

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

Response Plans for Shipments of Oil
OMB Control No. 2137-0591

(Expiration Date: May 31, 2018)

Introduction

This is to request the Office of Management and Budget's (OMB) renewed three-year extension for the information collection "Response Plans for Shipments of Oil," OMB Control No. 2137-0591, which is currently due to expire on May 31, 2018. This information collection was initiated from a June 17, 1996 rulemaking [61 FR 30532; HM-214], titled "Oil Spill Prevention and Response Plans," which implemented regulations as required by the Oil Pollution Act of 1990 (OPA-90) (Pub. L. 101-380). This rulemaking was in response to major oil discharges that damaged the marine environment of the United States. This specific information collection addresses the burden associated with pollution prevention and response plans for shipments of petroleum oil. This information collection supports the Departmental Strategic Goal for Safety.

Part A. Justification.

1. Circumstances that make the collection necessary.

This is a request for renewal of the information collection, "Response Plans for Shipments of Oil," OMB Control No. 2137-0591, which is currently due to expire on May 31, 2018. Congress passed OPA-90 to amend the Federal Water Pollution Control Act (FWPCA; 33 U.S.C. §§ 1251 *et seq.*). OPA-90 is designed "to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." Furthermore, OPA-90 reduces the amount of taxpayer dollars used in response to oil spills, because it is designed to internalize costs on private entities response for the spill instead of on the public. To assure that entities achieve that capability, section 4202(a)(5)(A) [33 U.S.C. 1321(j)(5)(A)] of OPA-90 specifies:

"The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (B) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

On October 18, 1991, the President issued Executive Order 12777, *Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as*

Amended, and the Oil Pollution Act of 1990, which delegates, to the Secretary, authority to establish “procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities.

The Secretary redelegated OPA-90 authority to the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) at 49 CFR 1.53. The Secretary's redelegation grants the PHMSA Administrator authority to establish “procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in pipelines, motor carriers, and railways.” (49 CFR, Part 130). In addition, the Administrator may require motor carriers and railways to prepare written response plans, and submit them to DOT for review and approval.

On June 16, 1993, the Research and Special Programs Administration (RSPA), PHMSA’s predecessor, published an Interim Final Rule (IFR) and request for comments and public meeting titled, “Oil Spill Prevention and Response Plans,” [58 FR 33302; HM-214] which implemented the FWPCA, as amended by OPA-90. RSPA published a follow up final rule on June 17, 1996 [61 FR 30533; HM-214], which responded to comments in the IFR. These rulemakings created part 110.30 and the oil spill response plan requirements in this information collection.

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

Basic Written Response Plan: A person who transports liquid petroleum oil in a package with a capacity of 3,500 gallons or more, must have a basic written plan that:

- 1) Sets forth the manner of response to discharges that may occur in transportation;
- 2) Takes into account the maximum potential discharge of the contents from the packaging;
- 3) Identifies who will respond to a discharge;
- 4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center; and
- 5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

As described in the preamble text of the 1993 IFR, the 3,500-gallon threshold for a basic written response plan was selected because it is same bulk package threshold “as the [Hazardous Materials Transportation Act (HMTA)] bulk registration requirement, 49 App. U.S.C. 1805(c)(1)(C), and the Federal Highway Administration’s financial responsibility requirement, 49 CFR part 387.”

Transporters of oil are not required to prepare a separate plan for each cargo tank, tank car, and portable tank under their control. Rather, they may develop nationwide, regional, or other types of generic pollution prevention and response plans.

The basic written response plans must be implemented by the person transporting the oil, in the event of a discharge, in a manner consistent with the National Contingency Plan, 40 CFR part 300, or as otherwise directed by the Federal on-scene coordinator. They are not required to be submitted to any Federal, State, or local entity.

Comprehensive Written Response Plan: Each transporter of liquid petroleum or non-petroleum oil in a quantity greater than 1,000 barrels (42,000 gallons) is subject to comprehensive written plan requirements. These include every requirement for a basic written plan, as well as additional requirements that a plan:

- 1) Conforms with all requirements specified in paragraph (a) of § 130.31
- 2) Is consistent with the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans;
- 3) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing spill response personnel and equipment;
- 4) Identifies, and ensures by contract or other means the availability of, private personnel (including address and phone number), and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge;
- 5) Describes the training, equipment testing, periodic unannounced drills, and response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of such a discharge; and
- 6) Is submitted, and resubmitted in the event of any significant change, to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks) at East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

The 42,000-gallon requirement was tied to 33 USC 1321(j)(5) and represents RSPA's attempt to quantify the amount that "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into [or] on the navigable waters or adjoining shorelines." RSPA ultimately chose 42,000 gallons in part because it was supported by a number of comments to the docket for the 1996 rulemaking that cited its use by the EPA in related sections of the Code of Federal Regulations. For additional information, see 61 FR 30537-38.

