

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE CHIEF INFORMATION OFFICER
SUPPORTING STATEMENT
PRACTICES OF HOUSEHOLD GOODS BROKERS

The Federal Motor Carrier 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 Final Rule, RIN 2126-AA84 entitled "Brokers of Household Goods Transportation by Motor Vehicle," (75 FR 72987), November 29, 2010 (Attachment B).

1. Circumstances that make the collection of information necessary.

FMCSA is amending its existing regulations applicable to property brokers (49 CFR Part 371) to require brokers who arrange for the transportation of household goods (HHG) 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) (Attachment C). The amendments are 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.

Section 4212 of SAFETEA-LU (Attachment D) 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 authorized 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.

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 E). FMCSA published a notice of proposed rulemaking (NPRM) in the Federal Register on February 8, 2007 (72 FR 5947) (Attachment F). In the NPRM, FMCSA addressed the problems and recommendations identified by AMSA in its petition, incorporated requirements mandated by SAFETEA-LU, and proposed adopting some of the recommendations made by commenters to the ANPRM. FMCSA proposed to amend the current broker regulations in part 371 by adding a new subpart B specifically for household goods brokers and proposed other regulatory changes not involving new information collections. This proposed rule was intended to educate and inform consumers and household goods brokers about fair and competitive business practices the FMCSA believes should be a part of every transaction between individual shippers and household goods brokers.

This information collection supports the new requirements of subpart B of part 371 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 Interstate Commerce Commission (ICC); however, that agency was not required to comply with the Paperwork Reduction Act (PRA). When these items transferred from the ICC to the Federal Highway Administration (FHWA), and ultimately to FMCSA, no OMB control number was assigned to cover this information collection transfer. It is, 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 will be generated by this final rule.

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 final rule requires brokers obtain a signed and dated receipt from the individual shippers for the "Ready to Move" brochure (Attachment G) and the "Your Rights and Responsibilities When You Move" pamphlet (Attachment H). This will help enforcement personnel determine whether 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 the 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 segregating expenses and revenues relating to brokerage activities from those

related to non-brokerage services, in accordance with 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 I for the frequency required for the proposed new information collections.

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. The household goods program can use modern automated information collection technology, which will serve to reduce the burden of the program. The information collections can be transmitted by e-mail or facsimile transmissions, at the discretion of the consumer, household goods broker, or household goods motor carrier. In addition, information is available and complaints can be submitted via the internet. None of the information collected is submitted to FMCSA.

4. Efforts to identify duplication.

FMCSA is unaware of any other Federal rules that will duplicate, overlap, or conflict with this proposed rule except for certain provisions of the household goods shipper protection rules in 49 CFR Part 375. Because the part 375 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 it has minimized the burden on small entities. FMCSA prepared the following Final Regulatory Flexibility Analysis:

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

AMSA petitioned the DOT for a rulemaking in March 2003 that would amend the property broker regulations in Part 371 to require brokers that arrange for household goods transportation by motor carrier (HHG brokers) to provide consumer information that only household goods motor carriers must now provide, as well as establish additional consumer protection requirements. Many of AMSA’s concerns were addressed in the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU), Pub. L.109-59, which was enacted into law on August 10, 2005. Section 4212 of SAFETEA-LU directs FMCSA to issue regulations requiring HHG brokers to provide this information to consumers.

(2) Objectives of, and legal basis for, the final rule.

This rulemaking is mandated by section 4212 of SAFETEA-LU. FMCSA’s general authority to enact consumer protection regulations governing broker operations is contained in 49 U.S.C. 13904(c). The objective of this rule is to ensure that individual shippers of HHG that arrange for transportation through HHG brokers (rather than directly through motor carriers) receive necessary information regarding the parties with which they are dealing and their rights and responsibilities in connection with interstate HHG moves. It also is intended to ensure that HHG brokers deal only with properly registered and insured motor carriers and that estimates provided by HHG brokers be provided under specific circumstances designed to protect the shippers against possible abuse. Finally, it increases the level of financial responsibility required to ensure that HHG brokers perform their transportation contracts.

(3) Significant issues raised by small entities’ comments.

A summary of the significant issues raised by the public in response to the NPRM and the assessment of each significant issue are discussed in the final rule under the heading “Discussion of Comments on the Proposed Rule.”

FMCSA is adopting the proposed rule as final with minor changes, based mainly on comments to the NPRM. FMCSA believes most HHG brokers that commented to the NPRM would meet the definition of a small business entity.

(4) Description and estimate of the number of small entities to which the final rule will apply.

