

SUPPORTING STATEMENT

PRACTICES OF HOUSEHOLD GOODS BROKERS

The Federal Motor Carriers Safety Administration (FMCSA) requests the Office of Management and Budget's (OMB) clearance of a new information collection titled, "Practices of Household Goods Brokers." This proposed information collection requirement is contained in Title 49 CFR part 371 (Attachment A) as provided in the Notice of Proposed Rulemaking (NPRM), RIN 2126-AA84 entitled "Brokers of Household Goods Transportation by Motor Vehicle,"(Attachment B).

1. Circumstances that make the collection of information necessary.

The FMCSA proposes to amend its regulations to require brokers who arrange for transportation of household goods to comply with additional shipper protection requirements. This rulemaking is in response to Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L.109-59) and a Petition for Rulemaking from the American Moving and Storage Association (AMSA). The proposed amendment is intended to protect shippers of household goods from the actions of unscrupulous brokers while not adding significantly to the costs of fair and honest brokers.

The Secretary of Transportation's (Secretary) general jurisdiction to establish regulations concerning the procurement by property brokers of for-hire transportation in interstate or foreign commerce is found at 49 U.S.C. 13501 (Attachment C). Brokers of household goods are a subset of all property brokers but specifically register with FMCSA as household goods brokers. This rulemaking applies only to household goods brokers procuring for-hire transportation in interstate or foreign commerce. The Secretary is authorized to collect from household goods brokers "information the Secretary decides is necessary" to ensure a transportation system that meets the needs of the United States. (49 U.S.C. 13101 (Attachment D) and 13301 (Attachment E)). Brokers of household goods are required to register with the Secretary by 49 U.S.C. 13904(a)(1) (Attachment F). Section 4142 of SAFETEA-LU (Attachment G), which made changes to certain other registration requirements, did not change registration requirements for household goods brokers. The Secretary also has authority to adopt regulations applicable to registered household goods brokers which "shall provide for the protection of shippers by motor vehicle." (49 U.S.C. 13904(c)) (Attachment F). The Secretary's authority to inspect and copy household goods broker records is found at 49 U.S.C. 14122 (Attachment H). The Secretary has delegated these various authorities to the FMCSA Administrator. (49 CFR 1.73(a)) (Attachment I).

Household goods brokers have been regulated by FMCSA and its predecessor agencies for many years and a number of regulations apply to them, including registration requirements (49 CFR part 365 at Attachment J), process agent

requirements (49 CFR part 366 at Attachment K) and financial responsibility requirements (49 CFR part 387 at Attachment L). Section 387.307 requires property brokers to maintain a surety bond or trust fund agreement in the amount of at least \$10,000 to provide for payments to motor carriers or shippers if the broker fails to carry out its agreement to supply transportation by authorized motor carriers.

Part 371 (Attachment A) specifies general property broker transaction record requirements, prohibits misrepresentation of the broker's name or non-carrier status, and prohibits certain rebating and compensation practices. Part 379 (Attachment M) specifies general recordkeeping time periods.

In addition, 49 CFR 375.409 (Attachment N) allows a household goods broker to give estimates to prospective shippers only if the motor carrier transporting the shipment, by written agreement with the broker, adopts the estimate as the carrier's own. If the carrier enters into such an agreement, it must comply with all the requirements of part 375 pertaining to estimates, including the requirement to relinquish possession of the shipment upon payment of 110 percent of a non-binding estimate.

Section 4212 of SAFETEA-LU (Attachment O) directs the Secretary to require a household goods broker to provide shippers with the following information whenever the broker has contact with a shipper or a potential shipper:

1. The broker's DOT number.
2. The FMCSA pamphlet titled, "Your Rights and Responsibilities When You Move."
3. A list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

Section 4209 of SAFETEA-LU (Attachment P) adds new civil penalties for unlawful broker estimating practices and increases existing civil penalties for providing motor carrier or broker services subject to FMCSA jurisdiction without being registered with FMCSA.

On March 6, 2003, AMSA petitioned FMCSA to initiate a rulemaking to amend 49 CFR part 371, "Brokers of Property," to impose specific additional requirements on household goods brokers. AMSA's main argument for additional rulemaking was its assertion that there were an increasing number of "moving-related" websites hosted by unscrupulous household goods brokers.

FMCSA granted AMSA's petition and issued an Advance Notice of Proposed Rulemaking (ANPRM) in 2004 (69 FR 76664, December 22, 2004) (Attachment Q) . In the ANPRM, FMCSA sought answers to 36 questions related to household goods broker issues. The questions sought to determine whether there was public agreement that a problem existed and, if so, whether regulatory or non-regulatory solutions would best solve the problem. Additional questions addressed cost-benefit statistics, including

potential information collection burdens, other potential impacts, and an array of specific regulatory requirements.

