

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

**SUPPORTING STATEMENT
Financial Responsibility - Motor Carriers, Freight Forwarders and Brokers
2126-0017**

INTRODUCTION

The Federal Motor Carrier Safety Administration (FMCSA) requests the Office of Management and Budget's (OMB) approval of its revised information collection request (ICR) entitled, "Financial Responsibility – Motor Carriers, Freight Forwarders and Brokers" covered by OMB Control Number 2126-0017. The ICR is currently due to expire on May 31, 2012. The Agency is proposing to revise this ICR due to its development of a supplemental notice of proposed rulemaking (SNPRM) entitled, "Unified Registration System," (see Attachment A) that would add the requirement for exempt for-hire motor carriers and private interstate motor carriers of hazardous materials (private interstate hazmat carriers) to file proof of liability insurance with FMCSA.

Part A. Justification.

1. Circumstances that make collection of information necessary:

The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. § 13902 (see Attachment B); surface freight forwarders under the provision of 49 U.S.C. § 13903 (see Attachment C); and property brokers under the provisions of 49 U.S.C. § 13904 (see Attachment D). These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. § 13901 (see Attachment E). The Secretary's authority to register these entities has been delegated to FMCSA. The registration authority remains valid only as long as the transportation entities maintain, on file with FMCSA, evidence of the required levels of financial responsibility (see Attachment A, and 49 U.S.C. § 13906 at Attachment F). The FMCSA regulations governing the minimum levels of financial responsibility are found at 49 CFR part 387 (see Attachment G).

Section 4303(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, 119 Stat. 1714, August 10, 2005] amended 49 U.S.C. § 13906 by requiring all persons, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier to file evidence of financial responsibility with the Agency. Consequently, motor carriers providing transportation not subject to registration under 49 U.S.C. 13902 (exempt for-hire carriers) are now subject to the financial responsibility filing requirements. Section 4120 of SAFETEA-LU gives the Secretary authority to establish, through rulemaking, financial responsibility requirements applicable to motor private carriers. This section of the statute has not yet been implemented.

Certificates of insurance (Forms BMC-91, BMC-91X and BMC-34); surety bonds (Forms BMC-82, BMC-83 and BMC-84); and trust fund agreements (Form BMC-85) satisfy this statutory requirement. The attachment of endorsements (Forms BMC-90, BMC-90B and BMC-32)¹ to insured motor carriers' or freight forwarders' policies of insurance establish continuing compliance with a statutory requirement, which terminates only when a policy is canceled. Notices of cancellation (Forms BMC-35 and BMC-36) notify FMCSA when regulated motor carriers and freight forwarders have canceled their required bodily injury and property damage (BI & PD) liability and/or cargo liability coverage. In all instances, notices of cancellation (Forms BMC-36 and BMC-85) notify FMCSA when property brokers have canceled their surety bonds or trust fund agreements.

Motor carriers can also satisfy this statutory insurance requirement by qualifying to self-insure bodily injury and property damage and/or cargo liability in lieu of filing certificates of insurance or surety bonds with FMCSA. See 49 CFR 387.11(d)(3) and 387.309. Form BMC-40 is the application form carriers use to apply for self-insurance authority.

2. How, by whom, and for what purpose is the information used.

The purpose of certificates of insurance, when filed with FMCSA, is to certify that the insurance company making the filing is providing the motor carrier or freight forwarder named thereon with liability insurance coverage in the amounts prescribed. By requiring the filing of Forms BMC-91, BMC-91X and BMC-34, the Agency ensures that the public is protected and will be compensated for any claims involving bodily injury and property damage, or loss or damage to household goods, respectively.

Surety bonds (Forms BMC-82 and BMC-83), when filed with FMCSA, certify that the surety company making the filing is liable for cargo losses and damages of the motor carrier or freight forwarder named thereon. A property broker's bond (Form BMC-84) or trust fund agreement (Form BMC-85), on the other hand, only holds the surety company or trustee liable for transportation charges if the broker fails to provide transportation services for which it has been paid. The filing of surety bonds or trust fund agreements helps ensure that motor carriers and the public are protected against non-performance of the broker's legal obligations.

An endorsement (Forms BMC-90, BMC-90B and BMC-32) sets forth the minimum limits of liability or cargo insurance coverage which an FMCSA-regulated motor carrier or freight forwarder is required to maintain. Attachment of the endorsement to the insurance policy establishes continuing compliance with statutory and regulatory requirements. The purpose of the endorsement is to hold an insurance company liable for any damages which may occur to the public (up to the limits of the policy), and to supersede any exclusions or limitations which may be contained in the insured motor carrier's or freight forwarder's policy.

