

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Grants Pass, Channel 257A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010-18265 Filed 7-27-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA-2009-0410 (HM-233B)]

RIN 2137-AE57

Hazardous Materials Transportation: Revisions of Special Permits Procedures

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to revise its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.

DATES: Submit comments by August 26, 2010.

ADDRESSES: You may submit comments identified by the docket number (PHMSA-2009-0410) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

- *Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

- *Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

FOR FURTHER INFORMATION CONTACT: Mr. Steven Andrews or Mr. T. Glenn Foster, Office of Hazardous Materials Standards, PHMSA, at (202) 366-8553 or Mr. Don Burger, Office of Hazardous Materials Special Permits and Approvals, PHMSA, at (202) 366-4511.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. (49 U.S.C. 5103) Federal hazmat law authorizes the Secretary to issue variances—termed special permits—from the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) only if a special permit provides for a safety level at least equal to the safety level required under Federal hazmat law/regulations or consistent

with the public interest and Federal hazmat law, if a required safety level does not exist. Section 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazmat law and issuing special permits.

The HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. A special permit must achieve at least an equivalent level of safety to that specified in the HMR, or be consistent with the public interest and Federal hazmat law, if a required safety level does not exist.

Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities often provide a greater level of safety than required under the regulations. And each applicant granted a special permit undergoes a safety fitness evaluation further assuring the safety of transportation under the special permit. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

The procedures governing the application, issuance, modification, and termination of special permits are found

at Subpart B of 49 CFR part 107 (*see* §§ 107.101–107.127). An application must include: (1) A citation of the specific regulation or regulations from which the applicant seeks relief; (2) the hazardous materials planned for transportation under the special permit; (3) the mode or modes of transportation that will be utilized; (4) a detailed description of the operation for which the special permit is requested (e.g., alternative ways to qualify packagings for hazardous materials transportation; alternative packagings; alternative hazard communication; alternative stowage or segregation plans; or other alternative procedures or activities) and written description, drawings, flow charts, plans, and supporting documentation; (5) the time period for which the special permit is requested; (6) a statement outlining the reasons for requesting the special permit; and (7) a description of the packaging that will be used under the special permit. Further, PHMSA must review an applicant's safety fitness (*i.e.*, previous incidents, citations) to assure that the applicant will carry out its responsibilities in a safe manner.

In addition, the applicant must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation or, if the required safety level does not exist, that the special permit is consistent with the public interest. To this end, at a minimum, the application must include: (1) Information on shipping and incident history and experience relating to the application; (2) identification of increased risks to safety or property that may result if the special permit is granted and a description of measures that will be taken to mitigate that risk; and (3) analyses, data, or test results demonstrating that the level of safety expected under the special permit is equal to the level of safety achieved by the regulation from which the applicant seeks relief.

PHMSA independently reviews and evaluates the information provided in the special permit application to determine that the special permit will achieve an equal level of safety as provided by the HMR or, if a required level of safety does not exist, that the special permit is consistent with the public interest. This review includes a technical analysis of the alternative proposed in the application, an evaluation of the past compliance history of the applicant (including incident history, enforcement actions, and the like), and coordination, as applicable, with the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA),

Federal Aviation Administration (FAA), and/or the U.S. Coast Guard to gather additional information relevant to the application and ensure the agency's concurrence with PHMSA's conclusions.

II. Proposals in This NPRM

In this NPRM, PHMSA is proposing to revise the special permits application procedures by clarifying existing requirements and requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. The proposed revisions to the application procedures will allow PHMSA to more effectively assess the level of safety that will be achieved under the special permit. In addition, the proposed revisions will enable PHMSA to better evaluate the fitness of an applicant, including its ability to safely conduct the operations that may be authorized under a special permit. The additional information will also enhance PHMSA's ability to monitor operations conducted under a special permit and to take corrective actions if necessary to ensure safety. In addition, PHMSA is proposing to remove the word "exemption" from Part 107 and from the definition of a "special permit" in § 107.1, Definitions, and § 171.8, Definitions and Abbreviation because the term has become obsolete. Further, § 107.1 was amended following the publication of a final rule entitled "Hazardous Materials: Incorporation of Special Permits Into Regulations," published on May 14, 2010 [75 FR 27205] under Docket No. PHMSA–2009–0289 (HM–233A). The May 14, 2010 final rule revised the definition for "special permit" in 49 CFR part 107 to permit the Associate Administrator of Hazardous Materials Safety to designate signature authority at the Office Director level. The same revision to the definition for "special permit" was made in § 171.8. Both revisions are reflected in this NPRM.

Finally, to increase flexibility and reduce the paperwork burden on applicants, in this NPRM, PHMSA is proposing to implement an on-line application capability for special permits, and to authorize electronic service for several administrative practices and procedures.