Before FMCSA took further action in addressing the issues raised in the AMSA petition, Congress imposed new requirements on household goods brokers through enactment of SAFETEA-LU.

While FMCSA has addressed certain household goods broker issues in recent years, a number of problems still remain. Based on FMCSA's review of the responses to the ANPRM and complaints about household goods brokers, the agency believes some household goods brokers are acting deceptively, particularly on the Internet. These broker operations use various disguises and facades to mislead vulnerable shippers into believing that they are complying with FMCSA regulations.

Accordingly, the proposed regulations address the problems identified above and incorporate requirements mandated by SAFETEA-LU and recommendations by AMSA in its petition. FMCSA proposes to amend the current broker regulations in part 371 by adding a new subpart B specifically for household goods brokers; amending appendix B of part 386 to identify the civil penalties applicable to brokers added by SAFETEA-LU; and amending part 387 to specify new surety bond or trust fund requirements for household goods brokers.

This information collection supports the new subpart B of part 371, which contains new requirements, and the Department of Transportation's strategic goal to reduce congestion and other impediments to using the Nation's transportation system.

2. How, by whom, how frequently, and for what purpose the information will be used.

The collected information will assist shippers in their commercial dealings with interstate brokers. The collection of information will be used by prospective shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate motor carrier industry. Certain information collection items were required by regulations issued by the former ICC; however, that agency was not required to comply with the PRA. When these items transferred from the ICC to FHWA, and ultimately to FMCSA, no OMB control number was assigned to cover this information collection transfer. It was, therefore, necessary to calculate the old information collection burden hours for these items approved under the ICC rules and to add the new burden that may be generated by this proposal.

Section 4209 of SAFETEA-LU imposes new penalties and increases existing civil penalties applicable to household goods brokers. Section 4212 of SAFETEA-LU requires we complete a rulemaking within one year requiring household goods brokers to list motor carriers the broker uses, provide shippers with the "Ready to Move" brochure, make it mandatory for the broker's registration number to be on all

advertisements and websites and provide a statement to the shipper or potential shipper that the broker is not a motor carrier providing transportation of household goods.

AMSA proposed requiring household goods brokers to provide shippers with a copy of the pamphlet “Your Rights and Responsibilities When You Move.” Section 4212 of SAFETEA-LU requires FMCSA to write a rule requiring brokers to provide the FMCSA brochure “Ready to Move.” This proposed rule requires brokers to provide both the “Ready to Move” brochure and the “Your Rights and Responsibilities When You Move” pamphlet.

Because the broker may be the primary point of contact for the shipper in many cases, it would be in the best position to educate shippers and prepare them for a successful move. The rule proposes requiring brokers obtain a signed and dated receipt from the individual shippers for the “Ready to Move” brochure and the “Your Rights and Responsibilities When You Move” pamphlet. This will inform enforcement personnel that the individual shipper actually received the information.

Household goods brokers, including legitimate ones, could incur some expense to obtain and store the “Ready to Move” and “...Rights and Responsibilities...” pamphlets. However, brokers using the Internet could satisfy this requirement by providing an additional link on their website.

Household goods brokers, including legitimate brokers, could incur some expense to change their website or advertisements to include required information.

FMCSA estimates current information collection burden under the PRA to record all household goods broker transactions as required under 49 CFR 371.3 and to establish a separate accounting system to segregate non-household-goods activities to comply with 49 CFR 371.13 to be 42,400 cumulative annual burden hours for the 690 household goods property brokers subject to current 49 CFR part 371.

See Attachment R for the frequency required for the proposed new information collections.

Prospective shippers will be able to make better decisions about contracts and services to be ordered, executed, and settled within the interstate motor carrier industry as a result of the agency’s implementation of the final rule. If this information were not available, the shippers would not have an informed means to make decisions on the services rendered by the household goods broker. Also, FMCSA will be able to review the information collected to determine if each broker is in compliance with the provisions of the statute and regulations.

3. Extent of automated information collection.

FMCSA estimates that 90% of the information will be disseminated by e-mail or facsimile transmissions to the shipper, at the discretion of the broker. None of the information collected is submitted to FMCSA.

