

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

Rulemaking, Special Permits, and Preemption Requirements
OMB Control No. 2137-0051

(Expiration Date: April 30, 2018)

Introduction:

This is to request a 3-year renewal with change of the information collection “Rulemaking, Special Permits and Preemption Requirements” (OMB Control No. 2137-0051), which is due to expire on April 30, 2018. This information collection was initially created in 1981 as a means for regulated entities to propose new or revised safety standards that deviated from the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-180). Since that time, it has evolved to include an accounting of the burden associated with the rulemaking, special permits, and preemption requirements. The change in this information collection request is due to PHMSA’s efforts to better account for this burden, including the creation of nine different information collections, as opposed to just one.

Part A. Justification:

1. Circumstances that make collection of information necessary

This is a request for renewal with change of an existing approval under OMB Control No. 2137-0051 for reporting and recordkeeping requirements of rulemaking, special permits, and preemption. Participation in the rulemaking process is detailed in Part 106, Subpart B. Special Permit application requirements are detailed in Part 107, Subpart B. Preemption requirements are detailed in Part 107, Subpart C. This information collection supports the departmental strategic goal of safety. The HMR are promulgated in accordance with U.S.C. 5110, the Federal hazardous materials transportation law. The change in this information collection request is due to PHMSA’s efforts to better account for this burden, including the creation of nine different information collections, as opposed to just one.

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

Part 106, Subpart B details the requirements for participating in the rulemaking process. A person may file a petition for rulemaking in accordance with § 106.95, requesting that PHMSA add, amend, or delete a regulation. PHMSA evaluates each petition based on safety, economic, and policy merits. Each petition is reviewed by chemist and engineers to determine if there is an adequate safety justification to move forward with the petition. PHMSA then notifies the requestor that the petition is either incomplete or complete. If complete, PHMSA notifies the requestor of whether it does or does not justify a rulemaking action.

Part 107, Subpart B, details the requirements for applying for a special permit. A special permit

is required when a person wants to perform an action not otherwise authorized in the HMR (i.e., change in packaging specifications, additional marking exceptions, etc.). An application for a new special permit must provide all information detailed in § 107.105, including, for example, a description of the special permit proposal, justification for requested change, and demonstration that the requested activities meet a level of safety at least equal to that prescribed by the HMR. Depending on the special permit applicant or application, there may be additional requirements, such as when the applicant is requesting confidential treatment or when a foreign applicant is designating a U.S. agent. A person may also apply to use a special permit that is already issued, by applying to receive party status, in accordance with § 107.107. PHMSA has an online database of active special permits available at <https://www.phmsa.dot.gov/approvals-and-permits/hazmat/special-permits-search>. In addition PHMSA publishes a list of newly approved special permits in the federal register on a monthly basis. The application requires a person to include an explanation of why party status to the special permit is needed. Similar to a new special permit application, certain applicant/application circumstances may require additional requirements. Lastly, for both new and party-status special permits, applicants must apply for a renewal, upon expiration, in accordance with § 107.109. The renewal application requires information similar to a new or party-status application, including additional information on pertinent previous operational, shipping, and incident experience in connection with the special permit. Additional information may be required based on applicant/application circumstances.

Part 107, Subpart C, details preemption requirements. Preemption procedures provide information that allows PHMSA to determine whether a State, political subdivision, or Indian tribe requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued. Preemption-determination application requirements are detailed in § 107.203, and waiver of preemption application requirements are detailed in § 107.215. An entity may submit a petition for reconsideration of the preemption or waiver of preemption in accordance with §§ 107.211 or 107.223. The information required for the reconsideration is the same for both preemption determination and waiver of preemption.

3. Extent of automated information collection

The information requested is necessary to ensure safe operations, and is considered critical in making evaluations and assuring safe transportation of hazardous materials. The Government Paperwork Elimination Act directs agencies to allow the option of electronic filing and recordkeeping by October 2003, when practicable. Electronic filing and recordkeeping is authorized, and in previous years, PHMSA has revised the HMR and internal processes to make the burden as simple as possible. PHMSA authorizes the submission of both paper and electronic petitions for rulemakings, special permits, and preemption requests; a person may submit these to PHMSA in whichever form they prefer.

4. Efforts to identify duplication

This information collection has been in effect for many years and is unique to the HMR. There is no duplication, as the information requested is not required by any other source. Each response is unique and information derived from one may not be inferred by another. PHMSA has received no indication of duplication and has done its due diligence to ensure that this

requirement is not covered by any other agency.