III. Section-by-Section Review

Following is a section-by-section review of the amendments proposed in this NPRM.

Part 105

Section 105.35

Section 105.35 specifies the methods by which PHMSA may serve documents during the course of its proceedings, such as registered mail, certified mail, or publication in the **Federal Register**. In an effort to provide an additional alternative to these methods, in this NPRM, we are proposing to add a new paragraph (a)(4) to authorize electronic service if consented to in writing by the party to be served, and electronic service for all special permit and approval actions.

Part 107

Section 107.105

Section 107.105 specifies the requirements for submitting an application for a special permit or a modification of a special permit. In this NPRM, for clarification, we propose to revise paragraph (a) to require that all supporting documentation be written in English. We propose to revise (a)(1) to require that a table of contents be included in the application and to remove the requirement that applications must be submitted in duplicate. In (a)(1)(iii), we also propose to provide the option for applicants to submit applications on-line through the PHMSA website.

In paragraph (a)(2), PHMSA is proposing to request additional information about the applicant, including the applicant's physical address(es) of all known locations where the special permit will be used, a point of contact for information about the special permit, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier.

In paragraph (a)(4), for a manufacturing special permit, PHMSA is proposing to require the street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and, if applicable, the symbol of the packaging manufacturer ("M" number). PHMSA also is proposing to add a new paragraph (a)(5) to require an applicant who must register in accordance with Subpart F or G of Part 107 to provide its registration number or the name of the company to which the registration number is assigned if different from the applicant. Likewise, in the same paragraph, PHMSA is proposing to require an applicant to provide a statement that the registration requirements are not required when these requirements do not apply.

PHMSA is also proposing to revise, re-designate, and add several new paragraphs in paragraphs (c) and (d) of § 107.105 to ensure that a special permit application includes sufficient information on shipping and incident history and experience relating to the initial application, modification or renewal of a special permit, and identification of increased risks to safety or property that may result if a special permit is granted or renewed.

In paragraph (c)(2), PHMSA is proposing to require a description of all operational controls that would apply to the mode or modes of transportation that will be utilized under the special permit. For example, for a shipment of ammonia solutions, the operational controls may include the driver of a transport vehicle and the consignee being trained not to enter the transport vehicle until the ammonia vapors have dissipated.

In paragraph (c)(3), PHMSA is proposing to require alternative hazard communication, including labeling and marking requirements, be included within the detailed description of the proposed special permit. PHMSA is proposing to revise paragraph (c)(5) to require, for transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available. PHMSA is also proposing to revise paragraph (c)(7) to require the quantity of each hazardous material be indicated in addition to the identification and description of the hazardous materials planned for transportation under the special permit.

In addition, PHMSA is proposing to re-designate paragraph (c)(10) as new paragraph (c)(13), and to add new paragraphs (c)(10), (c)(11) and (c)(12) to require the applicant to submit: (1) An estimate of the number of operations expected to be conducted or the number of shipments expected to be transported under the special permit; (2) an estimate of the number of packagings expected to be manufactured under the special permit; and (3) a statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action, respectively.

Finally, we believe it is essential to understand and analyze the risks of a special permit application, and the analysis should include potential failure modes and consequences. For example, a special permit application that includes Part 178 requirements for design and manufacturing of DOT specification cylinders should include an analysis that addresses failure of a cylinder due to excessive hoop stress,

fatigue, and corrosion. The hoop stress may result from inadequate tensile strength, exposure of a cylinder to high temperature, overfilling, and other factors. We believe that the applicant requesting a special permit is the most suitable party to perform a “failure mode and effect analysis (FMEA)” FMEA or a risk assessment that identifies the associated risks and ways to control the risk for a requested special permit. Therefore, in paragraph (d)(3)(i), PHMSA is proposing to add the phrase “failure mode and effect analysis (FMEA)” as an example of documentation that is acceptable to substantiate that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is being sought.

Section 107.107

Section 107.107 specifies the requirements for submitting an application for party status to an application or an existing special permit. In paragraph (a), PHMSA is proposing to editorially revise the sentence “Any person eligible to apply for a special permit may apply to be made a party * * *” by removing the word “made.” In paragraph (b)(3), PHMSA is proposing to require the applicant to submit the same information that would be required from an applicant for a special permit, including the applicant’s physical address(es) of all known locations where the special permit will be used, a point of contact, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet’s Data Universal Numbering System (D–U–N–S) identifier. We also propose to add a new (b)(6) to require a certification that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

Section 107.109

Section 107.109 specifies the requirements for submitting an application for renewal of a special permit or party status to a special permit. In paragraph (a)(3), PHMSA is proposing to require the applicant to submit the same information that would be required from an applicant for the special permit, including the applicant’s physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, a point of contact, the

name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet’s Data Universal Numbering System (D–U–N–S) identifier. In paragraph (a)(4), for clarification, PHMSA is proposing to provide examples of supporting documentation that may require updating when an application for renewal of the special permit is submitted. In paragraph (a)(5), to more fully capture events that may have occurred throughout the life-cycle of the special permit, PHMSA is proposing to add the term “operational” experience to the current requirement that a statement be included in the application describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal.

