

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

**THE SUPPORTING STATEMENT
Hazardous Materials Safety Permits**

Introduction: The Federal Motor Carrier Safety Administration (FMCSA) is seeking to revise the information collection (IC) titled, "Hazardous Materials Safety Permits (formerly Hazardous Materials Permit)," approved by the Office of Management and Budget (OMB) as OMB Control Number 2126-0030. This IC is currently due to expire on October 31, 2007.

SECTION A. JUSTIFICATION:

1. Circumstances that make the collection of information necessary:

The Federal laws (Attachment A), relating to the transportation of hazardous materials (HM) (49 U.S.C. § 5101 *et seq.*) were enacted "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation (Secretary)." Certain provisions of chapter 51 of title 49, U.S.C., including §§ 5105(e), 5109 and 5119, apply only to the transportation of hazardous materials by motor vehicle. The authority for implementing these provisions (except § 5109(F)) has been delegated to FMCSA under 49 CFR § 1.73(d)(2).

Section 5109 requires the Department of Transportation (DOT) to prescribe regulations necessary for the Secretary to issue motor carrier safety permits for transporting certain hazardous materials. A motor carrier must hold a safety permit issued by DOT, and keep a copy of the permit or other proof of its existence in the vehicle, to transport certain hazardous materials in commerce. Under section 5109(b), a safety permit is required for the following four hazardous materials, above threshold amounts established by DOT, but DOT may also prescribe additional hazardous materials, and the amount of each, to be subject to the safety permit requirement:

- A Class A or B explosive (now Division 1.1, 1.2 or 1.3 explosive);
- Liquefied natural gas;
- Hazardous material designated as extremely toxic by inhalation (TIH); and
- A highway-route-controlled quantity of radioactive material.

Other provisions in section 5109 require DOT to issue regulations for issuing safety permits, including application procedures; the duration, term and limitations of a safety permit; other conditions needed to protect public safety; and procedures to amend, suspend or revoke a safety permit. In order to issue a safety permit, DOT must find that the motor carrier is fit, willing and able to:

- (1) Provide the transportation to be authorized by the safety permit;
- (2) Comply with Federal hazardous materials transportation law and DOT's regulations under that law; and

- (3) Comply with applicable Federal motor carrier safety laws and applicable minimum financial responsibility laws and regulations.

A final rule (Attachment C) entitled, “Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits (69 FR 39350 June 30, 2004),” adopted a revised statutory list (referred to as the “Modified Statutory Option” or “expanded list”) and additional explosive and toxic by inhalation materials in certain quantities as appropriate. Specifically, a permit will be required for:

- Radioactive Materials – A highway route-controlled quantity of Class 7 materials.
- Explosives – More than 25 kilograms (kg) (55 pounds) of a Division 1.1, 1.2 or 1.3 material, or an amount of a Division 1.5 material requiring a placard under part 172, subpart F, of this subchapter.
- Toxic by Inhalation (Division 2.3 and 6.1) Materials – Hazard Zone A materials in a packaging with a capacity greater than 1 liter (L) (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).
- A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

This information collection supports the DOT strategic goal of safety by promoting the safe and secure transportation of the designed hazardous materials and enhances motor carrier safety on our nation’s highways.

2. How, by whom, and for what purpose is the information used:

The HM Safety Permit regulations require carriers to complete a entitled, “Combined Motor Carrier Identification Report and HM Permit Application”--Form MCS-150B (See Attachment D). The Form MCS-150B is covered under the FMCSA’s OMB Control Number 2126-0013, “Motor Carrier Identification Report,” information collection request. The application questions, as well as the certification statements on the form, help ensure that FMCSA can identify carriers that should be granted HM safety permits. The HM Safety Permit regulation requires carriers to develop and maintain route plans so that law enforcement officials could verify the correct location of the shipment. In addition, FMCSA requires companies holding permits to develop a communications plan that allows for the periodic tracking of the shipment. This may be accomplished either through phone calls or radio calls placed by the driver or through an electronic monitoring or tracking system. A record of the communications may be kept by either the driver (e.g., recorded in the log book) or the company that contains the time of the call and location of the shipment. These records must be kept, either physically or electronically, for at least six months at the company’s principal place of business or readily available to employees at the company’s principal place of business.

3. Extent of automated information collection:

In accordance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. § 3504 (October 23, 1998)) (Attachment E), FMCSA allows motor carriers to complete and prepare all of the required information (e.g., permit applications, routing plans, documentation of communication, etc.) electronically. While 100 percent of the motor carriers are allowed to use electronic methods to meet these requirements, 60% submit their Form MCS-150B electronically to FMCSA.