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 opportunities to: submit a petition for rulemaking that could relax, clarify, or simplify the regulations; obtain a special permit exempting them from certain regulatory requirements; and petition for preemption of non-conforming State regulations that may cause an undue burden. In addition, 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. Because the benefits to safety outweigh a reduction in small business burden, and because applying for a petition for rulemaking, special permit, or preemption is not required in order to comply with the HMR, this information is collected based on business decisions and not on business size.

6. Impact of less frequent collection of information

Since regulated entities are not required to petition for a rulemaking, apply for special permit, or request a preemption 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 of information collection, for the most part, is determined by those affected. Consequently, 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, for more than 3 years.

8. Compliance with 5 CFR 1320.8

PHMSA published a 60-Day Notice and Request for Comments under Docket No. PHMSA-2017-0018 (Notice No. 2017-01) on April 21, 2017, in the *Federal Register* [82 FR 18828] requesting public comment on the renewal of this information collection, along with 10 other information collections. PHMSA received two comments.

- Submitted April 25, 2017: Comment on PHMSA's request for comment on OMB Control No. 2137-0557, "Approvals for Hazardous Material." At the time of the Notice publication, PHMSA had submitted a renewal with change, based on a rulemaking action. To ensure OMB Control No. 2137-0557 did not expire, the information collection was included as a part of the 60-day notice. The commenter was aware of the renewal request pending with OMB, and therefore questioned PHMSA's decision and requested a republication of the 60-day notice without OMB Control No. 2137-0057. Because this

information collection was approved by OMB, but did not receive an extension in expiration date, a new 60-day Notice was not published and OMB Control No. 2137-0057 was included in the 30-day Notice publication.

- Submitted June 15, 2017: Comment on a pipeline rulemaking action, which was out of the scope of these information collection activities.

PHMSA published a 30-Day Notice and Request for Comments under Docket No. PHMSA-2017-0018 (Notice No. 2017-05) on September 28, 2017, in the *Federal Register* [82 FR 45356] requesting public comment on the renewal of this information collection, along with 10 other information collections. No comments pertaining to this information collection were 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). A small number of special permits do request that business information remain confidential. In these special circumstances, PHMSA works to ensure the confidentiality of the information provided by the applicant. Per § 105.30, PHMSA requires that applicants requesting confidentiality provide both a version of the special permit application that includes confidential information and a copy with the confidential information removed. PHMSA marks the application as confidential in our internal system to help to ensure that confidential information is not shared with the public.

11. Justification for collection of sensitive information

No sensitive information is required.

12. Estimate of burden hours for information requested

Total estimate of annual burden hours:

<u>Total Number of Respondents</u>	<u>Total Number of Annual Responses</u>	<u>Total Annual Burden Hours</u>	<u>Total Annual Salary Costs</u>
3,147	3,147	4,899	\$324,540

Calculation of burden hours and cost

Part 106, Subpart B – Petition for Rulemaking

Section 106.95 outlines the requirements for requesting a petition for rulemaking. PHMSA estimates that 28 respondents submit a petition each year. Based on historical stakeholder feedback, each respondent spends 8 hours preparing and submitting the information required in a petition for a total of 224 total burden hours (28 respondents x 8 hours/response). PHMSA estimates the salary for a respondent submitting the petition to be \$99.88¹ per hour for a total annual burden of \$22,374 (224 burden hours x \$99.88/hour).

<u>Regulation</u>	<u>Information Collection</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 106.100	Petitions for Rulemaking	28	1	28	8	224	\$99.88	\$22,374

Part 107, Subpart B – Special Permit Applications

Special permit application requirements are detailed in Part 107, Subpart B. For any activity that is not authorized in the HMR, an interested entity may apply for a special permit to receive authorization to perform the restricted activity.

A person will need to apply for a new special permit when there is no other special permit authorizing the activity requested, in accordance with § 107.105. Based on applications received, PHMSA approximates that approximately 12 persons apply for a new special permit per month, for a total of 144 special permit requests annually (12 requests/month x 12 months/year). Based on historical stakeholder feedback, each request is estimated to take a person 7 hours to complete for a total of 1,008 total burden hours (144 applications x 7 hours/application). PHMSA estimates that the salary cost for each respondent is \$99.88² per hour, for a total salary cost of \$100,682 (1,008 burden hours x \$99.88/hour).

