

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745 (July 5, 1994).) A United States Court of Appeals has found uniformity was the "linchpin" in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation

transported and fees related to transporting hazardous material. See 49 U.S.C. 5125(c) and (f). See also 49 CFR 171.1(f) which explains that a "facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes."

for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.97(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. See 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is "fair" within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on "Preemption" (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy "that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption."

Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts regulations of the State of California that prohibit an employer from requiring an employee to work during any mandatory meal or rest period. Comments should specifically address the preemption criteria discussed in Part II above.

Issued in Washington, DC, on August 23, 2016.

Joseph Solomey,

Senior Assistant Chief Counsel.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0066 (Notice No. 16–16)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA issues this notice to announce that the Information Collection Requests (ICR) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. This ICR describes the nature of the information collection and its expected burden. On June 27, 2016 [81 FR 41648], PHMSA published a **Federal Register** notice with a 60-day comment period under Docket No. PHMSA–2016–0066 (Notice No. 2016–10) that solicited comments pertaining to this ICR. PHMSA did not receive any comments in response to the June 27, 2016 notice.

DATES: Interested persons are invited to submit comments on, or before October 3, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, by any of the following methods:

- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOT–PHMSA, 725 17th Street NW., Washington, DC 20503.

- Fax: 1-202-395-5806.
- Email: OIRA_Submission@omb.eop.gov.

Instructions: Comments should refer to the information collection by title and/or OMB Control Number.

We invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH-12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590-0001, Telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection was last approved. The following information is provided for the information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for the information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137-0039.

Summary: This collection is applicable upon occurrence of an incident as prescribed in §§ 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a main artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,781.

Total Annual Responses: 17,810.

Total Annual Burden Hours: 23,746.

Frequency of collection: On occasion.

Issued in Washington, DC, on August 10, 2016, under authority delegated in 49 CFR part 107.

William S. Schoonover,

Acting Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID: OCC-2016-0023]

Mutual Savings Association Advisory Committee and Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury (OCC).

ACTION: Request for nominations.

SUMMARY: The OCC is seeking nominations for members of the Mutual Savings Association Advisory Committee (MSAAC) and the Minority Depository Institutions Advisory Committee (MDIAC). The MSAAC and

the MDIAC assist the OCC in assessing the needs and challenges facing mutual savings associations and minority depository institutions, respectively. The OCC is seeking nominations of individuals who are officers and/or directors of federal mutual savings associations, or officers and/or directors of federal stock savings associations that are part of a mutual holding company structure, to be considered for selection as MSAAC members. The OCC also is seeking nominations of individuals who are officers and/or directors of OCC-regulated minority depository institutions, or officers and/or directors of other OCC-regulated depository institutions with a commitment to supporting minority depository institutions, to be considered for selection as MDIAC members.

DATES: Nominations must be received on or before October 7, 2016.

ADDRESSES: Nominations of MSAAC members should be sent to msaac.nominations@occ.treas.gov or mailed to: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, 400 7th Street SW., Washington, DC 20219. Nominations of MDIAC members should be sent to mdiac.nominations@occ.treas.gov or mailed to: Beverly F. Cole, Deputy Comptroller for Compliance Supervision, 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT:

About the MSAAC, Michael R. Brickman, Deputy Comptroller for Thrift Supervision, 400 7th Street SW., Washington, DC 20219; (202) 649-6450; msaac.nominations@occ.treas.gov. About the MDIAC, Beverly F. Cole, Deputy Comptroller for Compliance Supervision, 400 7th Street SW., Washington, DC 20219; (202) 649-5688; email: mdiac.nominations@occ.treas.gov.

SUPPLEMENTARY INFORMATION: The MSAAC and the MDIAC will be administered in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2. The MSAAC will advise the OCC on ways to meet the goals established by section 5(a) of the Home Owners' Loan Act, 12 U.S.C. 1464. The Committee will advise the OCC with regard to mutual savings associations on means to: (1) Provide for the organization, incorporation, examination, operation and regulation of associations to be known as federal savings associations (including federal savings banks); and (2) issue charters therefore, giving primary consideration of the best practices of thrift institutions in the United States. The MSAAC will help meet those goals by providing the OCC with informed advice and