¹ Only household goods motor carriers and freight forwarders need to file the Forms BMC-32 endorsement and BMC-34 certificate of insurance as security to compensate shippers or consignees for loss or damage to cargo in connection with their transportation services. The limits of cargo liability are set forth at 49 CFR § 387.303(c).

The FMCSA is proposing to extend these requirements to exempt for-hire carriers and to private hazmat interstate carriers. All such carriers already are required by 49 U.S.C. § 31138 (see Attachment H) and § 31139 (see Attachment I) and 49 CFR part 387 to obtain and maintain BI & PD insurance. The SNPRM proposes to require these entities now to file evidence of financial responsibility with FMCSA. The proposed filing requirement would provide the public with assurances that all interstate for-hire motor carriers and private hazmat interstate carriers have the financial means to compensate members of the public for injuries or damages caused by their negligence. These filings also would increase public accessibility to insurance information and would enable FMCSA to more effectively track insurance cancellations.

Notices of cancellation (Forms BMC-35, BMC-36 and BMC-85) are used by insurance and surety companies or trustees to notify FMCSA that a certificate of insurance, surety bond or trust fund agreement has been canceled. Since evidence of financial responsibility is to be maintained on a continuous basis, FMCSA may begin proceedings to revoke the operating authority of the regulated entity if replacement insurance, a surety bond or trust fund agreement is not filed with FMCSA by the effective date of the cancellation.

The only alternative motor carriers have to filing certificates of insurance and surety bonds with FMCSA is to qualify to act as self-insurers for their bodily injury and property damage and/or cargo liability. Form BMC-40 is the application form used by carriers and freight forwarders to apply for such authority. Data contained on the completed self-insurance form, and in exhibits attached thereto, provide pertinent information regarding the carrier's or forwarder's financial claims and safety condition. The FMCSA uses this data to make a determination regarding whether the entity qualifies for the grant of self-insurance authority.

This ICR has been disaggregated into 10 information collections (ICs) as follows:

- a. IC-1, Form BMC-91 entitled, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance."
- b. IC-2, Form BMC-91X entitled, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance."
- c. IC-3, Form BMC-34 entitled, "Motor Carrier Cargo Liability Certificate of Insurance."
- d. IC-4, Form BMC-82 entitled, "Motor Carrier Bodily Injury Liability and Property Damage Liability Surety Bond Under 49 U.S.C. § 13906."
- e. IC-5, Form BMC-83 entitled, "Motor Carrier Cargo Liability Surety Bond Under 49 U.S.C. § 13906."
- f. IC-6, Form BMC-84 entitled, "Property Broker's Surety Bond Under 49 U.S.C. § 13906."
- g. IC-7, Form BMC-85 entitled, "Property Broker's Trust Fund Agreement Under 49 U.S.C. § 13906 or Notice of Cancellation of the Agreement."
- h. IC-8, Form BMC-35 entitled, "Notice of Cancellation Motor Carrier Insurance Under 49 U.S.C. § 13906."
- i. IC-9, Form BMC-36 entitled, "Notice of Cancellation Motor Carrier and Brokers Surety Bonds Under 49 U.S.C. § 13906."
- j. IC-10, Form BMC-40 entitled, "Application for Authority to Self-Insure Under 49 U.S.C. § 13906."

Forms BMC-90 entitled, “Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability Under Section 13906, Title 49 of the United States Code,” and BMC-32 entitled, “Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability Under 49 U.S.C. § 13906,” do not create a paperwork burden for any small businesses. The insurance company merely executes the endorsement, attaches it to the bodily injury and property damage or cargo liability insurance policy, respectively, and forwards it to the motor carrier or freight forwarder.

3. Extent of automated information collection:

All filers would be required to file the insurance forms noted above electronically, except the Form BMC-40 entitled, “Application for Authority to Self-Insure” under 49 U.S.C. 13906. Because less than 10 carriers file the BMC-40 form annually, creating an electronic form is not justified. In addition, as the Agency announced in the 2005 NPRM, it is continuing its practice of processing and approving each motor carrier self-insurance application on a case-by-case basis. Commenters generally supported the self-insurance proposal. Finally, the Agency has decided to develop a separate rulemaking to address self-insurance, and therefore is not including any action concerning the Form BMC-40 in this supplementary proposal.

4. Efforts to identify duplication:

There are no similar insurance filings made with any other Federal agency or within the Department of Transportation that would result in duplication of this information.