There are currently 615 active, registered HHG brokers and another 394 registered HHG brokers that are inactive.¹ We do not know the number of unregistered HHG brokers, but we suspect that there are many. For the purposes of our analysis, we assume the number is 75—which would put the percentage of unregistered brokers at just over ten percent (75 is 10.87% of (615 + 75)). The figure is based on conversations with industry experts and information from broker websites. We use 690, then, as the estimate of total active brokers—registered and (now) unregistered. Almost all are small entities according to the definition in Small Business Administration (SBA) regulations (13 C.F.R. 121) which defines a “small entity” in the North American Industrial Classification System (NAICS) Code 488510 “Freight Transportation Arrangement” industry by average annual receipts, which are currently set at \$7 million per firm. The motor carriers with whom HHG brokers deal may also be indirectly affected.

(5) Description of the projected reporting, record-keeping and other compliance requirements for small entities.

The final rule requires additional record-keeping on the part of HHG brokers to demonstrate compliance. The cost to HHG brokers of this additional record-keeping ((\$5.493 million in the first year and \$1.726 million annually to inform, display, and disclose information to shippers,

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

and maintain the files for three years) and increased financial responsibility requirements (\$50,000 per year) are reflected in our cost estimates, having a present value of approximately \$17.11 million over ten years when discounted at 7 percent, and does not require any special skills that would be available to large entities any more than to small entities.

(6) Duplication with other Federal rules.

FMCSA is unaware of any other Federal rules which will duplicate, overlap, or conflict with this proposed rule except for the household goods carriers (HHG carriers) rule published on July 12, 2005.² Because these rules apply only to HHG motor carriers, it was necessary to establish separate rules applicable to HHG 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.” HHG carriers are already required to make this pamphlet available to every shipper. This rule requires HHG brokers to make the same pamphlet available to shippers. There is no practical way around the duplication because some shippers do not use a HHG broker and those who do often do not have any direct contact with a HHG carrier early enough in the process to make effective use of the information contained in the pamphlet.

(7) Description of any significant alternatives to the final rule.

FMCSA believes that there are no significant alternatives to the final rule which would accomplish the stated objectives of the Household Goods Mover Oversight Enforcement and Reform Act of 2005, otherwise known as Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L.109-59) and which would minimize any significant economic impact of the final rule on small entities.

The Agency did consider ways in which it could assist small HHG broker entities to mitigate the impact of increasing the trust fund resources to the new minimum requirement of \$25,000. The Agency decided it could extend the compliance date regarding the financial responsibility requirement so that brokers will have a full year after publication of the final rule to come into compliance with the \$25,000 requirement, increasing trust funds from the minimum of \$10,000 to the final rule’s minimum requirement of \$25,000.

As we stated above, almost all of the 690 HHG brokers subject to this final rule meet the definition of a small business entity under the RFA. We have estimated this final rule will cause the average HHG broker to incur an additional \$8,030 in the first year of implementation and annual recurring costs of about \$2,575.

6. Impact of less frequent collection of information.

The information in this final rule will be collected when a shipper requests that a broker provide an estimate and when a shipper arranges for a broker to have a particular mover transport household goods. The required information will be provided to shippers so that they can educate themselves regarding their rights and responsibilities in the commercial transactions with the

² 70 FR 39949 (Jul. 12, 2005).

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). FMCSA published a notice of proposed rulemaking (NPRM) in the Federal Register on February 8, 2007 (72 FR 5947).

The eleven comments received addressed many of the information collection requirements proposed in the NPRM. All of the significant issues relating to proposed information collection requirements are addressed in the section “Discussion of Comments on the Proposed Rule” in the preamble of the final rule.

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.

Assumptions used for calculation of the information collection burden include the following: (1) There are currently approximately 690 active household goods brokers; (2) Household goods brokers will have negotiated and signed, written agreements with about 31 motor carriers to estimate shipment costs, (3) Household goods brokers will eventually sever some of these written agreements and make agreements with new household goods motor carriers. We assume

that an average agreement lasts for about six years, and thus about five new negotiations and written agreements will be negotiated each year, and (4) FMCSA estimates household goods brokers handle about 100,000 moves each year. The first two items result in 24,390 respondents subject to the information collection ($690 \times 31 = 24,390$). The third item results in an additional 3,450 respondents subject to the information collection ($690 \times 5 = 3,450$). Together with the fourth item, a total of about 127,900 respondents ($24,390 + 3,450 + 100,000$) would be subject to the information collection. Additional assumptions and estimates can be found in Attachment I, which discusses each proposed regulatory section separately.

Table 1 summarizes the current and new information collection burden-hours in the final rule, which are effectively those for Option 3, discussed in the regulatory evaluation.