<u>Regulation</u>	<u>Information Collection</u>	<u>Monthly Respondents</u>	<u>Months per Year</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 107.105	New Special Permit Application	12	12	144	1	144	7	1,008	\$99.88	\$100,682

Any person who wants to apply for an already active special permit, may apply for party status to that special permit. This application process differs from a new special permit application in that there is already some demonstration of an equivalent level of safety; therefore, a party status application is estimated to take less time to complete than a new special permit application. It is estimated that PHMSA receives 20 party status requests per month, for a total of 240 annual

¹ Occupation labor rates based on 2017 Occupational and Employment Statistics Survey (OES) for “Lawyers (23-1011)” in the Legal Operations industry (<https://www.bls.gov/oes/current/oes231011.htm>). The hourly mean wage for this occupation (\$68.22) is adjusted to reflect the total costs of employee compensation based on the BLS Employer Costs for Employee Compensation Summary, which indicates that wages for civilian workers are 68.3 percent of total compensation (total wage = wage rate/wage % of total compensation).

² Ibid.

requests (20 respondents/month x 12 months/year). Based on historical PHMSA estimates, each request is estimated to take an hour and a half to complete for a total of 360 annual burden hours (240 respondents x 1.5 hours/response). PHMSA estimates salary cost of \$41.20/hour³ for total salary cost of \$14,832 (360 burden hours x \$41.20/hour).

<u>Regulation</u>	<u>Information Collection</u>	<u>Monthly Respondents</u>	<u>Months per Year</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 107.707	Request for Party Status	20	12	240	1	240	1.5	360	\$41.20	\$14,832

When a special permit is issued, whether a new or party-status special permit, it receives an expiration date. The time frame for expiration is based on the specific type of special permit. On average, PHMSA receives 70 renewal requests per month, for a total of 840 annual respondents (70 respondents/month x 12 months/year). Based on historical stakeholder feedback, PHMSA estimates it takes an hour and a half to prepare a request for renewal for a total annual burden of 1,260 hours (840 respondents x 1.5 hours/response). The salary cost per hour is estimated to be \$41.20/hour⁴ for a total of \$51,913 total burden cost (1,260 burden hours x \$41.20/hour).

<u>Regulation</u>	<u>Information Collection</u>	<u>Monthly Respondents</u>	<u>Months per Year</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 107.109	Special Permit Renewal	70	12	840	1	840	1.5	1,260	\$41.20	\$51,913

Special permit holders may be required to maintain a special permit at a facility, on a motor vehicle, or with the shipment, per the requirements of the special permit. The special permit holders must provide a copy of the special permit as detailed in the special permit authorization, or to an official of the Department of Transportation, upon request. PHMSA estimates there are 1,852 respondents who are required to furnish a special permit once per year. Based on historical stakeholder feedback, these 1,852 responses take approximately 1 hour to complete, for a total of 1,852 burden hours (1,852 responses x 1 hour/response). PHMSA estimates that permit-holder salary costs for complying with recordkeeping requirements are \$41.20/hour⁵, for a total of \$76,303 in salary costs (1,852 burden hours x \$41.20/response).

<u>Regulation</u>	<u>Information Collection</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
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³ Occupation labor rates based on 2017 Occupational and Employment Statistics Survey (OES) for "First-Line Supervisors of Office and Administrative Support Workers (43-1011)" in the Office and Administrative Support Occupations industry (<https://www.bls.gov/oes/current/oes431011.htm>). The hourly mean wage for this occupation (\$28.14) is adjusted to reflect the total costs of employee compensation based on the BLS Employer Costs for Employee Compensation Summary, which indicates that wages for civilian workers are 68.3 percent of total compensation (total wage = wage rate/wage % of total compensation).

⁴ Ibid.

⁵ Ibid.

Section 107.105	Special Permit Recordkeeping Burden	1,852	1	1,852	1	1,852	\$41.20	\$76,303
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Special permit applications may require additional information collection, depending on the applicant. Special permit holders that are located outside of the United States must request a U.S. agent to submit their special permit application, in accordance with §§ 107.105(a)(2), 107.107(b)(3), or 107.109(a)(3), depending on the type of special permit application. Each year, there are approximately 20 requests for U.S. agents, which based on historical stakeholder feedback, take approximately 2 hours to prepare, for a total of 40 burden hours (20 requests x 2 hours/request). At a salary cost of \$99.88/hour⁶, the total salary cost is estimated to be \$3,995 (40 burden hours x \$99.88/hour).