5. Efforts to minimize the burden on small businesses:

Paperwork burdens associated with completing Forms BMC-91, BMC-91X, BMC-34, BMC-83, BMC-84, BMC-85, BMC-35 and BMC-36 are minimized for small businesses because such entities merely fill in blank spaces with information about the carrier, freight forwarder or broker and the insurer, surety or trustee. Furthermore, certificates of insurance, surety bonds and trust fund agreements are not renewed or replaced on an annual or periodic basis, and notices of cancellation are only filed with FMCSA when an insurance policy, surety bond or trust fund agreement is terminated by the insurer.

Endorsements (see Forms BMC-90, BMC-90B and BMC-32) do not create a paperwork burden for any small business. The insurance company or its agent merely executes the endorsement, attaches it to the bodily injury and property damage or cargo liability insurance policy, respectively, and forwards it to the motor carrier or freight forwarder.

Applications for Authority to Self-Insure (see Form BMC-40) consist of seven pages. However, no consideration has been given to limiting the information requested by this form, since such form is submitted on a voluntary basis. Further, the filing of less information could result in the FMCSA denying the requested authority and, therefore, defeating the purpose of the form and FMCSA’s regulations governing self-insurance authority.

6. Impact of less frequent collection of information:

If this data were collected less frequently, the purpose of the applicable regulations would be defeated. The information collected is intended to establish continuing compliance with statutory insurance requirements and is not collected on a periodic basis. Also, if notices of cancellation are not filed timely, insurers would remain at risk after coverage is terminated and would be held liable for claims made against them, even though the policies or bonds are no longer in effect.

Form BMC-40 is not filed periodically, but on an “as needed” basis.

7. Special circumstances:

There are no special circumstances related to this information collection.

8. Compliance with 5 CFR § 1320.8:

On May 19, 2005, FMCSA published a notice of proposed rulemaking (NPRM) for the Unified Registration System (70 FR 28990) (see Attachment J), which included a proposal to extend the filing of insurance information to exempt-for-hire carriers and private hazmat interstate carriers. FMCSA received five comments related to this proposal. The FMCSA is issuing a supplemental notice of proposed rulemaking and will again seek further comments on this proposal.

9. Payments or gifts to respondents:

Respondents are not provided with any payment or gift for this information collection.

10. Assurance of confidentiality:

There is no statute, regulation or Agency policy that provides assurances of confidentiality. On the contrary, the insurance coverages and cancellations evidenced by these filings are public information regularly requested by individuals and groups.

11. Justification for collection of sensitive information:

The information requested and collected is not of a sensitive nature.

12. Estimate of annual burden hours for information requested:

The annual burden hour estimates are based on motor carrier application data derived from FMCSA’s Motor Carrier Management Information System (MCMIS) for fiscal year (FY) 2007. In 2007, 400,565 financial responsibility filings were made on behalf of 251,415 respondents. All but five of these, however, were filed by insurance companies. Because all of the insurance company filings are completed electronically, with many fields being check boxes, FMCSA

estimates that the filing time for each form is 10 minutes. The five companies that applied to self insure are assumed to spend 40 hours each.

The proposed rule would require exempt-for-hire and private hazmat interstate carriers to have their insurance companies file insurance information. Because FMCSA has no basis for determining which forms they will file, FMCSA has assumed that the new filers will file BMC-91X, the form most commonly filed, and has added 73,327 carriers with recent activity and 5,796 new entrants to the number of respondents for that form. The FMCSA estimates that 6,273 of the new filers will file for replacement insurance during the year, so the total number of additional applicants using the BMC-91X for insurance purposes would be 85,396.

| IC/Form | Annual Burden | Number of Applications | Number of Respondents |
|----------------|----------------------|-------------------------------|------------------------------|
| IC-1, BMC-91 | 69 | 415 | 315 |
| IC-2, BMC-91X | 42,821 | 256,926 | 186,358 |
| IC-3, BMC-34 | 13,458 | 80,750 | 56,360 |
| IC-4, BMC-82 | 9 | 55 | 30 |
| IC-5, BMC-83 | 18 | 105 | 85 |
| IC-6- BMC-84 | 405 | 2,430 | 2,115 |
| IC-7, BMC-85 | 637 | 3,820 | 3,180 |
| IC-8, BMC-35 | 23,345 | 140,070 | 80,760 |
| IC-9, BMC-36 | 231 | 1,385 | 1,330 |
| IC-10, BMC-40 | 200 | 5 | 5 |
| Total | 81,193 | 485,961 | 330,538 |

IC-1: Form BMC-91, Bodily Injury and Property Damage-Full requirements

The FMCSA estimates that Form BMC-91 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 69 Hours [415 x 10 minutes/60 minutes].