Table 1: Total Annual Burden-Hours Across the 690 Household Goods Property Brokers			
Section	Description	Calculation	Hours
371.3	Household Goods Broker Transactions	15min/day x 240 workdays x 690	41,400
371.13	Separate Accounting System*	8hrs x 125 new entrants	1,000
371.107	Website/Ad Modification	20hr x 690	13,800
371.109	Create A List of Carriers	10hr x 690	6,900
371.111(a)	Pamphlet Provision (One-Time)	0.5hr x 690	345
371.111(c)	Confirming Required Info	0.5hr/month x 12 x 690	4,140
371.113	Explanation of Waiver-Agreement	(1/12)hr x 20,000 explanations	1,667
371.115	Negotiation of Agreements (One-Time)	4hr x 31 agreements x 690	85,560
	Annual Agreements Through Turnover	4 hrs x 5 agreements x 690	13,800
371.117	Disclosure and Records	10hr x 690	6,900
371.119	Removed Verification Requirement	Removed	0
Total First-Year Hours			175,512
Total Recurring Annual Hours			89,607
* 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 proposed in the NPRM that setting up an accounting system is a usual and customary practice when starting a new business. FMCSA received no comments from the public about this assertion.			

Note that the current information collection burden for the 690 HHG brokers is estimated to be 42,400 annual burden-hours subject to current 49 CFR Part 371. By Section 371.3, for each of the 690 brokers, it takes 15 minutes per day for 240 workdays for a total of 41,400 hours per year ($1/4 \text{ hours/day} \times 240 \text{ days/broker} \times 690 \text{ brokers} = 41,400$). By Section 371.13, the initial (one-time first-year) set-up of a separate accounting system takes 8 burden-hours for 125 new-entrant household-goods brokers each year, for a 1,000 annual hours burden ($8 \text{ hours/broker} \times 125 \text{ brokers} = 1,000 \text{ hours}$). The 41,400 and the 1,000 total to 42,400 annual burden-hours.

Note that after the first year, this new final rule actually results in slightly less annual burden-hours (40,307) than the current burden (42,400).

1) 371.107—Website/Ad Modification: Information collection requirements in 371.107 require broker-staff to work with ad designers or website designers to create, modify, and in some cases remove items from advertisements and websites. Not all brokers require creation or modification of such products. We assume that the average broker will spend 20 hours per year on these endeavors, so for 690 brokers, this comes to 13,800 annual burden-hours (690 x 20)

2) 371.109—Create a List of Carriers: Information collection requirements in 371.109 require broker staff to work with typesetters, printers, and website designers to create paper and electronic lists of motor carriers. We assume that the average broker will spend 10 hours per year on these endeavors, so for 690 brokers, this comes to 6,900 annual burden-hours (690 x 10).

3) 371.111(a)—Pamphlet Provision: This regulatory change would require HHG brokers to provide consumers (shippers) with information, by means of FMCSA pamphlets “Your Rights and Responsibilities When You Move” and “Ready to Move?—Tips for a Successful Interstate Move.” HHG brokers can accomplish this either (1) by providing a link on their websites, or (2) by physically distributing the pamphlets. The cost of providing the link is limited to half an hour of programming/uploading for each of the 690 active HHG brokers, for a total of 345 hours ($\frac{1}{2}$ x 690). Because this action does not have to be repeated, we estimated that all burden-hours are incurred in the first year of analysis.

4) 371.111(c)—Confirming that the Required Information Has Been Received: Shippers will be required to provide a signed and dated statement indicating that they have received the required information from the HHG broker. The HHG broker must inform the shipper of the necessity to fill out the statement, receive the statements, file them, and empty the files after they have been retained for 3 years. We assume a broker spends half an hour per month in this endeavor, so the total annual hours devoted to this task are 4,140 (690 HHG brokers \times $\frac{1}{2}$ an hour per month \times 12 months per year).

5) 371.113—Explanation of Physical-Survey Waiver-Agreement: We require a household goods broker to explain the physical-survey waiver-agreement to the individual shipper in plain English (see new \S 371.113(c)(2)). If 20,000 of the 100,000 moves per year require explanation of the waiver-agreement and it takes five minutes of a correspondence clerk’s time, then 1,667 annual burden-hours result (20,000 explanations \times (1/12) hours/explanation).

6) 371.115—Negotiation of Agreements Between Broker and Carrier: An agreement is negotiated between the broker and motor carrier—the broker must reduce it to writing, obtain the signatures of the broker, motor carrier, and notary public, and make copies. We assume four hours is a reasonable time to complete a single agreement.

In the proposed rule’s information collection supporting statement and initial regulatory evaluation, we stated that it would be reasonable to assume that brokers would have agreements with an average of five different motor carriers. A commenter believed this assumption was inaccurate. In response, FMCSA polled its eight household goods investigators who perform compliance reviews.

Out of seven broker compliance reviews conducted at the time of the poll, FMCSA investigators found a total of 220 written agreements with carriers, which averages to 31 written agreements per broker (220 / 7). Therefore, 85,560 total hours are required to complete all of the requisite tasks (690 brokers x 31 written agreements per broker x 4 hours per written agreement = 85,560 hours).

