

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

Rulemaking, Special Permits and Preemption Requirements

INTRODUCTION

This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection entitled, "Rulemaking, Special Permits and Preemption Requirements" (OMB Control No. 2137-0051), which is currently due to expire on July 31, 2009.

Part A. Justification.

1. Circumstances that make collection of information necessary.

This is a request for renewal without change of an existing approval under OMB No. 2137-0051, applicable to the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-180). This information collection supports the Departmental Strategic Goal for Safety. The HMR are promulgated in accordance with U.S.C. 5110, the Federal hazardous materials transportation law.

This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include Part 105, Subpart A and Subpart B, "Hazardous Materials Program Definitions and General Procedures;" Part 106, Subpart B, "Participating in the Rulemaking Process;" Part 107, Subpart B, "Special Permits;" and Part 107, Subpart C, "Preemption." The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption.

The information collected under these application procedures is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart B of Part 106. Applications for special permits, preemption determinations and waivers of preemption are covered under Subparts B and C of Part 107. Rulemaking procedures enable PHMSA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Special permit procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

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

The information collected under these application procedures is used in the review process by

PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart B of Part 106. Applications for special permits, preemption determinations and waivers of preemption are covered under Subparts B and C of Part 107. Rulemaking procedures enable PHMSA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Special permit procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

3. Extent of automated information collection.

The burden has been made as simple as possible. The information requested is necessary to ensure safe operations. The information is considered critical in evaluating and assuring safe transport of hazardous materials. The Government Paperwork Elimination Act directs agencies to allow the option of electronic filing and recordkeeping by October 2003, when practicable. By the end of 2003, the special permits and approvals process became fully electronically capable for both receiving and delivering. Special permits and approvals applications are currently being accepted by fax and email. Electronic filing and recordkeeping are authorized. Since electronic submission is not mandatory; approximately 10% are applying electronically. Instructions on applying for a special permit or approval are available on-line at our hazmat web site.

4. Efforts to identify duplication.

The collection of this information has been in effect for many years and is unique to the Hazardous Materials Regulations. We have received no indication of duplication.

5. Efforts to minimize the burden on small businesses.

Because this information is unique, similar information is unavailable. This information collection provides affected entities, including small businesses, the opportunity to obtain a special permit from certain regulatory requirements, to submit petitions for rulemaking that could relax regulatory requirements, clarify and simplify the regulations, and to petition for preemption of non-conforming State regulations that may cause an undue burden. However, the collection of this information is reviewed periodically to ensure that the requirements involving safety in the transportation of hazardous materials are kept to the necessary standards to protect all involved.

6. Impact of less frequent collection of information.

Since affected entities are not required to apply for special permits, petition for rulemaking, or request a pre-special permit determination, there is no mandatory information collection that

applies to all regulated entities. Only those entities seeking regulatory change or relief are subject to this information collection. The frequency, for the most part, is determined by those affected. Subsequently, it is not possible to conduct the collection less frequently.

7. Special circumstances.

This collection of information is generally conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2) with the following qualifications:

Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records more than three years.

8. Compliance with 5 CFR 1320.8.

We published a 60-Day Notice and Request for Comments under Docket No. PHMSA–2009–0019 (Notice No. 09–1) on February 5, 2009, in the Federal Register (74 FR 6215) requesting public comment on the renewal of this information collection. The comment period closed on April 6, 2009. One comment was received pertaining to OMB Control No. 2137-0051, “Rulemaking, Special Permits, and Preemption Requirements.” In its comment, the Institute of Makers of Explosives (IME) provided suggestions for administrative improvements to the Special Permits and Competent Authority Approval programs. These comments are beyond the scope of this notice. However, we indicated in the subsequent 30-Day Notice that PHMSA will evaluate the recommendations and consider program changes as necessary and appropriate. No other comment pertaining to this information collection was received.

We published a 30-Day Notice and Request for Comments under Docket No. PHMSA–2009–0019 (Notice No. 09–2) on May 8, 2009, in the Federal Register (74 FR 21732) requesting public comment on the renewal of this information collection. The comment period closed on June 8, 2009. No comments pertaining to this information collection was received

9. Payments or gifts to respondents.

There is no payment or gift provided to respondents associated with this collection of information.

10. Assurance of confidentiality.

None of the data collected contain personally identifiable information (PII) or business confidential information. Therefore, no guarantees of confidentiality are provided to applicants.