3. Extent of automated information collection

The information required is unique to each company and may be amenable to the use of improved information, storage, and retrieval technology. For example, the length and content of the response plans are expected to vary considerably depending on the scope of the carrier's operations. Consequently, the use of automated information collection may be used in place of hard-copy editions (e.g., machine-readable forms). 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. However, this particular information collection is not submitted to PHMSA and therefore it is unknown to what extent this information collection is done electronically.

4. Efforts to identify duplication

In developing this information collection, PHMSA recognized that carriers may also be subject to OPA-90 requirements issued by the Environmental Protection Agency (EPA) for fixed facilities (e.g., storage tanks filled with diesel fuel used to support transportation operations), or another Federal department or agency (e.g., United States Coast Guard (USCG) for mobile marine-transportation related facilities). Also, requirements of EPA and USCG have common attributes (e.g., persons responsible for responding to spills, impact of spilled material to the environment, etc.) with the transportation-related response plans. Therefore, we do not require a stand-alone capability in the development of the emergency response plan for oil. It is quite conceivable that the transportation-related aspects of a response plan may be satisfied by the addition of an annex to a comprehensive operations plan used at a multi-purpose facility (i.e., a complex).

Based on a review performed by PHMSA, much of the required information will be unique. However, some information may also be required under EPA's Oil Pollution Prevention regulations (40 CFR part 112, also known as the Spill Prevention, Control, and Countermeasures (SPCC) program), which applies to onshore, non-transportation-related facilities that: (1) have the potential to discharge oil into the navigable waters or adjoining shorelines of the U.S.; and (2) meet certain storage capacity thresholds. Because certain facilities have both transportation- and non-transportation-related components, such as carrier terminals that have storage tanks, these facilities may be subject to both the PHMSA and EPA regulations. Specifically, under the Oil Pollution Prevention regulation, facilities are required to develop an SPCC plan that describes procedures and responsibilities for preventing discharges from storage tanks. In addition to the existing SPCC regulation, EPA issued OPA-90 response plan regulations similar to those required by PHMSA. Certain carriers that operate onshore facilities with associated storage tanks may be affected by both response plan regulations. Although the extent of the overlap between EPA and PHMSA response plan regulations is not calculated, the overlap is estimated to be small.

In addition, the National Response Team has made various plans required by regulatory agencies (e.g., EPA, USCG, PHMSA) more useful by developing a “One-Plan System.” This concept resulted in a blending of agency-specific plan formats into a single plan that the facility operator may use to satisfy requirements of all Federal, State, and local regulatory authorities.

5. Efforts to minimize the burden on small businesses

This information collection requirement will not have a significant economic impact on a substantial number of small entities. Because of the nature of this information collection requirement, the level of effort to prepare the response plan is estimated to vary directly with the size and complexity of the company's operation. As a result, small business carriers are estimated to incur a lesser burden than larger carriers (i.e., the paperwork burden is not constant across all sizes and types of affected carriers).

Furthermore, in drafting OPA-90, it was clearly Congress' intent that certain small facilities be subject to the same response planning requirements as large facilities. Specifically, in discussing the selection of facilities that could cause “substantial harm” to the environment (i.e., those subject to the information collection activities), the OPA-90 Conference report states:

“The criteria should not result in the selection of facilities based solely on the size or age of storage tanks. Specifically, the selection criteria should not necessarily omit those smaller facilities that are near major drinking water supplies or that are near environmentally sensitive areas.”
H.R. Rep. No. 101-653, 101st Cong. 2nd Sess. 1991, p. 150.

6. Impact of less frequent collection of information

The statutory requirements of OPA-90 specify that after August 18, 1993, facility operators (e.g., carriers) may not handle, store, or transport oil unless a response plan is on file. Thus, this information collection requirement provides carriers with an appropriate level of direction and guidance that clearly communicates what they must do to be in compliance with OPA-90. Absent this regulatory direction and guidance, many carriers may determine that the possible consequences of transporting oil in violation of OPA-90 statutory requirements are so severe as to cause them to otherwise suspend that part of their operations.

PHMSA recognizes the need to minimize the burden of any information collection to the extent permitted under the requirements of OPA-90. Section 4202(a)(5)(C)(vi) of OPA-90, requires carriers to maintain a current written response plan, and submit and resubmit for approval, each significant change (49 CFR 130.31(b)(6)). For purposes of this information collection requirement, a carrier is expected to conduct, at least annually, a review of its response plan and revise it, where appropriate.

PHMSA determined that requiring carriers to review and update response less frequently than once a year would undermine the intent of OPA-90, which is to ensure that carriers have an up-to-date plan. For example, contact lists of spill response personnel may require revision every year, and possibly more frequently. Because the majority of information collection activities involve initial preparation of the response plan, reducing the frequency of the annual information collection activities would not significantly reduce the overall burden of the information collection activities required under this regulation.