Regulation	Information Collection	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost
Sections 107.105(a)(2), 107.107(b)(3), or 107.109(a)(3)	Request for US Agent	20	1	20	2	40	\$99.88	\$3,995

A person may also apply for confidential handling of their special permit application, as detailed in § 107.105(b). PHMSA estimates that it receives 20 confidential handling requests annually. Based on historical stakeholder feedback, each request takes approximately 15 minutes to prepare. Therefore, the total annual burden is estimated at 5 hours (20 responses x 15 minutes). At an hourly wage of \$99.88/hour⁷, confidential handling is estimated to cost \$499 (5 burden hours x \$99.88).

Regulation	Information Collection	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost
Section 107.015(b)	Confidential Handling	20	1	20	0.25	5	\$99.88	\$499

Part 107, Subpart C – Preemption

A person may apply for preemption or a waiver for preemption as detailed by §§ 107.203 and 107.215. PHMSA estimates that two applications for preemption determinations are submitted per year. Based on historical stakeholder feedback, each application requires 60 burden hours, for a total of 120 annual burden hours (2 responses x 60 hours/response). It is estimated to cost \$99.88/hour⁸ to prepare the preemption application for a total annual salary of \$11,986 (120 burden hours x \$99.88/hour).

⁶ Occupation labor rates based on 2017 Occupational and Employment Statistics Survey (OES) for “Lawyers (23-1011)” in the Legal Operations industry (<https://www.bls.gov/oes/current/oes231011.htm>). The hourly mean wage for this occupation (\$68.22) is adjusted to reflect the total costs of employee compensation based on the BLS Employer Costs for Employee Compensation Summary, which indicates that wages for civilian workers are 68.3 percent of total compensation (total wage = wage rate/wage % of total compensation).

⁷ Ibid.

⁸ Ibid.

<u>Regulation</u>	<u>Information Collection</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Sections 107.203, 107.215	Preemption Determination Application	2	1	2	60	120	\$99.88	\$11,986

A person may petition for reconsideration of a preemption decision, as outlined in §§ 107.211 and 107.223. PHMSA estimates that there is one petition for reconsideration per year. Based on historical stakeholder feedback, each application is estimated to take 30 hours per response, for a total of 30 burden hours (1 response x 30 hours/response). It is estimated to cost \$99.88/hour⁹ in salary costs to prepare a petition for reconsideration, for a total of \$2,996 (30 burden hours x \$99.88/hour).

<u>Regulations</u>	<u>Information Collection</u>	<u>Annual Respondents</u>	<u>Responses per Respondent</u>	<u>Number of Responses</u>	<u>Hours per Response</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Sections 107.211, 107.223	Preemption Determination Reconsideration	1	1	1	30	30	\$99.88	\$2,996

13. Estimate of total annual costs to respondents

PHMSA does not estimate any out-of-pocket expenses for these information collection requirements.

14. Estimate of cost to the Federal government

The cost to the Federal Government for the economic analysis of petition for rulemaking is estimated to be \$154,000/year. The economic analysis of cost or cost savings for each petition is identified by the Program Management, Data, and Statistics Division. Most of this work is conducted by a contractor, with each petition costing from \$4,000 to \$7,000 per petition. To average the costs, PHMSA is estimating a cost of \$5,500 per petition. For 28 petitions per year, PHMSA estimates this petition analysis costs \$154,000 per year (28 petitions x \$5,500/petition).

<u>Annual Number of Petitions</u>	<u>Average Cost per Petition</u>	<u>Cost to Federal Government for Petition Analysis</u>
28	\$5,500	\$154,000

There is no additional cost to the Federal Government, as the rest of the petition for rulemaking analysis is conducted by Federal employees within the scope of their salaried tasks.

There is no cost to the Federal Government for reviewing Special Permits or Preemption applications. These programs are reviewed by employees as part of their set salary.

⁹ Ibid.

15. Explanation of program changes or adjustments

There are no changes to the total number of burden hours for the renewal of this OMB Control Number. However, there is a change in the number of responses. During review of this burden, PHMSA noted it has historically consolidated all reporting and recordkeeping requirements into one information collection. As demonstrated throughout this justification, PHMSA is now separating the information collections into 9 different reporting and recordkeeping requirements. This change decreases the number of responses. However, this did not change the number of total burden hours, because no changes were made to the petition for rulemaking, special permit, or preemption requirements.

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

This information collection OMB Control Number is prominently displayed in the HMR under § 171.6, “Control Numbers under the Paperwork Reduction Act.”

18. Exceptions to certification statement

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