

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

**THE SUPPORTING STATEMENT
Hazardous Materials Safety Permits**

Introduction:

This request is for the Office of Management and Budget's (OMB) approval for the proposed revision of the OMB Control Number 2126-0030, "Hazardous Materials Safety Permits," information collection request (ICR). This ICR is currently due to expire on 02/28/11 and is to be approved for revision by the Office of Management and Budget's (OMB). This ICR is being revised due to an increase in the estimated number of annual trips in which permitted hazardous materials (HM) are transported.

Part A: Justification

1. Circumstances that make the collection of information necessary:

The Federal laws (Attachment A), relating to the transportation of HM (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 HM 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 HM by commercial motor vehicles. The authority for implementing these provisions (except § 5109(f)) has been delegated to FMCSA under 49 CFR § 1.73(d)(2) (Attachment B).

Section 5109 requires the Department of Transportation (DOT) to prescribe regulations necessary for the Secretary to issue motor carrier safety permits for transporting certain HM. 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 in order to transport certain HM in commerce. Under section 5109(b), a safety permit is required to transport the following four HM in amounts above the threshold established by DOT:

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

DOT may also prescribe additional HM, and the amount of each, to be subject to the safety permit requirement.

Other provisions in section 5109 require DOT to promulgate 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 HM 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 list (referred to as the "Modified Statutory Option" or "expanded list") for which safety permits are required, including additional explosive and toxic by inhalation materials in certain quantities. 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 HM 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 form entitled, "Combined Motor Carrier Identification Report and HM Permit Application" (Form MCS-150B, see Attachment D). Form MCS-150B is approved for use by FMCSA under the OMB Control Number 2126-0013, "Motor Carrier Identification Report." 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 can verify the correct location of the shipment. In addition, FMCSA requires companies holding HM safety 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.

4. Describe efforts to identify duplication:

The Federal HM 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. 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 HM and to comply with the applicable laws, regulations and financial responsibility requirements under Federal law. Section 5109 also 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 will 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:

The FMCSA built flexibility into the 2004 final rule 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 as set 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. The HM Safety Permit rule requires that motor carriers furnish a driver transporting explosives instructions or procedures to be followed in the event of an accident or delay. 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. The

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 ICR.

8. Compliance with 5 CFR 1320.8:

On September 9, 2010, the FMCSA published a notice in the Federal Register with 60-day comment period (75 FR 54941) (see Attachment I), advising the public of our intent to seek OMB approval to revise this information collection. No comment was received during the public comment period for this notice.

The Agency announced its plans to send this ICR to OMB for review and approval in a published notice with a 30-day comment period (75 FR 80886) dated December 23, 2010 (see Attachment J).

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 will be protected to the extent allowed by the Freedom of Information Act (FOIA), 5 U.S.C. § 552 as amended (Attachment K).

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 that 261 intrastate carriers and 1,164 interstate carriers, including 58 new entrant carriers, or a total of 1,425 motor carriers transport permitted HM. In total, these carriers are estimated to operate about 15,000 trucks in permitted HM transport. The Agency estimates that a fully utilized truck is used for 280 trips per year, and that carriers make 4.2 million annual trips transporting permitted HM (15,000 trucks × 280 trips).¹

The HM permitting program requires all motor carriers to communicate with their drivers at least twice per day and to maintain written records of these communications. These records must include time and location of the communication. The FMCSA estimates that it takes 5 minutes to maintain a daily record for each driver's daily communication. The total annual information collection burden for maintaining daily communication records is approximately **350,000 hours** [4.2 millions trips × 5 minutes per record ÷ 60 minutes per hour].

¹ Data source: Motor Carrier Management Information System (MCMIS) as of April 23, 2010.

Estimated Annual Burden Hours: 350,000 hours [4.2 million trips x 5 minutes/60 minutes per record =350,000].

Estimated Number of Annual Respondents: 1,425 motor carriers transporting permitted HM [261 interstate carriers + 1,164 interstate carriers = 1,425].

Estimated Number of Annual Responses: 1,425 motor carriers transporting permitted HM [261 interstate carriers + 1,164 interstate carriers = 1,425].

13. Estimate of total annual costs to respondents:

There are no costs to respondents beyond those associated with the annual hourly burden (not to be included here).

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 increase in estimated annual burden hours from 130,780 to 350,000 is due to an increase in the estimated number of annual trips from 1,570,391 to 4,200,000 in which permitted HM is transported. The previous estimate for the number of annual trips was originally developed for a 2004 report commissioned by FMCSA on the costs and benefits of the HM Safety Permits final rule. The number of trips in that reports was based on Vehicle Inventory and Use Survey (VIUS) data collected by the U. S. Census Bureau on the number of trucks transporting HM requiring permitting. The Census Bureau discontinued VIUS after 2002 and documentation on other aspects of the trip estimate was not included in that 2004 report. FMCSA reestimated the number of trips used in this supporting statement based on data from MCMIS reported on MCS-150B registration forms. After the HM Safety Permits rule became effective, better data from more HM registrants, especially intrastate HM carriers, became available from these forms, allowing the Agency to construct its current estimates. Notably, although the number of carriers (responses) has fallen, current data indicate that a greater number of trucks are engaged in hauling HM requiring permitting, leading to an increase in the annual number of trips.

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:

The FMCSA is not seeking this approval.

18. Exceptions to certification statement:

The 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., “Purpose.”
- B. 49 C.F.R. § 1.73(d) (2), “Delegation to the Administrator of the Federal Motor Carrier Safety Administration.”
- 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, “Transportation of Hazardous Materials; Driving and Parking Rules.”
- 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 (75 FR 54941) dated September 9, 2010.
- J. Thirty-day Comment Request Federal Register Notice (75 FR 80886) dated December 23, 2010.
- K. Freedom of Information Act (FOIA), 5 U.S.C. § 552.