PHMSA is also proposing to add new paragraphs (a)(7) and (a)(8). In paragraph (a)(7), PHMSA is proposing to require the applicant to submit additional information for a renewal that is requested after the expiration date of the special permit. Specifically, PHMSA proposes to require: (1) The reason the special permit authorization was allowed to expire; (2) a certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and (3) a statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date. In paragraph (a)(8), PHMSA is proposing to require the applicant to provide a specific justification why the special permit should be renewed if no operations or shipments have been made since the issuance or renewal of the special permit.

Sections 107.109; 107.113; 107.117; 107.121; 107.123; 107.125; and 171.8

In this NPRM, PHMSA is proposing to revise certain sections in Part 107—“Hazardous Materials Program Procedures” to authorize the use of “electronic service” or “electronic means” to provide greater flexibility in the procedures for the issuance, modification, and termination of special permits. The affected sections are as follows:

§ 107.113 Application processing and evaluation.**§ 107.121 Modification, suspension or termination of special permit or grant of party status.****§ 107.123 Reconsideration.****§ 107.125 Appeal.**

Section 107.113 specifies the requirements for the application and processing of: (1) An application for a special permit; (2) modification of a special permit, (3) party to a special permit, or (4) renewal of a special permit to determine if it is complete and conforms to the requirements of the HMR. In paragraph (d), PHMSA is proposing to require that during the processing and evaluation of an application, the Associate Administrator may request additional information from the applicant, including during an on-site review. To enable the agency to better evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit, we are also proposing to specify that a failure on the part of the applicant to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied.

Section 107.117 specifies the requirements for submitting an application for emergency processing. In paragraph (d)(5), PHMSA is proposing to update the telephone number for the Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC for an application submitted on an emergency basis and to be utilized by water transportation for the initial mode of transportation.

PHMSA is also proposing to remove the word "exemption(s)" from various sections in part 107 and from the definition of a "special permit" in § 171.8, Definitions and Abbreviation. These proposed amendments are necessary because use of the term "exemption(s)" has been replaced with "special permit(s)" following the publication of a final rule entitled "Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations," published on December 9, 2005 [70 FR 73156] under Docket No. PHMSA-2005-22208 (HM-240). The December 9, 2005 final rule changed the term "exemption" to "special permit" and provided for a two-year period when the special permit is first granted, and a four-year period for renewals.

The affected sections are as follows:

§ 107.109**§ 107.113****§ 107.121****§ 107.123****§ 171.8****III. Rulemaking Analyses and Notices****A. Statutory/Legal Authority for This Rulemaking**

This NPRM is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations to revise the special permit application requirements and provide an on-line capability for applications.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). In this NPRM, PHMSA is proposing to revise the special permits application procedures by requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. PHMSA recognizes there may be additional costs related to the proposals to require additional information in the special permits application procedures. However, we believe these costs are minimized by the proposals to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication. Taken together, the provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing paperwork burden on

applicants and administrative costs for the agency.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101-5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601-611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The NPRM proposes revisions to current special permit application requirements that may increase the time that would be required to complete such an application. Although many of the applicants may be small businesses or other small entities, PHMSA believes that the addition of an on-line application option will significantly reduce the burden imposed by the application requirements. Therefore, PHMSA certifies that the provisions of this NPRM would not have a significant economic impact on a substantial number of small entities.

F. *Unfunded Mandates Reform Act of 1995*

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. *Paperwork Reduction Act*

PHMSA has an approved information collection under OMB Control Number 2137-0051, "Rulemaking, Special Permits, and Preemption Requirements." This NPRM may result in a slight increase in the annual burden and costs under this information collection due to proposed changes to require an applicant to provide additional information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. Some of this increased burden will be minimized because of proposed changes to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. This notice identifies a revised information collection request, including a new form, that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the additional information collection and recordkeeping burden as proposed in this rule would be as follows:

- OMB Control No. 2137-0051:
- Affected Number of Annual Responses: 3,500.
- Affected Number of Annual Responses: 3,500.
- Net Increase in Annual Burden Hours: 865.
- Net Increase in Annual Burden Costs: \$34,600.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and

maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone (202) 366-8553. Address written comments to the Dockets Unit as identified in the ADDRESSES section of this rulemaking.