4. Efforts to identify duplication.

FMCSA is unaware of any other Federal rules which will duplicate, overlap, or conflict with this proposed rule except for certain provisions of the household goods carrier shipper protection rules in 49 CFR part 375. Because these rules apply only to household goods motor carriers, it was necessary to establish separate rules applicable to household goods brokers, even though they contain certain similarities. For example, SAFETEA-LU requires every shipper to receive the pamphlet "Your Rights and Responsibilities When You Move." Household goods carriers are already required to make this pamphlet available to every shipper. This rule requires household goods brokers to make the same pamphlet available to shippers. There is no practical way around the duplication because some shippers do not use a household goods broker and those who do often do not have any direct contact with a household goods carrier early enough in the process to make effective use of the information contained in the pamphlet.

5. Efforts to minimize the burden on small businesses or other small entities.

FMCSA believes that this proposal will not have a significant economic impact on a substantial number of small entities, but there remains some uncertainty as to the impacts to individual brokers. Therefore, FMCSA prepared the following Preliminary Regulatory Flexibility Analysis:

(1) A description of the reasons why action by the agency is being considered.

Title IV, subtitle B of SAFETEA-LU mandates that certain changes to the FMCSA regulations affecting household goods transportation be adopted, some of which involve the activities of household goods brokers.

Also, the American Moving and Storage Association (AMSA) petitioned the DOT for a rulemaking that would amend the property broker regulations in part 371. AMSA's proposal would, among other things, require brokers who arrange for household goods transportation by motor carrier (household goods brokers) to identify themselves as brokers, provide information regarding their physical location and points of contact and provide shipper protection information materials that household goods motor carriers are currently required to provide in 49 CFR part 375. AMSA contends Internet-based brokers fail to identify themselves as brokers of moving services and take advantage of the lack of knowledge of potential shippers.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

This rulemaking is mandated by section 4212 of SAFETEA-LU. The Motor Carrier Act of 1935 subjected household goods brokers to full economic regulation by

the Interstate Commerce Commission (Commission). The Commission regulated brokers until the end of 1995, when it was abolished and its jurisdiction over household goods brokers was transferred to DOT. The objective of this rule is to ensure that individual shippers of household goods who arrange for transportation through household goods brokers instead of directly through motor carriers receive necessary information regarding the parties they are dealing with and their rights and responsibilities in connection with interstate household goods moves. It also is intended to ensure that household goods brokers deal only with properly registered and insured motor carriers and that estimates provided by household goods brokers be provided under specific circumstances designed to protect the shipper against possible shipper abuse.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.

There are currently 615 active, registered HHG brokers and another 394 registered HHG brokers who are inactive.¹ FMCSA does not know the number of unregistered HHG brokers, but the Agency suspects that there is a significant presence. For the purposes of this analysis, we assume the number is 75—which would put the percentage of unregistered brokers at just over ten percent (10.87%). The figure is based on conversations with industry experts and information from broker websites. FMCSA will use 690, then, as the total number of active brokers—registered and (now) unregistered (but becoming compliant).

Almost all are small entities according to the definition in Small Business Administration (SBA) regulations (13 CFR part 121) which define a “small entity” in the motor carrier industry by average annual receipts, which are currently set at \$23.5 million per firm. The motor carriers with whom household goods brokers deal may also be indirectly affected.

(4) A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

The additional regulations placed upon household goods brokers by the proposed rule would require additional recordkeeping on the part of household goods brokers so that they can prove compliance, if they are audited or an enforcement investigation is directed toward them. The costs of this additional recordkeeping and other compliance requirements are reflected in our cost estimates and do not require any special skills that would be available to large entities any more than to small entities.

6. Impact of less frequent collection of information.

The information in this proposal will be collected when a shipper requests that a broker provide an estimate and when a shipper arranges for a broker to have a

¹ A broker generally becomes inactive after registering with FMCSA when its surety bond or trust fund is cancelled.

particular mover transport household goods. The required information will be transferred to shippers so that they can educate themselves regarding their rights and responsibilities in the commercial transactions with the broker and mover. Therefore, frequency is based on the number of moves arranged and is not a factor that FMCSA or the broker can control.

7. Special circumstances.

The frequency of information collection is done more often than quarterly as it is done as services are requested by the shipper. This is to help shippers understand each part of the commercial transaction and determine whether or not they are being defrauded or deceived by a broker and/or mover.

8. Compliance with 5 CFR § 1320.8.

On March 6, 2003, the American Moving and Storage Association (AMSA) petitioned FMCSA to initiate a rulemaking to amend 49 CFR part 371, "Brokers of Property," to impose specific additional requirements on household goods brokers. AMSA's main argument for additional rulemaking was its assertion that there were an increasing number of "moving-related" websites hosted by unscrupulous household goods brokers.