Estimated Annual Number of Respondents: 315.

Estimated Annual Number of Responses: 415.

IC-2: Form BMC-91X, Bodily Injury and Property Damage Liability Aggregation

The FMCSA estimates that Form BMC-91X takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 42,821 Hours [256,926 x 10 minutes/60 minutes].

Estimated Annual Number of Respondents: 186,358.

Estimated Annual Number of Responses: 256,926.

IC-3: Form BMC-34, Motor Carrier Cargo Liability Certificate of Insurance

The FMCSA estimates that Form BMC-34 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 13,458 Hours [80,750 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 56,360.
Estimated Annual Number of Responses (New Applications): 80,750.

IC-4: Form BMC-82, Motor Carriers Public Liability Surety Bond

The FMCSA estimates that Form BMC-82 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 9 Hours [55 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 30.
Estimated Annual Number of Responses: 55.

IC-5: Form BMC-83, Motor Carrier Cargo Liability Surety Bond

The FMCSA estimates that Form BMC-83 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 18 Hours [105 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 85.
Estimated Annual Number of Responses: 105.

IC-6: Form BMC 84, Property Broker's Surety Bond

The FMCSA estimates that Form BMC-84 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 405 Hours [2,430 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 2,115.
Estimated Annual Number of Responses: 2,430.

IC-7: Form BMC 85, Property Broker's Trust Fund Agreement

The FMCSA estimates that Form BMC-85 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 637 Hours [3,820 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 3,180.
Estimated Annual Number of Responses: 3,820.

IC-8: Form BMC-35, Notice of Cancellation of Motor Carrier Insurance

The FMCSA estimates that Form BMC-35 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 23,345 Hours [140,070 x 10 minutes/60 minutes].

Estimated Annual Number of Respondents: 80,760.
Estimated Annual Number of Responses: 140,070.

IC-9: Form BMC-36, Notice of Cancellation Motor Carrier and Broker Surety Bonds

The FMCSA estimates that Form BMC-36 takes approximately 10 minutes to complete for a new application.

Estimated Annual Burden to Respondents: 231 Hours [1,385 x 10 minutes/60 minutes].
Estimated Annual Number of Respondents: 1,330.
Estimated Annual Number of Responses: 1,385.

IC-10: Form BMC-40, Authority to Self-insure Against Bodily Injury and Property Damage Claims.

The FMCSA estimates that Form BMC-40 takes approximately 40 hours to complete for a new application and 80 hours for the government to process the form.

Estimated Annual Burden to Respondents: 200 Hours [5 x 40 = 200].
Estimated Annual Number of Respondents: 5.
Estimated Annual Number of Responses: 5.

Estimated Total Annual Burden for this ICR: 81,193 hours.

Estimated Total Annual Number of Respondents for this ICR: 330,538.

Estimated Total Annual Number of Responses for this ICR: 485,961.

Labor costs for the insurance companies are estimated at \$4.63, using the mean wage for an insurance industry insurance claims and policy processing clerk (\$17.73 loaded with fringe benefits at 1.388 percent, based on BLS data or \$24.61 hour in 2010 projected to \$27.81 in 2014 using a 3.1 OMB wage growth rate).² For self-filers, FMCSA used the BLS wage rate for a trucking industry insurance underwriter (\$28.51 plus fringe benefits of 1.31 or \$37.37 in 2010 projected to \$42.22 in 2014 using a 3.1 OMB wage growth rate). Labor cost per form is shown below.

² BLS, May 2010 National Industry-Specific Occupational Employment and Wage Estimates for the insurance industry and BLS, Employer Costs for Employee Compensation, December 2010.

| IC/Form Number | Annual Burden Hours | Labor Cost |
|----------------|---------------------|--------------------|
| IC-1, BMC-91 | 69 | \$1,923 |
| IC-2, BMC-91X | 42,821 | \$1,190,702 |
| IC-3, BMC-34 | 13,458 | \$374,229 |
| IC-4, BMC-82 | 9 | \$255 |
| IC-5, BMC-83 | 18 | \$487 |
| IC-6- BMC-84 | 405 | \$11,262 |
| IC-7, BMC-85 | 637 | \$17,703 |
| IC-8, BMC-35 | 23,345 | \$649,143 |
| IC-9, BMC-36 | 231 | \$6,419 |
| IC-10, BMC-40 | 200 | \$8,445 |
| Total | 81,193 | \$2,260,567 |

