

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

INTRODUCTION

This is to request the Office of Management and Budget's (OMB) renewed three-year approval of the OMB Control Number 2126-0048, "Practices of Household Goods Brokers," information collection request (ICR), which is currently due to expire on February 28, 2014. The currently-approved paperwork burden accounts for costs that were incurred by brokers to come into compliance with Title 49 CFR part 371. This ICR is being revised to no longer include these onetime costs and update other wage related costs that have changed since the previous approval.

Part A. Justification

1. Circumstances that make the collection of information necessary.

This ICR requirement is contained in Title 49 CFR part 371 (Attachment A) as provided in the Final Rule, RIN 2126-AA84 titled, "Brokers of Household Goods Transportation by Motor Vehicle," (75 FR 72987), November 29, 2010 (Attachment B). The Final Rule amended FMCSA's 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 were 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 USDOT 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.

This information collection supports the 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 assists shippers in their commercial dealings with interstate brokers. The collection of information is 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, OMB control number PRA-2126-0048 was assigned to cover this information collection transfer.

Because the broker may be the primary point of contact for the shipper in many cases, it is in the best position to educate shippers and prepare them for a successful move. The final rule required brokers obtain a signed and dated receipt from the individual shippers for the "Ready to Move" brochure (Attachment E) and the "Your Rights and Responsibilities When You Move" pamphlet (Attachment F). This will help enforcement personnel determine whether the individual shipper actually received the information.

Brokers that arrange the transportation of HHG in interstate or foreign commerce for consumers must provide: their U.S. DOT number on their advertisements and Internet Web sites; estimates of expected moving charges and brokerage fees; FMCSA pamphlets containing tips for successful moves and the consumer's rights and responsibilities; and the broker's policies concerning deposits, cancellations, and refunds. These actions are intended to help ensure the individual shippers who arrange for transportation of HHG through brokers receive necessary information regarding their rights and responsibilities in connection with interstate HHG moves.

3. Extent of automated information collection.

FMCSA estimates that 90% of the information will be disseminated electronically to the shipper by 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 its rulemaking mandated by section 4212 of SAFETEA-LU has minimized the burden on small entities by ensuring 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 helps 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 increased the level of financial responsibility required to ensure that HHG brokers perform their transportation contracts.

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.

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 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.

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

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.

FMCSA published a notice in the Federal Register (78 FR 68136) with a 60-day public comment period to announce this proposed information collection on November 13, 2013 (see Attachment G). The agency received no comments in response to this notice.

FMCSA published a notice in the Federal Register (79 FR 9033) on February 14, 2014 with a 30-day public comment period that announced this information would be sent to OMB for approval (Attachment H).

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 ($690 \times 31 = 21,390$). 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 124,900 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(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	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 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) allows 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 (690×20)

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 (690×10).

3) 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 × ½ an hour per month × 12 months per year).

4) 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 § 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 × (1/12) hours/explanation).

5) 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.

HHG brokers will eventually sever some of these agreements and make agreements with new carriers. Each carrier is estimated to maintain 31 written agreements. 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.² Thus, the recurring annual burden hours of negotiating agreements between broker and carrier is 13,800 annual burden hours.³

6) 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.

7) 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.

² 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.

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

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

Estimated Annual Number of Respondents: 690 brokers.

Estimated Annual Number of Responses: 103,450 [100,000 moves handled per year + (690 respondents x 5 new agreements with motor carriers per year) = 103,450].

Estimated Annual Burden Hours: 89,607 hours.

13. Estimates of Annual Costs to Respondents.

The total cost of the regulations (the seven elements discussed in the burden-hour section above plus meeting the higher surety bond/trust fund requirements) is approximately \$1.860 million per year with a present value over a ten-year period (when discounted at 7 percent) of approximately \$13.6 million.

Estimate of Annual Costs to Respondents: \$1.860 million

14. Estimate of Annual Costs to the Federal Government.

Household Goods Brokers are required to provide information and make information available to shippers, but the Federal Government does not routinely collect information for this burden. Therefore this IC does not impose costs on the Federal Government.

15. Explanation of Program Changes or Adjustments.

The program adjustment of 28,635 annual burden hours [118, 242 currently approved estimated annual burden hours - 89, 607 proposed estimated annual burden hours = 28,635]. FMCSA has revised its estimate of the total annual cost burden by \$84,000 [\$1.860 million proposed annual cost burden - \$1.776 million currently approved for third year of ICR = \$0.084 million or \$84,000]. The previous approval included first-year costs that are no longer applicable, and the wages used to calculate the costs of the burden have caused the adjustment in the recurring costs.

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.