FMCSA granted AMSA's petition and issued an Advance Notice of Proposed Rulemaking (ANPRM) in 2004 (69 FR 76664; December 22, 2004). In the ANPRM, FMCSA sought answers to 36 questions related to household goods broker issues. The questions sought to determine whether there was public agreement that a problem existed and, if so, whether regulatory or non-regulatory solutions would best solve the problem. Additional questions addressed cost-benefit statistics, including potential information collection burdens, other potential impacts, and an array of specific regulatory requirements.

The nine comments received did not address many of the specific questions raised in the ANPRM. For example, none of the commenters submitted specific information relating to the number of household goods brokers or to the details of the household goods broker business.

In any case, before FMCSA took further action in addressing the issues raised in the AMSA petition, Congress imposed new requirements on household goods brokers through enactment of SAFETEA-LU.

The Notice of Proposed Rulemaking addresses the problems associated with using household goods brokers to arrange interstate moves and incorporates the requirements mandated by SAFETEA-LU and proposals recommended by AMSA in its petition. FMCSA proposes to amend the current broker regulations in part 371 by adding a new subpart B specifically for household goods brokers; amending appendix B of part 386 to identify the civil penalties applicable to brokers added by SAFETEA-LU;

and amending part 387 to specify surety bond or trust fund requirements for household goods brokers.

9. Payments or gifts to respondents.

There are no payments or gifts to respondents for this information collection.

10. Assurances of Confidentiality.

None of the information collected by movers will be confidential.

11. Justification for Sensitive Information.

There are no questions of a sensitive nature.

12. Estimates of Burden Hours for Information Requested.

Some of the information collection items applicable to household goods brokers were required by regulations issued by the former ICC; however, that agency was not required to comply with the PRA. When these items transferred from the ICC to FHWA, and ultimately to FMCSA, no OMB control number was assigned to cover this information collection transfer. It was, therefore, necessary to calculate the old information collection burden hours for these items approved under the ICC rules and to add the new burden that may be generated by this proposal.

Assumptions used for calculation of the information collection burden include the following: (1) There are currently approximately 690 active household goods brokers; (2) FMCSA estimates 125 new household goods brokers will register with FMCSA each year, making them subject to FMCSA regulations; (3) FMCSA estimates about five motor carriers would have agreements with each household goods broker to estimate shipment costs (690 times 5 equals 3,450); and (4) FMCSA estimates household goods brokers handle about 100,000 moves each year. This means about 104,140 respondents would be subject to this information collection. Additional assumptions and estimates can be found in Attachment R which discusses each proposed regulatory section separately.

Table 1 summarizes the information collection burden hours by correlating the information collection activities with the sections of part 371 in which they appear. The table shows whether each information collection activity was required under ICC regulations in 1995.

Current information collection burden under the PRA estimated to be 42,400 annual burden hours across the 690 household goods property brokers subject to 49 CFR part 371.

- o Section 371.3 - 15 minutes per day per broker, 240 workdays per year = 60 hours per broker times 690 brokers = 41,400 hours per year.

- o Section 371.13 - one time, first year cost to set up separate accounting system, 8 burden hours times 125 new entrant household goods brokers each year equals 1,000 annual hours burden.

The proposed rules would increase the information collection burden under the PRA by 85,420 burden hours in the first year across the 690 household goods property brokers.

FMCSA estimates "Old" Burden Hours at 42,400 [1,000 hours to establish a separate accounting system + 41,400 hours for Household Goods Broker Transactions = 42,400.]

The Estimated Total Annual Burden Hours: First Year – 127,820 hours [42,400 of old burden hours + 85,420 of new burden hours = 127,820]

Subsequent Years – 115,850 hours [42,400 of old burden hours + 73,450 of new burden hours = 115,850].

Table 1

Type of Burden	Proposed Section	First Year Burden	Annual Hourly Burden	New Burden?
Household Goods Broker Transactions	Old 371.3	41,400	41,400	No
Separate accounting system*	Old 371.13	1,000	1,000	No
Website and Advertisement Information	371.107	173	32	Yes
List and Statement	371.109	173	32	Yes
Adding Hyperlinks on Household Goods Broker Website to FMCSA Booklet Information "Ready to Move" and "Your Rights and Responsibilities When You Move"	371.111(a)(1)	311	57	Yes
Distribute FMCSA's Booklets	371. 111(a)(2)	1,250	1,250	Yes
Distribute Household Goods Motor Carrier's Booklets	371. 111(a)(3)	1,250	1,250	Yes
Shipper's Signed and Dated Statement	371.111(b)&(c)	29,140	29,140	Yes
Travel to location within 50 air miles of broker and physically survey household goods	371.113	37,500	37,500	Yes
Written agreement with household goods motor carrier	371.115	13,800	2,500	Yes
Disclose cancellation, deposit, and refund policies	371.117(a)	173	32	Yes
Disposition of shipper's cancel request	371.117(b)	250	250	Yes
Carrier monthly operating authority status check	371.119	1,400	1,400	Yes
	"Old" Burden Hours	42,400	42,400	
	New Burden Hours	85,420	~73,450	
Total Burden Hours for This Information Collection		127,820	115,850	