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:

- a. Except as noted above concerning requirements for periodic (at least annually) updating of response plans to accurately reflect information like the identification and telephone numbers of response personnel, carriers are not required to report information to the agency more often than quarterly.
- b. This information collection requirement is mandated by a regulation published in the *Federal Register* on June 17, 1996. Because it is a regulation of general applicability, no respondent, or potential respondents (e.g., new carriers and carriers that are expanding their operation to include bulk transportation of oil), may rightfully claim that it must provide the required information in fewer than 30 days.
- c. No respondent is required to prepare and maintain more than one copy of a comprehensive response plan to the Federal Railroad Administrator or the Federal Highway Administrator. Neither is a respondent (carrier) required to maintain more than one copy of its response plan at its principal place of business or dispatch offices.
- d. A respondent (carrier) is required to maintain the spill response plan only as long as it is engaged in the bulk transportation of oil. There is no requirement to retain a plan beyond the date a carrier ceases such transportation.

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 that were outside the scope of this notice

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

9. Payments or gift 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. No guarantees of confidentiality are provided to applicants.

11. Justification for collection of sensitive information

Not applicable. Information is not of a sensitive nature.

12. Estimates of burden hours for information requested

PHMSA consulted several resources (i.e., Truck Inventory and Utilization Survey; Statistical Trends in Railroad Hazardous Materials Transportation Safety; Flows of Selected Hazardous Materials by Rail; and United States Department of Transportation (USDOT)/Maritime Administration Inventory of American Intermodal Equipment) to determine the information in this information collection.

<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>
8,000	8,000	10,560	\$608,784

Basic Written Response Plans:

A person who transports liquid petroleum oil in a package with a capacity of 3,500 gallons or more must have a basic written plan. Based on registration data, PHMSA estimates that there are 80 new transporters subject to this requirement each year. Each transporter creates one basic response plan. It is estimated to take 33 hours to create the new basic response plan, for a total of 2,640 burden hours (80 response plans x 33 hours).

It is estimated to cost \$84.41¹ in salary cost, for a total of \$222,835 in total salary cost (2,640 burden hours x \$84.41).

	<u>Information Collection</u>	<u>Number of Carriers</u>	<u>Response Plan per Carrier</u>	<u>Number of Response Plans</u>	<u>Hours per Response Plan</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 130.31(a)	Basic Written Response Plan - New Plans - Reporting	80	1	80	33	2,640	\$84.41	\$222,835

Based on registration data, there are approximately 7,920 carriers that need to update their basic written response plan on an annual basis. It is estimated to take 1 hour to update the response plan, for a total of 7,920 annual burden hours. At a salary cost of \$84.41 per hour², the total salary cost is \$668,504 to update the basic response plans (\$7,920 burden hours x \$84.41).

	<u>Information Collection</u>	<u>Number of Carriers</u>	<u>Response Plans per Carrier</u>	<u>Number of Response Plans</u>	<u>Hours per Response Plan</u>	<u>Total Burden Hours</u>	<u>Salary Cost per Hour</u>	<u>Total Salary Cost</u>
Section 130.31(a)	Basic Written Response Plan - Updating Plans - Reporting	7,920	1	7,920	1	7,920	\$84.41	\$668,504

Comprehensive Written Response Plan: Each a transporter of liquid petroleum or non-petroleum oil in a quantity greater than 1,000 barrels (42,000 gallons) is subject to comprehensive written plan requirements. Currently, PHMSA is not aware of any carrier that transports liquid petroleum or non-petroleum oil in a quantity greater than 1,000 barrels (42,000 gallons). Therefore, while this is a potential information collection under this OMB Control Number, there is no burden currently associated with this regulatory requirement.

13. Estimate of total annual costs to respondents

PHMSA estimates there are no out-of-pocket expenses, and therefore there is no annual cost to respondents.

14. Estimate of cost to the Federal Government

¹ Occupation labor rates based on 2017 Occupational and Employment Statistics Survey (OES) for “Management Occupations (11-0000)” (<https://www.bls.gov/oes/current/oes110000.htm>). The hourly mean wage for this occupation (\$57.65) 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.

There are no costs to the Federal Government associated with this burden.

15. Explanation of program changes or adjustments

There is no change in hourly burden or the number of responses associated with this request for renewal of this OMB control number. PHMSA notes it has historically consolidated all reporting requirements into one information collection. As demonstrated throughout this justification, there are two different reporting requirements, which PHMSA is now identifying. In addition, PHMSA had previously mistakenly accounted for salary cost as cost burden. There are no out of pocket expenses associated with these information collections and PHMSA is revising as such.

16. Publication of results of data collection

There is no publication of the response plans 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, in § 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.