

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) approval of the reinstatement of the information collection request (ICR) entitled "Practices of Household Goods Brokers," covered by OMB Control Number 2126-0048. This ICR requires reinstatement because it expired on July 31, 2017. The paperwork burden presented in the ICR approved by OMB in April 2014, accounted for costs that were incurred by brokers to come into compliance with Title 49 CFR part 371, however these onetime compliance costs are no longer included and other wage related costs have been updated in the current request for approval of the reinstatement of the ICR.

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.

Specifically, 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. Brokers must either provide a hyperlink on their Internet website to the FMCSA website containing the brochure and pamphlet in FMCSA's publications, or brokers must distribute to each shipper and potential shipper at the time they provide an estimate, copies of FMCSA's publications. 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.

If an individual shipper elects to waive physical receipt of the Federal consumer protection information and elects to access the same information via the hyperlink on the Internet then the broker must include a clear and concise statement on the written estimate that the individual shipper expressly agreed to access the Federal consumer protection information on the Internet. The broker must obtain a signed, dated, electronic or paper receipt showing the individual shipper has received both booklets which includes, if applicable, verification of the shipper's agreement to access the Federal consumer protection information on the Internet. The broker must maintain the signed receipt for three years from the date the individual shipper signs the receipt.

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 484 active, registered HHG brokers.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 59—which would put the percentage of unregistered brokers at just over ten percent (59 is 10.87% of (484 + 59)). The figure is consistent with previous estimates based on conversations with industry experts and information from broker websites. We use 543, 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

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

annual receipts, which are currently set at \$15 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.

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 (82 FR 14102) with a 60-day public comment period to announce this proposed information collection on March 16, 2017, (see Attachment G). The agency received no comments in response to this notice.

FMCSA published a notice in the Federal Register with a 30-day public comment period (82 FR 38988) that announced this information will be sent to OMB for approval (Attachment H), as well as a correction to the 30-day FR (82 FR 46606), issued on October 5, 2017 (Attachment I), to provide clarification to the 30-day public comment notice.

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 543 active household goods brokers; (2) Household goods

brokers have an average of negotiated and signed written agreements with about 31 motor carriers to estimate shipment costs. 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 (3) FMCSA estimates household goods brokers handle about 100,000 moves each year.

The first two items result in 2,715 respondents subject to the information collection ($543 \times 5 = 2,715$). Together with the third item, a total of about 102,715 respondents ($2,715 + 100,000$) would be subject to the information collection.

Table 1 summarizes the current and new information collection burden-hours.

| Table 1: Total Annual Burden-Hours Across the 543 Household Goods Property Brokers | | | |
|---|-------------------------------------|--------------------------------|---------------|
| Section | Description | Calculation | Hours |
| 371.3 | Household Goods Broker Transactions | 15min/day x 240 workdays x 543 | 32,580 |
| 371.13 | Removed Separate Accounting System | Removed | 0 |
| 371.107 | Website/Ad Modification | 20hr x 543 | 10,860 |
| 371.109 | Create A List of Carriers | 10hr x 543 | 5,430 |
| 371.111(c) | Confirming Required Info | 0.5hr/month x 12 x 543 | 3,258 |
| 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 543 | 10,860 |
| 371.117 | Disclosure and Records | 10hr x 543 | 5,430 |
| Total Recurring Annual Hours | | | 70,085 |

1) 371.3—Household Goods Broker Transactions: Note that the current information collection burden for the 543 HHG brokers is estimated to be 32,580 annual burden-hours subject to current 49 CFR Part 371. According to 49 CFR section 371.3, for each of the 543 brokers, it takes 15 minutes per day for 240 workdays for a total of 32,580 hours per year ($1/4 \text{ hours/day} \times 240 \text{ days/broker} \times 543 \text{ brokers} = 32,580$). Previous total annual burden-hour estimates included the initial (one-time first-year) set up of a separate accounting system (Section 371.13), resulting in 1,000 annual hours burden (8 burden-hours x 125 new-entrant household goods brokers each year = 1,000 annual hours burden). 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 and therefore removes this from total annual burden-hour estimations.

2) 371.107—Website/Ad Modification: Information collection requirements in 49 CFR section 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 543 brokers, this comes to 10,860 annual burden-hours (543×20).

3) 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 543 brokers, this comes to 5,430 annual burden-hours (543 x 10).

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 3,258 (543 HHG brokers × ½ an hour per month × 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 § 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 x (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.

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 10,860 annual burden hours.³

7) 371.117—Disclosure and Records: The regulations 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 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 543 brokers spend 10 hours annually, 5,430 burden hours result.

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.

³ 543 brokers x 5 agreements per broker x 4 hours per written agreement = 10,860 hours.

FMCSA is rounding the recurring annual hours to the nearest hundred and thus requests approval for a total recurring annual burden of 70,000 hours.

Estimated Annual Number of Respondents: 543 brokers.

Estimated Annual Number of Responses: 102,715 [(543 respondents x 5 new agreements with motor carriers per year) + 100,000 moves handled per year = 102,715].

Estimated Annual Burden Hours: 70,000 hours.

13. Estimates of Annual Costs to Respondents.

The total cost of the regulations is approximately \$1.677 million per year (see Table 2).

| Section | Description | Per Respondent | Total Cost |
|----------------|---------------------------------------|-----------------------|--------------------|
| 371.107 | Website/Ad Modification | \$830 | \$450,690 |
| 371.109 | Create a List of Carriers | \$245 | \$133,035 |
| e | Confirming Required Info | \$610 | \$331,230 |
| 371.113 | Explanation of Waiver-Agreement | \$59 | \$32,037 |
| e | Annual Agreements Through Turnover | \$1,100 | \$597,300 |
| 371.117 | Disclosure and Records | \$245 | \$133,035 |
| | Total Annually Recurring Costs | \$3,089 | \$1,677,327 |

Estimate of Annual Costs to Respondents: \$1.686 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.

A revised estimate of 70,085 annual burden hours [89,607 currently approved estimated annual burden hours – 70,085 proposed estimated annual burden hours = an estimated burden reduction of 19,522] is the result of the removal of a 1,000 burden-hours from the first year of the IC that are no longer applicable, as well as a difference in calculations using an updated estimate of number of household goods brokers from 690 brokers to 543 brokers (based on 2015 data).

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

Attachment A - Title 49 CFR Part 371

Attachment B - Brokers of HHG Final Rule (75 FR 72987), November 29, 2010.

Attachment C - Petition for Rulemaking, American Moving and Storage Association (AMSA)

Attachment D - Section 4212 of SAFETEA-LU

Attachment E - "Ready to Move" Brochure, April 14, 2006.

Attachment F - "Your Rights and Responsibilities When You Move" Pamphlet, April 14, 2006.

Attachment G - 60-day FR Notice (82 FR 14102), March 16, 2017.

Attachment H - 30-day FR Notice for Reinstatement (82 FR 38988), August 16, 2017.

Attachment I - Correction to 30-day FR Notice for Reinstatement (82 FR 46606),
October 5, 2017.