11. Justification for collection of sensitive information.

No sensitive information is required.

12. Estimate of burden hours for information requested.

The estimated annual burden hours to respondents are approximately 4,219 hours.

The estimated annual burden costs to respondents are approximately \$248,300.

Estimate of the annual hour burden:

$224 + 720 + 2,000 + 40 + 840 + 240 + 5 + 150 = 4,219$ hours.

Estimate of annual cost burden:

$\$11,200 + \$144,000 + \$40,000 + \$800 + \$33,600 + \$9,600 + \$100 + \$9,000 = \$248,300$.

(a) Sections 106.95 and 106.105 -- 28 respondents will each spend approximately 8 hours preparing and submitting the information contained in the average petition for rule change for a total information collection of 224 hours.

28 respondents \times 8 hours per response = 224 burden hours.

Based on an estimate of \$50 per hour in salary costs, including professional and clerical times, the annual cost for petitions for rulemaking is \$11,200.

224 burden hours \times \$50 average hourly wage = \$11,200 burden cost.

(b) Sections 107.105, 107.107, 107.109, 107.113, 107.117, 107.121, 107.125, 107.127 and Part 107 Subpart B, Appendix B and special permit holder recordkeeping and information collection burdens are based on:

(1) Receipt of approximately 12 requests for new special permits monthly for a total of 144 requests annually. Each request is estimated to take approximately 5 hours to complete for a total information collection burden of 720 hours for new special permit applicants.

12 requests per month \times 12 months = 144 annual requests \times 5 hours per request =

720 burden hours.

The estimated salary costs for developing the necessary information and data necessary for an special permit application is \$ 1,000 including professional, clerical engineering, etc. costs. The total yearly cost for the special permit application process is \$ 144,000.

144 annual requests \times \$1,000 average hourly wage = \$144,000 burden cost.

(2) The recordkeeping and information collection burden for special permits is based on an average of one report received from each of the approximately 2,000 holders or parties to 1,000 special permits. This includes shippers and carriers of hazardous materials and manufacturers of containers for hazardous materials. The reporting burden will vary due to the type of report that is filed. Reports of damaged/leakage special permits packaging is estimated to take approximately one-half (1/2) hour plus one-half (1/2) hour to record and store the required information to make the report on shipping experience. Therefore, the annual information collection burden is 1,000 hours plus the recordkeeping burden is 1,000 hours, or 2,000 hours.

$2,000$ reports \times $\frac{1}{2}$ hour to report damaged/leakage special permits packaging +

$2,000$ reports \times $\frac{1}{2}$ hour to record and store required information =

1,000 + 1,000 = 2,000 burden hours.

The reports and records required by the special permit process will take approximately 2,000 hours at approximately \$ 20 per hour. The total cost is estimated to be \$ 40,000.

2,000 reports x \$20 average hourly wage = \$40,000 burden cost.

(3) An approximate average of 20 requests for U.S. Agent is received annually in conjunction with special permit applications. These requests are estimated to take approximately 2 hours to prepare. The total annual information collection burden for this requirement is approximately 40 hours.

20 annual requests x 2 hours to prepare special permit applications = 40 burden hours.

The average hourly wage to complete the special permit application requirement is estimated at approximately \$40 per request. The total is approximately \$ 800.

20 annual requests x \$40 average hourly wage = \$800 burden cost.

(c) An average of 70 renewal requests is received monthly or approximately 840 requests annually. It is estimated that it takes approximately 1 hour to prepare a request for renewal. Therefore, the annual burden is 840 hours.

70 requests per month x 12 months = 840 annual requests x 1 hour per request = 840 burden hours.

Administrative, professional and clerical costs for assembling and mailing special permit renewal requests is estimated at \$40 per hour, for a total cost of \$33,600.

840 annual requests x \$40 average hourly wage = \$33,600.

(d) Approximately 20 requests to become a party to a special permit are received monthly for an annual total of 240 requests. Each request takes approximately one hour to complete for an annual information collection total of 240 hours.

20 requests per month x 12 months = 240 annual requests x 1 hour per request = 240 burden hours.

The cost for preparing a request for party-to status is estimated at approximately \$40 per hour for administrative and clerical costs. The total cost is approximately \$9,600.

240 annual requests x \$40 average hourly wage = \$9,600.

