

Transportation Security Administration/Department of Homeland Security will continue to evaluate security issues, and in the future, may issue additional standards relating to security issues raised in this rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to hazardous material permitting. The FMCSA has estimated costs and benefits for three policy/regulatory options. These estimates are discussed in detail in the full regulatory evaluation contained in the docket. Option 1, the statutory option, is the one preferred by FMCSA. It is an option involving a limited listing of HM included by Congress in earlier rulemaking considerations. It is anticipated that the economic impact of this rule, implementing option 1, would be \$0.6 million in the first year and \$10.5 million in each subsequent year. The total discounted cost estimates are \$74.5 million over 10 years. The costs and benefits for this NPRM are discussed below.

Permit Applications. Industry costs directly tied to obtaining a permit include obtaining an application form, completing the information requested on the form, and submitting the form to FMCSA. Using data from RSPA on carriers that are registered with DOT under the provisions of 49 CFR Part 107 (FY 2002, most recent year available), FMCSA estimates that 2,434 carriers will be subject to this proposed rule. FMCSA estimates that it will take carriers 2 hours to obtain and complete the initial permit application at a total cost per carrier of \$42 (\$15 per hour plus fringe benefits). There are no permit application fees under the proposed program. The industry would thus incur an estimated \$102,228 in permit application costs. This is a one time non-recurring cost.

Permit renewal applications would be required every two years. The estimated burden to complete a renewal application is 15 minutes per carrier per year. This involves gathering some information and checking off a few

additional boxes on the MCS-150 Form. Using the same unit cost of \$15 per hour plus fringe benefits, the annual costs to industry are estimated at \$12,789.

Safety Record Standards Compliance. FMCSA data show that 1,865 motor carriers subject to the requirements proposed in this rule do not currently possess a satisfactory safety rating and will need to obtain one as part of the permit process. This includes carriers without a current safety rating and those whose most recent safety ratings were unsatisfactory or conditional. Carriers who transport HRCQ or radioactive materials (RAM) are assumed to have met the safety record requirements of this rule through their compliance with regulations imposed by the Department of Energy and the Nuclear Regulatory Commission. FMCSA assumes that a typical carrier will spend \$182 preparing for the compliance review necessary to obtain a new safety rating. This includes 2 hours for the carrier's safety director and 6 hours for a clerk to gather and process the necessary information. The total one-time non-recurring permit application and safety compliance costs to industry are, therefore, estimated to be \$339,430.

Operational Costs. The proposed rule imposes four requirements on carriers that will result in increased costs, most of which will recur annually. The rule requires that drivers must be able to contact the carrier and/or law enforcement in emergencies. While many carriers employ sophisticated satellite communication systems, FMCSA assumes that cell-phone type service will meet these requirements and that 90 percent of the vehicles in service already have such a device. The service life of the communications equipment is assumed to be 10 years. Utilizing data from the 1997 Vehicle Inventory and Use Survey (VIUS), FMCSA estimates the total number of vehicles affected by the proposed regulations to be 12,500. Ten percent of these vehicles will require new equipment, estimated at \$100 per vehicle, as well as a communications service plan, estimated at \$60 per month. The one-time non-recurring communication requirement cost to industry is expected to be \$125,000 (1,250 vehicles \times \$100/vehicle) and \$900,000 annual cost in subsequent years (1,250 vehicles \times \$60/month \times 12 months).

Under current requirements for the Commercial Vehicle Safety Alliance (CVSA) Level VI inspections, point of origin inspections are conducted on all shipments of HRCQ or radioactive materials (RAM). Carriers of these HM are required to have route plans and

satisfy conditions for expeditious delivery. As such, HM carriers would not incur extra costs under the proposed permit program to satisfy point-of-origin inspections and route plan requirements.

The proposed rule requires carriers to develop and maintain route plans and ensure that route verification contact numbers are carried on the vehicle so that law enforcement could verify the correct location of the shipment. It is believed that the carrier's representative responsible for developing the route plans would be the one to ensure the numbers are placed in the vehicles and available for inspection. It was also assumed that the same individual would ensure that the permit verification number is placed in the vehicle. A unit cost of \$5.25 per shipment was based on an hourly rate of \$21 (including fringe benefits) for a clerk and 15 minutes to complete the task and was derived from comments to the joint FMCSA/RSPA ANPRM entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials," published July 16, 2002 (67 FR 46622) (FMCSA Docket No. 2002-11650). FMCSA realizes that some shipments are moved along the same routes repeatedly between given origins and destinations and new route plans would not need to be generated each year for these shipments. Further, the HM permits would be valid for two years and the carrier contact numbers are not expected to change frequently, if at all. Therefore, developing route plans and providing verification contact numbers and permit numbers in the vehicles are assumed to be repeated for only 50 percent of the shipments in a given year. The annual number of shipments, 1,221,144, were estimated with FMCSA data and VIUS data on the number of vehicles transporting different HM and assumptions regarding the anticipated number of trips per vehicle per year. Class 1.1, 1.2, and 1.3 and HRCQ RAM shipments were excluded as they already meet the proposed requirements. The estimated annual costs for industry compliance is \$3,205,503 $\left([1,221,144 \text{ annual shipments}] \times [\frac{1}{2} \text{ of shipments requiring action}] \times [\$5.25/\text{shipment}] \right)$.

The cost to a carrier to document and maintain written communication records between itself and its drivers assumes 15 minutes of a clerk's time per shipment. All shipments are considered to require this documentation. The estimated annual cost for this requirement is \$6,411,006 $\left([1,221,144 \text{ annual shipments}] \times [\$5.25/\text{shipment}] \right)$.

Benefits. The benefits of the proposed HM permit program include improved