As noted above, FMCSA received 400,565 filings in FY 2007. FMCSA is proposing that exempt-for-hire and private hazmat interstate carriers also file proof of insurance. In the first year, 73,327 exempt for-hire and private hazmat interstate carriers with recent activity and 5,796 new entrant exempt-for-hire and private hazmat interstate carriers are estimated to file applications and 6,273 new filers will file for replacement insurance during the year, increasing the number of filings for the year to 485,961 (400,565 + 73,327 + 5,796 + 6,273). In subsequent years, 5,877 and 5,959 additional new carriers, and 6,360 and 6,448 replacement filers are estimated to need to file, but the new filers in Year 1 and subsequent years will only need to file again when their certificate of insurance, surety bond, or trust fund agreement is replaced.

| | New Responses | Responses for Carriers with Recent Activity | Total Responses | Total Burden Hours |
|--------|---------------|---|-----------------|--------------------|
| Year 1 | 85,396 | 400,565 | 485,961 | 81,193 |
| Year 2 | 12,237 | 400,565 | 412,802 | 69,000 |
| Year 3 | 12,407 | 400,565 | 412,972 | 69,028 |

13. Estimate of Total Annual Costs to Respondents:

Express mail for the five self-insurance filings is estimated to cost \$22 per filing or \$110. There are no costs associated with electronic filings.

Total Estimate of Annual Costs to Respondents: **\$110.**

14. Estimate of Cost to the Federal Government:

The cost of the insurance program is estimated to be about \$19.5 million, covering staff, IT services, and overhead.

The FMCSA estimates that it requires approximately 80 hours to process the Form BMC-40. The processing of Form BMC-40 is conducted by employees ranging from the GS-09 to GS-15 levels. Assuming an average grade level of GS-11, Step 10, would process these applications, the hourly wage rate is \$39.15 in 2010 (31.32 loaded with fringe at 1.25 percent) and projected to \$44.24 in 2014 using the 3.1 percent OMB wage growth rate. Thus, the estimated total cost to the Federal Government of processing all paper insurance filings is the \$17,696 cost of processing Form BMC-40. There are no costs specific to other forms.

IC-10: Form BMC 40

Estimated Annual Cost: \$17,696 [5 filings x 80 Hours x \$44.24 = \$17,696].

15. Explanation of program changes or adjustments:

This proposed revision would result in program adjustment increase of 27,035 annual burden hours [54,158 approved annual burden hours revised to 81,193 hours]. The change in burden hours has occurred to recognize the increase in the number of respondents filing Form BMC-91X that would result from the proposed requirement for private hazmat and exempt for-hire interstate carriers to have their insurers file information on their insurance coverage. The previous ICR incorrectly classified labor costs as a cost. The costs would be adjusted downward to reflect only the operating and maintenance (O&M) costs associated with the rule.

16. Publication of results of data collection:

The information collected is not intended for publication.

17. Approval for not displaying the expiration date for OMB approval:

The FMCSA is not seeking approval to not display the expiration date of OMB approval of the information collection.

18. Exception to certification statement:

There are no exceptions to the certification statement.

ATTACHMENTS:

- A. Supplemental Notice of Proposed Rulemaking (SNPRM) entitled, “Unified Registration System,” (76 FR 66506), October 26, 2011.
- B. Title 49 U.S.C. § 13902, Registration of Motor Carriers.
- C. Title 49 U.S.C. § 13903, Registration of Freight Forwarders.
- D. Title 49 U.S.C. § 13904, Registration of Brokers.
- E. Title 49 U.S.C. § 13901, Requirement for Registration.
- F. Title 49 U.S.C. § 13906, Security of Motor Carriers, Motor Private Carriers, Brokers, and Freight Forwarders.
- G. Title 49 CFR part 387, Minimum Levels of Financial Responsibility for Motor Carriers.
- H. Title 49 U.S.C. § 31138, Minimum Responsibility for Transporting Passengers.
- I. 31139, Minimum Financial Responsibility for Transporting Property.
- J. NPRM entitled, “Unified Registration System,” (70 FR28990), May 19, 2005.

Forms:

- BMC-91
- BMC-91X
- BMC-34
- BMC-82
- BMC-83
- BMC-84
- BMC-85
- BMC-90
- BMC-32
- BMC-35
- BMC-36
- BMC-40