(e) An average of 20 requests for confidential handling is received annually. Each request is estimated to take approximately 15 minutes to prepare as it involves only the identification of materials in a document of items that are confidential and the preparation of a second document with these items deleted. The total annual burden is five hours.

20 annual requests x 15/60 minutes per requests = 5 burden hours.

The estimated cost is \$20 per hour for administrative and clerical time. The total cost is approximately \$100.

20 annual requests x 15/60 minutes per request x \$20 average hourly wage = \$100.

(f) Sections 107.201, 107.202, 107.203, 107.205, 107.209, 107.211, 107.215, 107.217, 107.219, 107.221, 107.223. PHMSA receives about 2 applications a year for preemption determinations. It is estimated that preparation of each preemption determination application takes approximately 40 hours. Applicants' responses to comments are estimated to require an additional 20 hours each. PHMSA receives approximately 1 petition for reconsideration a year, and preparation is estimated to take approximately another 30 hours. Total information collection hours for the preemption process are estimated to be 150 hours.

2 applications per year x 40 hours per application +

2 responses per year x 20 hours per response +

1 petition per year x 30 hours per petition =

80 + 40 + 30 = 150 burden hours.

The cost for preparing a request for preemption is estimated to be approximately \$ 60 per hour for legal, administrative and clerical time. The total estimated annual costs to respondents for all these activities (legal, administrative, and clerical) at \$60 per hour is \$9,000.

150 burden hours x \$60 average hourly wage = \$9,000.

13. Estimate of total annual costs to respondents.

There is no cost burden to respondents except as identified in item 12 above.

14. Estimate of cost to the Federal government.

The estimated annualized cost to the Federal Government is approximately \$ 898,900.

(a) Sections 106.31 and 106.33: docketing, review, evaluation and processing of notices of proposed rulemakings and amendments based on petitions for rulemaking -- 2 hazardous materials specialists spending approximately 1,040 hours each on petitions for rulemaking at a cost of approximately \$27.40 per hour = \$ 57,000; one clerk spending approximately 1,040 hours at \$10 per hour in salary = \$10,400. Total cost is approximately \$67,400.

2 specialists x 1,040 hours x \$27.40 per hour in salary + 1 clerk x 1,040 hours x \$10 per hour in salary = \$56,992 + \$10,400 = \$67,392 or approximately \$67,400.

(b) Sections 107.105, 107.107, 107.109, 107.113, 107.117, 107.121, 107.123, and 107.125.

(1) Costs to the Federal government for these sections include review by personnel in the Office of Hazardous Materials Special Permits and Approvals (OHMSPA) and the Office of Hazardous Materials Technology (OHMT). Costs in OHMEA include six professionals and two clericals plus one-third of the Office Director's time costs are approximately \$400,000 annually. OHMT costs include 50% of the time for ten professional and two clericals plus one-third of the Office Director's time costs, and are estimated at \$400,000 annually. Total annual costs for special permits and confidentiality requirements are approximately \$800,000.

(c) Sections 107.201, 107.202, 107.205, 107.209, 107.219, 107.221, 107.223. Two staff lawyers and other administrative directors on a part-time basis account for approximately 700 hours at approximately \$ 31,500 annually to manage the preemption process. PHMSA receives an average of 2 requests a year.

15. Explanation of program changes or adjustments.

There is no change in burden.

16. Publication of results of data collection.

There is no publication for statistical use, and no statistical techniques are involved.

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

The approved OMB number is prominently included in the text of 49 CFR 171.6.

18. Exceptions to certification statement.

There is no exception to PHMSA's certification of this request for information collection approval.

ATTACHMENTS:

Part B. Collections of Information Employing Statistical Methods.

This information collection does not employ statistical methods.

1. Describe potential respondent universe and any sampling selection method to be used.

There is no potential respondent universe or any sampling selection method being used.

2. Describe procedures for collecting information, including statistical methodology for stratification and sample selection, estimation procedures, degree of accuracy needed, and less than annual periodic data cycles.

There are no procedures for collecting information, including statistical methodology for stratification and sample selection, estimation procedures, degree of accuracy needed, and less than annual periodic data cycles.

3. Describe methods to maximize response rate.

There are no methods to maximize the response rate.

4. Describe tests of procedures or methods.

There are no tests of procedures or methods.

5. Provide name and telephone number of individuals who were consulted on statistical aspects of the information collection and who will actually collect and/or analyze the information.

There were no individuals consulted on statistical aspects of this information collection.