This should be considered a one-time cost, and as such will only affect the first year of the analysis. Table 2 for § 371.115 presents the calculations described above.

Table 2: Cost of Negotiating Written Agreements Between HHG Broker and Motor Carrier	
One-Time Only	Amount
Total Broker Compliance Reviews Conducted	7
Total Broker-Carrier Agreements of Those Seven Brokers Reviewed	220
Average Number of Agreements Per Broker (220 / 7)	31
Average Hours Per Negotiation of an Agreement	4
Total Number of Brokers	690
Total Hours Spent Negotiating Agreements (690 x 4 x 31)	85,560

In addition, HHG brokers will eventually sever some of these agreements and make agreements with new carriers. We can assume that they essentially replace some portion of the 31 written agreements annually. If we assume that an average agreement lasts for about six years, then that amounts to about five new written agreements having to be negotiated each year.³ Thus, the recurring annual burden hours of negotiating agreements between broker and carrier is 13,800 annual burden hours.⁴

7) 371.117—Disclosure and Records: This proposal would require full disclosure of the terms governing deposits and forfeitures in the event of cancellations. The disclosure requirement can be accomplished by including material on the HHG brokers’ websites and would add no cost for brokers choosing to post the consumer information pamphlets on their websites. However, this proposal is not merely a disclosure requirement—§ 371.117(b) requires maintaining cancellation records and evidence of refunds of deposits. In addition, the rule requires that the cancellation policies also be provided in the actual agreement with the shipper—so that there are potential costs associated with the revision and reprinting of existing agreements. If correspondence clerks for each of the 690 brokers spend 10 hours annually, 6,900 burden hours result.

8) 371.119—Removal of the Verification Requirement: This regulatory change requires that HHG brokers use only household goods motor carriers registered with FMCSA. Currently, household goods motor carriers must have the proper insurance, operating authority, and DOT number in order to operate in interstate commerce. Related to these new requirements, FMCSA had proposed to require brokers to verify the registration of motor carriers, which they are not explicitly required to do now. Based on comments to the NPRM, FMCSA is removing this requirement from the final rule, so there are no burden-hours.

³ 5 agreements for 6 years = 5+5+5+5+5+5 = 30 agreements. This in essence means (is an assumption) that a broker’s carrier population (of 31 agreements) turns over about every six years.

⁴ 690 brokers x 5 agreements per broker x 4 hours per written agreement = 13,800 hours.

FMCSA is rounding the first-year and recurring annual hours to the nearest hundred and thus requests approval for a total first-year burden of 175,500 hours and total recurring annual burden of 89,600 hours.

Estimated Annual Number of Respondents: 690 brokers.

Estimated Annual Number of Responses: 127,840 [100,000 moves handled per year + (690 respondents x 31 written agreements to estimate shipping costs with 31 motor carriers) + (690 respondents x 5 new agreements with motor carriers per year) = 127,840].

Estimated Annual Burden Hours: 118,242 hours [175,512 hours for first year + 89,607 hours for second year + 89,607 hours for third year/3 year approval = 118,242].

13. Estimates of Annual Costs to Respondents.

The total cost of adding the proposed regulations (the eight elements discussed in the burden-hour section above plus meeting the higher surety bond/trust fund requirements) is approximately \$5.543 million in the first year and \$1.776 million in subsequent years with a present value over a ten-year period (when discounted at 7 percent) of approximately \$17.11 million.

Estimate of Annual Costs to Respondents: \$3.032 million [\$5.543 million for first year + \$1.776 million for second year + \$1.776 million for third year/3 year approval = \$3.032 million].

14. Estimate of Annual Costs to the Federal Government.

None.

15. Explanation of Program Changes or Adjustments.

This program change increase of annual burden-hours to respondents is due to information collection requirements imposed in a final rule 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 in 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 no exceptions to the certification statement.

Attachments:

- A. 49 C.F.R. Part 371, Brokers of Property, October 21, 1996.
- B. Final rule, entitled “Brokers of Household Goods Transportation by Motor Vehicle,” (75 FR 72987) November 29, 2010.
- C. Petition for Rulemaking, American Moving and Storage Association, March 6, 2003.
- D. Section 4212 of SAFETEA-LU, Release of Household Goods Broker Information, Public Law 109-59, August 10, 2005.
- E. Advance Notice of Proposed Rulemaking, entitled, “Brokers of Household Goods by Motor Vehicle”, (69 FR 76664), December 22, 2004.
- F. Notice of Proposed Rulemaking, entitled, “Brokers of Household Goods by Motor Vehicle”, (72 FR 5947), February 8, 2007.
- G. “Ready to Move,” FMCSA, April 2006.
- H. “Your Rights and Responsibilities When You Move,” FMCSA, April 2006.
- I. Information Collection Analysis.