4. Describe efforts to identify duplication:

The Federal hazardous materials transportation laws allow States to continue their requirement of issuing permits for the safe transportation of HM after the FMCSA implemented its Federal safety permitting requirement. And, if a State has a safety permitting program that is equivalent to the requirements in 49 U.S.C. § 5109, FMCSA may properly accept the findings of the State that a motor carrier is “fit, willing and able” to transport the designated hazardous materials and to comply with the applicable laws, regulations and financial responsibility requirements under Federal law. Section 5109 requires DOT to issue a Federal safety permit to a motor carrier that meets these requirements, rather than simply allow the carrier to operate under an equivalent State permit. The FMCSA proposed to issue a Federal permit, without further inspection or investigation, when it can verify that this State equivalency condition exists.

5. Efforts to minimize the burden on small businesses:

FMCSA built flexibility into the final requirements, so that entities can choose the method by which they will comply with these conditions. For example, the regulation does not set forth any prescribed method of communication between the driver and the carrier. Carriers are permitted to use any system to communicate with a driver that meets the performance criteria specified in the final rule. Similarly, there are no specifications for the manner in which carriers develop and maintain route plans, allowing either electronic or paper-based approaches to be used. Entities can assess their own situations and tailor the requirements to fit them. The FMCSA developed the regulations under the assumption that small businesses make up the majority of entities that are subject to these provisions.

6. Impact of less frequent collection of information:

Initially, the carrier must complete the permit application, and then update it every 2 years. Written route plans are required for radioactive materials set as forth in 49 CFR § 397.101 (Attachment F) and for explosives in part 397.19 of the same chapter and therefore are not covered by this information collection. Implementation of the Hazardous Materials Safety Permit rule required that communications be established between motor carriers and their drivers of hazardous materials. Companies holding permits are required to develop a communications plan that allows for the tracking of the HM shipment. At a minimum, the communication plan must require contact from the driver or electronic tracking equipment at the beginning and end of transportation, during loading or unloading of a permitted material or at least twice per day.

FMCSA determined that requiring any of this communication information to be collected less frequently would tremendously reduce the benefits of the rule and jeopardize safety.

7. Special circumstances:

There are no special circumstances related to this IC.

8. Compliance with 5 CFR 1320.8:

On July 20, 2007, the FMCSA published a notice in the Federal Register with 60-day comment period (72 FR 39878) (see Attachment I), advising the public of our intent to seek OMB approval to revise this information collection. One comment was received during the public comment period that ended on September 18, 2007 (see Attachment J). The commenter asked FMCSA to exempt drivers of trucks transporting hazardous materials equipped with satellite tracking and monitoring from the additional requirements of 385.415 (c) (1) to make contact with their carrier at specific times and maintain a record of the communications for 6 months after the initial acceptance of a shipment of hazardous material. FMCSA will consider this comment in conjunction with feedback from the industry, safety and security principals regarding the appropriateness of this request. The agency announced its plans to send this IC to OMB for review and approval in a published notice with a 30-day comment period (72 FR 60712) dated October 25, 2007 (see Attachment K).

9. Payments or gifts to respondents:

Respondents are not provided with any payments or gifts for this information collection.

10. Assurance of confidentiality:

The information collected by the Form MCS-150B will be protected to the extent allowed by the Freedom of Information Act (FOIA), 5 U.S.C. § 552 as amended (Attachment L).

11. Justification for collection of sensitive information:

The information collected is not of a sensitive nature.

12. Estimate of burden hours for information collection requested:

The FMCSA estimates the total annual hour burden of this new information collection requirement at **130,780 hours**.

For purposes of this information collection, we estimate that 600 intrastate carriers, 1900 interstate carriers and 15 new entrant carriers, or a total of 2,515 motor carriers will make 1,570,391 annual trips to transport permitted hazardous materials.

New Entrants. The entire interstate motor carrier population was considered during the analysis for the New Entrant program, but only as it related to their paperwork burden to complete Forms

MCS-150 and MCS-150A covered by the OMB Control Number 2126-0013 information collection request. All new entrant HM permitted carriers will now need to complete Form MCS-150B. FMCSA anticipates that 0.0039 percent of the estimated 40,000 new entrants,¹ or 156, are HM permitted motor carriers that would fall under the Permit regulation each year. Of that 156 total of new entrant HM permitted motor carriers, we anticipate that only 10 percent of them, or 15 new entrant HM permitted carriers would be the NET growth of permitted carriers during the subsequent years of this regulation.