* FMCSA believes setting up the first accounting system for a new business is a usual and customary business practice. The PRA regulations at 5 CFR 1320.3(b)(2) allow FMCSA to calculate no burden when the agency demonstrates to OMB that the activity needed to comply with the specific regulation is usual and customary. FMCSA believes this supporting statement demonstrates that setting up an accounting system is a usual and customary practice when starting a new business. FMCSA seeks comments from the public about this assertion.

13. Estimates of Total Annual Costs to Respondents.

Household goods brokers could incur some expense to obtain and store the “Ready to Move” and “...Rights and Responsibilities...” pamphlets. However, brokers using the Internet could satisfy this requirement by providing an additional link on their website.

Household goods brokers could incur some expense to change their website or advertisements to include required information.

The total cost of adding the proposed regulations is approximately \$1.841 million in the first year and \$1.408 million in later years with a present value over a ten-year period, when discounted at 7 percent, of approximately \$11.74 million. These costs include the costs to verify carrier registration, post required pamphlets and other information to the broker’s website, complete and maintain all related paperwork, and pay additional administrative fees to meet higher surety bond requirements. It also includes the costs for individual shippers (consumers) to sign, date, and mail statements verifying they have received Federal consumer protection information from the household goods broker or its website.

Estimated Annual Costs to Respondents: \$1,841,000 the first year and \$1,408,000 in subsequent years.

14. Estimate of Total Annual Costs to the Federal Government.

None.

15. Explanation of Program Changes or Adjustments.

This program change increase of 127,820 annual burden hours and \$1,841,000 annual cost to respondents are due to information collection requirements proposed in a NPRM entitled “Brokers of Household Goods Transportation by Motor Vehicle. This burden covers all first year information collection requirements applicable to brokers arranging for the transportation of household goods interstate commerce contained in title 49 CFR part 371, “Brokers of Property.”

16. Publication of Results of Data Collection.

FMCSA does not plan to publish any results.

17. Approval for not Displaying the Expiration Date of OMB Approval.

The FMCSA is not seeking approval to not display the expiration date of OMB approval of the information collection.

18. Exceptions to Certification Statement.

There are not exceptions to the certification statement.

Attachments:

- A. 49 CFR 371, Brokers of Property, October 21, 1996
- B. Notice of Proposed Rulemaking, entitled "Brokers of Household Goods Transportation by Motor Vehicle, (72 FRxxxxxx) February xx, 2007.
- C. 49 U.S.C. 13501, General Jurisdiction, January 7, 2007.
- D. 49 U.S.C. 13101, Transportation Policy, January 7, 2003.
- E. 49 U.S.C. 13301, Powers, January 7, 2003.
- F. 49 U.S.C. 13904, Registration of Brokers, January 7, 2003.
- G. Section 4142 of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, August 10, 2005, Registration of Motor Carriers and Freight Forwarders.
- H. 49 U.S.C. 14122, Records: Form; Inspection; Preservation, January 7, 2003.
- I. 49 CFR 1.73, Delegation to the Administrator of the Federal Motor Carrier Safety Administration, October 1, 2005.
- J. 49 CFR 365, Rules Governing Applications for Operating Authority, October 21, 1996.
- K. 49 CFR 366, Designation of Process Agent, March 27, 1990.
- L. 49 CFR 387, Minimum Levels of Financial Responsibility for Motor Carriers, October 1, 2001.
- M. 49 CFR 379, Preservation of Records, June 12, 1997.
- N. 49 CFR 375, Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations, June 11, 2003.
- O. Section 4212 of SAFETEA-LU, Release of Household Goods Broker Information, Public Law 109-59, August 10, 2005

- P. Section 4209 of SAFETEA-LU, Civil Penalties Relating to Household Goods Brokers and Unauthorized Transportation, Public Law 109-59, August 10, 2005.
- Q. Advance Notice of Proposed Rulemaking, entitled, “Brokers of Household Goods by Motor Vehicle, (69FR76664), December 22, 2004.
- R. Information Collection Analysis.