

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

**SUPPORTING STATEMENT**  
Hazardous Materials Safety Permits

**INTRODUCTION**

This is to request the Office of Management and Budget's (OMB) approval for the revision of an information collection request (ICR) entitled, "Hazardous Materials Safety Permits," (OMB Control No. 2126-0030), which is currently due to expire on 05/31/2014. The estimated annual burden hours for this ICR are being increased from 350,000 to 967,000 because of an adjusted increase in the estimated number of trucks requiring Hazardous Materials Safety Permits.

**Part 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, 5109 and 5119, apply only to the transportation of hazardous materials by motor vehicle. The authority for implementing these provisions (except § 5109) has been delegated to FMCSA under 49 CFR § 1.87(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 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, in order to be in compliance while transport certain hazardous materials in commerce. Under section 5109(b), a safety permit is required to transport the following four hazardous materials, in quantities above the threshold amounts established by DOT.

- 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.

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

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 list (referred to as the "Modified Statutory Option" or "expanded list") and additional explosive and toxic by inhalation materials in certain quantities as appropriate. This list is now codified in 49 CFR 385.403. Specifically, a permit will also 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 form 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% of the motor carriers are allowed to use electronic methods to meet these requirements, 60% submit their Form MCS-150B electronically to FMCSA.

### **4. EFFORTS TO IDENTIFY DUPLICATION**

The Federal hazardous materials transportation laws allowed 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 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 allowing 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**

FMCSA built flexibility into the 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 criteria specified in 49 CFR 385.415. 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 ICR.

## **8. COMPLIANCE WITH 5 CFR 1320.8:**

On December 10, 2013, the FMCSA published a notice in the Federal Register with 60-day comment period (78 FR 74221) (see Attachment I), advising the public of our intent to seek OMB approval to revise this ICR. Three comments were received in response to this notice (Attachment J). Commenters included Boyle Transportation, a business consultant and engineer, and Landstar Transportation Logistics. FMCSA replies to the comments are provided at Attachment K. A summary of the comments and responsive considerations are as follows:

Boyle Transportation commented that it is necessary to track shipments more than two times a day; tracking technologies are widely available in the industry and carriers should maintain fully staffed operations center to monitor shipments. FMCSA responded that the requirements stated in 49 CFR §385.415(c)(1) are a minimum requirement for Hazardous Materials Safety Permits (HMSP) carriers and carriers are encouraged to use state-of-the-art monitoring and tracking devices.

The business consultant and engineer stated that we should start taking a stand against pollution. There was no return address in the comment for FMCSA to send a response, and the comment is beyond the scope of this ICR.

Landstar Transportation Logistics asks that if a carrier is using a satellite tracking system to monitor a hazardous materials load, FMCSA should eliminate the redundant requirement for operators to make specific contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. FMCSA responded that the requirement is not viewed as redundant and the requirements stated in 49 CFR §385.415(c)(1) are a basic and minimum requirement for all HMSP carriers and carriers are encouraged to use state-of-the-art tracking devices, but their use is not required.

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 (79 FR 19169) dated April 7, 2014 (see Attachment L).

## **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 M).

## **11. JUSTIFICATION FOR COLLECTION OF SENSITIVE INFORMATION**

There are no questions of a sensitive nature.

## **12. ESTIMATE OF BURDEN HOURS FOR INFORMATION REQUESTED**

FMCSA estimates that 223 intrastate carriers and 1,159 interstate carriers, of which 59 of them are in the new entrant program, are permitted to transport HM. In total, these 1,382 carriers operate nearly 125 thousand trucks; however, not all of those trucks typically transport HM, requiring a safety permit. The Agency estimates that each of the estimated carriers operates an

average of 30 trucks requiring HM safety permits. With a total of 1,382 motor carriers, this results in nearly 41,500 trucks in permitted HM transport (1,382 carriers × 30 trucks, rounded to nearest hundred). The Agency estimates that a fully utilized truck is used for 280 trips per year, and that carriers make 11.6 million annual trips transporting permitted HM (41,500 trucks × 280 trips).<sup>1</sup>

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. 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 a daily communication records is approximately **967,000 hours** [11.6 million trips × 5 minutes per record ÷ 60 minutes per hour].

**Estimated Annual Burden Hours: 967,000 hours** [11.6 million trips x 5 minutes/60 minutes per record = 966,667, rounded to the nearest thousand].

**Estimated Number of Annual Respondents: 1,382** motor carriers transporting permitted HM [223 intrastate carriers + 1,159 interstate carriers = 1,382].

**Estimated Number of Responses: 41,500** trucks with communication records for transporting permitted HM [1,382 carriers × 30 trucks = 41,460, rounded to nearest hundred].

### **13. ESTIMATE OF TOTAL ANNUAL COSTS TO RESPONDENTS**

There are no costs to respondents beyond those associated with the annual hourly burden.

### **14. ESTIMATE OF COST TO THE FEDERAL GOVERNMENT**

This information collection imposes no cost to the Federal government, because the Federal Government does not routinely collect information for this burden. Motor carriers holding Hazardous Material Safety permits are required to maintain a record of communications and have it readily available to an authorized FMCSA representative or special agent upon request.

### **15. EXPLANATION OF PROGRAM CHANGES OR ADJUSTMENTS**

This ICR is currently approved at 350,000 estimated annual burden hours. FMCSA estimates that it takes 5 minutes to maintain a daily record for each driver's daily communications. The total annual ICR burden for maintaining a daily communication record is approximately 967,000 hours [11.6 million trips x 5 minutes per record/60 minutes per record – 966,667 rounded to the nearest thousand]. The program adjustment increase of 617,000 annual burden hours [967,000 proposed annual burden hours – 350,000 currently approved annual burden hours = 617,000] is due to an increase in the estimated number trucks requiring HM safety permits.

### **16. PUBLICATION OF RESULTS OF DATA COLLECTION**

The results of this IC will not be published.

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<sup>1</sup> Data source: Motor Carrier Management Information System (MCMIS) as of July 26, 2013.

**17. APPROVAL FOR NOT DISPLAYING THE 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.