file in the public docket any relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Authority:** 49 U.S.C. 31136 and 31315; 49 CFR 1.73.

Issued on: December 5, 2003.

**Annette M. Sandberg,**  
Administrator.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than February 9, 2004.