The HM permitting program required all motor carriers to maintain written records of communications between carriers and their drivers. This communication must take place at least two times per day and we estimate that it will take 5 minutes to maintain a daily communication record for each driver. The types of information required include time and location of the communication. The total burden hours were based on 1,570,391 estimated annual trips for carriers. After making an adjustment for the number of interstate carriers (1,900) that will now need to maintain written records of communications, FMCSA determined that 2,515 carriers must comply with this new requirement [600 intrastate carriers + 1,900 interstate carriers + 15 new entrant carriers = 2,515 carriers]. Thus, the total annual information collection burden for maintaining a daily communication record per carrier is 52.03 hours, rounded to 52 hours per carrier [5minutes/60 minutes per hour x 1,570,391 estimated annual trips/2,515 carriers = 52]. The total annual burden for all carriers is 130,780 hours [52 hours per carrier x 2,515 carriers = 130,780 hours]. The estimated annual information collection burdens are summarized in the table below. These values reflect the additional burden the regulation would place on the affected carriers and are derived from FMCSA’s Motor Carrier Management Information System (MCMIS) and Pipeline and Hazardous Materials Safety Administration (PHMSA) data.

Annual Burden Calculations

ITEM	Intrastate Carriers	Interstate Carriers	New Entrant Carriers	Total	Burden Hours Per Intrastate Carrier ²	Burden Hours Per Interstate Carrier ¹	Total Annual Burden Hours
Maintaining communications records	600	1,900	15	2,515	52	52	130,780
TOTAL ANNUAL BURDEN							130,780

To maintain records pertaining to communications between the carrier and the driver:
 52 hours per carrier annually [5 minutes/60 minutes per trip x 1,570,391 est. annual trips/2,515 carriers = 52 hours].

130,780 annual hours [2,515 carriers x 52 hours per carrier annually = 130,780 hours].

¹ From 1990 to 2000, this country experienced an overall transportation increase of about 100 percent (this includes all modes). Since that time, however, our number estimates for the HM permitting carriers have remained relatively constant, with just as many HM permitted carriers entering the industry as those that exit.

² Figures are rounded to the nearest hundredth; unrounded numbers are used in calculations

Estimated Total Annual Burden: 130,780 hours.

Estimated Number of Annual Respondents: 2,515 carriers [600 intrastate + 1,900 interstate + 15 new entrant carriers = 2,515]. The HM carrier industry is relatively stable with the number of annual carriers entering and exiting the industry remaining about the same.

13. Estimate of total annual costs to respondents:

Other than the costs associated with the information collection burden hours shown in item #12 above (which are not to be included in item #13, the only cost incurred by respondents would be for the communications recordkeeping requirement. FMCSA estimates that the annual communications recordkeeping requirement will take 5 minutes per trip of a clerk's time at an hourly pay of \$21.00 (\$15.00 + fringe benefits at 40 percent). The total annual cost to respondents is **\$2,748,184** $([(5 \text{ minutes per trip} \times 1,570,391 \text{ annual trips})/60 \text{ minutes}] \times \$21.00 = \$2,748,184)$.

14. Estimate of cost to the Federal government:

This information collection imposes no cost to the Federal government.

15. Explanation of program changes or adjustments:

This program adjustment is due to a reduction in the number of carriers from 3,146 to 2,515.

16. Publication of results of data collection:

The results of this IC will not be published

17. Approval for not displaying expiration date of OMB approval:

FMCSA is not seeking this approval

18. Exceptions to certification statement:

FMCSA is not seeking any exception to the certification statement.

PART B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Attachments

A. Title 49 U.S.C. § 5101, et seq

- B. 49 C.F.R. § 1.73(d)(2)
- C. Final Rule entitled, “Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits,” (69 FR 39350), June 30, 2004.
- D. Form MCS-150B entitled, “Combined Motor Carrier Identification Report.”
- E. Government Paperwork Elimination Act (GPEA (44 U.S.C. § 3504)), October 23, 1998.
- F. Title 49 C.F.R. 397.
- G. NPRM entitled, “Federal Motor Carrier Safety Regulations: Transportation of Hazardous Materials,” (58 FR 33418), June 17, 1993.
- H. SNPRM entitled, “Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits” (68 FR 49737) August 19, 2003
- I. Sixty-day Comment Request Federal Register Notice (72 FR 39878) dated July 20, 2007.
- J. Sixty-day Comment Request Federal Register Notice: Review of comments and FMCSA Response.
- K. Thirty-day Comment Request Federal Register Notice (72 FR 60712) dated October 25, 2007.
- L. Freedom of Information Act (FOIA), 5 U.S.C. § 552.