

Goal of the SNPRM. FMCSA is required by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 to develop and implement a new motor carrier safety permit program. The safety permit program is intended to enhance the safety and security of certain hazardous materials shipments that, if released either accidentally or intentionally during transportation, have the potential to kill or injure large numbers of people and damage property and the environment.

Description of Actions. This SNPRM identifies specific fitness, financial and regulatory criteria for interstate and intrastate motor carriers to qualify and obtain a safety permit from FMCSA. Criteria include imposing operational security requirements, setting minimum safety and security standards, and making safety and security assessments of carriers to ensure compliance with operational, safety, and security standards. The specific hazardous materials covered by this permit program are: highway route-controlled quantities of a Class 7 radioactive material; more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material; more than one liter (1.08 quarts) per package of extremely toxic-by-inhalation hazardous material; and compressed or refrigerated liquid methane or natural gas in bulk packaging of 13,248 liters (3,500 water gallons) or more.

Identification of potentially affected small entities. The proposed rule would affect intrastate and interstate carriers of hazardous materials. The number of small carriers is determined based on the Small Business Administration (SBA) definition used for the RSPA registration file. RSPA flags the small carriers in their registration system based on the number of employees or annual revenue. Of the 2,434 total carriers expected to be affected by this proposed rule, 1,816 have been estimated to be small entities.

In addition to small carriers, other small businesses and small entities potentially could be affected by the proposed permit system. Small businesses that provide services to small carriers, offer hazardous materials for transportation, or receive shipments could also be affected by the proposed rule. The customers and suppliers of small carriers could be adversely affected if a carrier were prohibited from shipping certain hazardous materials because a permit was denied or revoked. Similarly, local government entities such as police could be affected by the proposed hazardous materials permitting requirements. Local police

would be notified anytime three or more hours elapsed after the last time that a communication was received from the driver of a hazardous materials vehicle covered by the permit. This probably would require the expenditure of law enforcement resources to investigate the communication lapse. The number of local police entities that would be involved is difficult to estimate before the permit program is implemented. It has been determined that 1,816 small motor carriers will be affected by the statutory requirements of this rule. Based on an expert judgment, the number of small businesses affected by this rule, excluding small motor carriers, was determined by doubling the number of small carriers affected by the statutory requirements. The application of expert judgment suggests that there could easily be two or more of these entities for each of the small carriers affected. Therefore, it is estimated that as many as approximately 4,000 small businesses could potentially be affected by the rule.

Reporting and recordkeeping requirements. This SNPRM proposes several new or modified recordkeeping requirements. While they have not been fully defined, they are detailed in the section of this preamble entitled "Paperwork Reduction Act." FMCSA has built flexibility into the proposed requirements, so that entities can choose the method by which they comply with the proposals. For example, there is no prescribed method of communication between the driver and the carrier. Carriers are permitted to use any system which meets the performance criteria specified. 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.

Related Federal rules and regulations. If this rule is adopted as proposed, FMCSA will eliminate possible conflict with two pieces of legislation: 49 U.S.C. 5119 and U.S.C. 5105(e). 49 U.S.C. 5119 authorizes states to participate in the Alliance. The FMCSA intends to automatically issue a Federal permit to a carrier that obtains a permit from a State that is part of the Alliance program or another state that has a program equivalent to the Federal permit program in operation. Therefore, a comparable state program will be deemed equivalent to the Federal HM Permit Program and no statutory conflict will exist. The other area is the Point of Origin Inspections for Highway Route Controlled Quantities (HRCQ) shipments that are required by 49 U.S.C.

5105(e). These inspections are currently being conducted via the CVSA Level VI Enhanced Radioactive Materials Inspection Program. This current program would fulfill the requirements of this proposed rule and thus prevent any statutory conflict.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. There are no significant alternatives to the proposed rule that would accomplish the stated proposed HM permitting rule and which would minimize any significant economic impact of the proposed rule on small entities. Alternative permitting systems, such as that of the Alliance program, could address national permitting needs if expanded to include all states, but the effects on small entities would be the same as under the proposed rule because the same requirements and provisions would be in effect.

We developed this SNPRM under the assumption that small businesses make up the majority of entities that will be subject to its provisions. Thus, we considered how to minimize the expected compliance costs as we developed this SNPRM.

Based on the discussion of the potential costs of this SNPRM in the section of this preamble entitled "Executive Order 12866 and DOT Regulatory Policies and Procedures," FMCSA certifies that although this rulemaking would impose a significant economic impact on those small business entities, these small entities do not represent a substantial number of small businesses within the trucking industry. The Research and Special Programs Administration (RSPA) identifies the small carriers in their registration system based on the number of employees or annual revenue, consistent with the Small Business Administration's Small Business Size Standards, which are matched to the North American Industry Classification System (NAICS). FMCSA estimates the costs to a small carrier to comply with this proposed rule to be \$4,512 in the initial year, and \$4,093 in subsequent years. A summary and breakdown of these first-year and annual costs is shown in Table 1. Note that the number of shipments was determined by using data provided by FMCSA in conjunction with U.S. Census Bureau Vehicle Inventory and Use Survey (VIUS) data for the number of trucks transporting particular HM, and assumptions regarding the anticipated number of