

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

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

(Expiration Date: November 30, 2024)

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 November 30, 2024. 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 171-180). 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.

The requested changes come from a Notice of Proposed Rulemaking (NPRM) published on March 3, 2023¹, titled “Adoption of Miscellaneous Petitions and Updating Regulatory Requirements” [HM-219D; 88 FR 13624]. This NPRM proposes to update, clarify, improve the safety of, or streamline various regulatory requirements. Specifically, this rulemaking responds to 18 petitions for rulemaking submitted by the regulated community between May 2018 and October 2020 that requests PHMSA address a variety of provisions, including but not limited to those addressing packaging, hazard communication, and the incorporation by reference of certain documents.

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

¹ <https://www.federalregister.gov/documents/2023/03/03/2023-03366/hazardous-materials-adoption-of-miscellaneous-petitions-and-updating-regulatory-requirements>

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 notice of proposed rulemaking (NPRM) on March 2, 2023, [88 FR 13624] titled “Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements,” [HM-219D]. PHMSA did not receive any comments on the information collection burdens associated with this NPRM.

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>	<u>Total Annual Burden Costs</u>
3,679	3,679	4,070	\$304,884	\$0

Part 106, Subpart B – Petition for Rulemaking

PHMSA estimates that 20 respondents submit a petition annually. Based on historical stakeholder feedback, each respondent spends 8 hours preparing and submitting the information required in a petition for a total of 160 total burden hours (20 respondents x 8 hours/response). At a salary cost of \$115.29² per hour, PHMSA estimates a total annual salary cost of \$18,446 (160 burden hours x \$115.29/hour). PHMSA does not estimate any out-of-pocket expenses.

<u>Petitions for Rulemaking – §§ 106.9, 106.110</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>	<u>Total Burden Cost</u>
Reporting	20	1	20	8	160	\$115.29	\$18,446	\$0

Part 107, Subpart B – New Special Permit Applications

Based on applications received, PHMSA approximates that 14 persons apply for a new special permit per month, for a total of 168 annual special permit applications (14 requests/month x

² Occupation labor rates based on 2022 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 (\$78.74) 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).

12 months/year). Based on historical stakeholder feedback, each request is estimated to take 7 hours to complete for a total of 1,176 total burden hours (168 applications x 7 hours/application). PHMSA estimates that the salary cost for each respondent is \$115.29³ per hour, for a total salary cost of \$135,576 (1,176 burden hours x \$115.29/hour). PHMSA does not estimate any out-of-pocket expenses.

New Special Permit Application – § 107.105	Monthly Respondents	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	14	168	1	168	7	1,176	\$115.29	\$135,576	\$0

Part 107, Subpart B –Special Permit Applications – Party Status

Any person who wants to apply for an already active special permit, may apply for party status to that special permit. PHMSA receives an average of 48 party status requests per month, for a total of 576 annual requests (48 respondents/month x 12 months/year). Based on historical estimates, each request takes an hour and a half to complete, for a total of 864 annual burden hours (576 respondents x 1.5 hours/response). At an estimated salary cost of \$46.11/hour,⁴ the total salary cost is estimated at \$39,835 (864 burden hours x \$46.11/hour). PHMSA does not estimate any out-of-pocket expenses.

Request for Party Status – § 107.707	Monthly Respondents	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	48	576	1	576	1.5	864	\$46.11	\$39,835	\$0

Part 107, Subpart B –Special Permit Applications – Renewals

On average, PHMSA receives approximately 66 renewal requests per month, for a total of 797 annual respondents (78 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 1,196 hours (797 respondents x 1.5 hours/response). The salary cost per hour is estimated to be \$46.11/hour,⁵ for a total of \$55,119 total salary cost (1,196 burden hours x \$46.11/hour). PHMSA does not estimate any out-of-pocket expenses.

Special Permit Renewal – § 107.109	Monthly Respondents	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	66	797	1	797	1.5	1,196	\$46.11	\$55,119	\$0

Part 107, Subpart B –Special Permit Applications – Modifications

³ Ibid.

⁴ Occupation labor rates based on 2022 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 (\$31.49) 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).

⁵ Ibid.

On average, PHMSA receives 11 modification requests per month, for a total 132 annual respondents (11 respondents/month x 12 months/year). Based on historical stakeholder feedback, PHMSA estimates that it takes an hour to prepare a request for modification, for a total annual burden of 132 hours (132 respondents x 1 hours/response). The salary cost per hour is estimated to be \$46.11/hour,⁶ for a total of \$6,086 total burden salary cost (132 burden hours x \$46.11/hour). PHMSA does not estimate any out-of-pocket expenses.

Special Permit Modifications – § 107.109	Monthly Respondents	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	11	132	1	132	1	132	\$46.11	\$6,086	\$0

Part 107, Subpart B – Special Permit Applications – Recordkeeping

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, it takes approximately 6 minutes to provide the documentation, for a total of 185 burden hours (1,852 responses x 6 minutes/response). PHMSA estimates that salary cost is \$46.11/hour,⁷ for a total of \$8,539 in salary costs (185 burden hours x \$43.56/response). PHMSA does not estimate any out-of-pocket expenses.

Special Permit Application – § 107.105	Annual Respondents	Responses per Respondent	Number of Responses	Minutes per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Recordkeeping	1,852	1	1,852	6	185	\$46.11	\$8,539	\$0

Part 107, Subpart B – Special Permit Applications – Request for US Agent

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. Each year, there are approximately 100 requests for U.S. agents, which based on historical stakeholder feedback, take approximately 2 hours to prepare, for a total of 200 burden hours (100 requests x 2 hours/request). At a salary cost of \$115.29/hour,⁸ the total salary cost is estimated to be \$23,057 (200 burden hours x \$115.29/hour). PHMSA does not estimate any out-of-pocket expenses.

Request for US Agent – §§ 107.105(a)(2), 107.107(b)(3), 107.109(a)(3)	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	100	1	100	2	200	\$115.29	\$23,057	\$0

⁶ Ibid.

⁷ Ibid.

⁸ Occupation labor rates based on 2022 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 (\$78.74) 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).

Part 107, Subpart B – Special Permit Applications – Confidential Handling

A person may apply for confidential handling of their special permit application, as detailed in § 107.105(b). PHMSA receives approximately 31 confidential handling requests annually. Based on historical stakeholder feedback, each request takes approximately 15 minutes to prepare for a total annual burden of 10 hours (31 responses x 15 minutes). At an hourly wage of \$115.29/hour,⁹ confidential handling is estimated to cost \$893 (8 burden hours x \$115.29). PHMSA does not estimate any out-of-pocket expenses.

Confidential Handling – § 107.105(b)	Annual Respondents	Responses per Respondent	Number of Responses	Minutes per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	31	1	31	15	8	\$115.29	\$893	\$0

Part 107, Subpart C – Preemption Determination

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 takes 60 hours to complete, for a total of 120 annual burden hours (2 responses x 60 hours/response). It is estimated to cost \$115.29/hour¹⁰ to prepare the preemption application for a total annual salary of \$13,834 (120 burden hours x \$115.29/hour). PHMSA does not estimate any out-of-pocket expenses.

Preemption– §§ 107.203, 107.215	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	2	1	2	60	120	\$115.29	\$13,834	\$0

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 to complete, for a total of 30 burden hours (1 response x 30 hours/response). It is estimated to cost \$115.29/hour¹¹ in salary costs, for a total of \$3,459 (30 burden hours x \$115.29/hour). PHMSA does not estimate any out-of-pocket expenses.

Preemption Reconsideration – §§ 107.211, 107.223	Annual Respondents	Responses per Respondent	Number of Responses	Hours per Response	Total Burden Hours	Salary Cost per Hour	Total Salary Cost	Total Burden Cost
Reporting	1	1	1	30	30	\$115.29	\$3,459	\$0

13. Estimate of total annual costs to respondents

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

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

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 \$110,000/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 estimates a cost of \$5,500 per petition. For 20 petitions per year, PHMSA estimates this petition analysis costs \$110,000 per year (20 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>
20	\$5,500	\$110,000

15. Explanation of program changes or adjustments

This information collection request reflects a proposed decrease in responses, burden hours and salary cost. The proposed decreases stem from a NPRM published on March 2, 2023, titled “Adoption of Miscellaneous Petitions and Updating Regulatory Requirements” [HM-219D; 88 FR 13624]. Specifically, this decrease is due to the proposals in the NPRM no longer requiring some entities to renew their special permits.

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.