We must receive comments regarding information collection burdens prior to the close of the comment period identified in the DATES section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202-395-6974.

H. *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. *Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. Given that this rulemaking proposes to require additional, more detailed information from applicants and strengthen agency oversight, this proposed change in regulation would increase safety and environmental protections. There are no significant environmental impacts associated with this proposed rule.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Parts 105, 107, and 171 as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

2. In § 105.35, add paragraph (a)(4) to read as follows:

§ 105.35 Serving documents in PHMSA proceedings.

(a) * * *

* * * * *

(4) *Electronic service.* (i) Service by electronic means if consented to in writing by the party to be served.

(ii) For all special permits and approvals actions, electronic service is authorized.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note); Pub. L. 104-121 sections 212-213; Pub. L. 104-134 section 31001; 49 CFR 1.45, 1.53.

4. In § 107.1, revise the definition of "special permit" to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 et seq. (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

5. Revise § 107.105 to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested

effective date and conform to the following requirements:

(1) The application, including a table of contents must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366-3753 or (202) 366-3308; or

(iii) Be submitted by electronic mail (e-mail) to: Specialpermits@dot.gov; or on-line at: <http://www.phmsa.dot.gov/hazmat/regs/sp-a>.

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D-U-N-S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent for service in accordance with § 105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer ("M" number), if applicable.

(5) For persons required to be registered in accordance with subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information

listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant must comply with § 105.30(a).

(c) *Description of special permit proposal.* The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required for the mode or modes of transportation;

(3) A detailed description of the proposed special permit (e.g., alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons;

(7) Identification and description, including the quantity, of the hazardous materials planned for transportation under the special permit;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to

a compliance review, inspection activity, or enforcement action;

(13) When a Class 1 material is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(d) *Justification of special permit proposal.* The application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application; and

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (e.g., failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

6. Revise § 107.107 to read as follows:

§ 107.107 Application for party status.

(a) Any person eligible to apply for a special permit may apply to be a party to an application or an existing special permit, other than a manufacturing special permit.

(b) Each application filed under this section must conform to the following requirements:—

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East

Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366-3753 or (202) 366-3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov*, or on-line at: <http://www.phmsa.dot.gov/hazmat/regs/sp-a>.

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D-U-N-S) identifier.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent for service in accordance with § 105.40 of part.

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for party status to a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit

renewal procedures set forth in § 107.109 apply.

7. Revise § 107.109 to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001;

(ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366-3753 or (202) 366-3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov*; or on-line at: <http://www.phmsa.dot.gov/hazmat/regs/sp-a>.

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D-U-N-S) identifier.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (e.g. all section references, shipping descriptions, etc.) and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:

(i) The reason the special permit authorization was allowed to expire;

(ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(8) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(b) If at least 60 days before an existing special permit expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

8. In § 107.113, revise paragraphs (a), (d), (f)(5), (g), and (h) to read as follows:

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for special permit, modification of special permit, party to special permit, or renewal of a special permit to determine if it is

complete and conforms with the requirements of this subpart. This determination will be made within 30 days of receipt of the application for special permit, modification of special permit, or party to special permit, and within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the applicant is informed of the reasons.

* * * * *

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

* * * * *

(f) * * *

(5) The applicant is fit to conduct the activity authorized by the special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

* * * * *

(g) An applicant is notified in writing or by electronic means whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) The initial special permit terminates according to its terms or, if not otherwise specified, 24 months from the date of issuance. A subsequent renewal of a special permit terminates according to its terms or, if not otherwise specified, 48 months after the date of issuance. A grant of party status to a special permit, unless otherwise stated, terminates on the date that the special permit expires.

* * * * *

9. In § 107.117, revise paragraph (d)(5) to read as follows:

§ 107.117 Emergency processing.

* * * * *

(d) * * *

(5) *Water Transportation*: Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593-0001; (202) 372-1426 (day); 1-800-424-8802 (night).

* * * * *

10. Revise § 107.121 to read as follows:

§ 107.121 Modification, suspension or termination of special permit or grant of party status.

(a) The Associate Administrator may modify a special permit, or grant of party status on finding that:

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of § 107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit, or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit, or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter, in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

(c) Except as provided in paragraph (d) of this section, before a special permit, or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing or by electronic means of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause why the proposed action should not be taken.

(2) After considering the holder's or party's response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing or

by electronic means of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

11. Revise § 107.123 to read as follows:

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing or by electronic means of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

12. In § 107.125, revise paragraphs (a)(1) and (c) to read as follows:

§ 107.125 Appeal.

(a) * * *

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration; (2) State in detail any alleged errors of fact and law;

* * * * *

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator's decision is the final administrative action.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

13. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note); Pub. L. 104-134 section 31001.

14. Revise the definition for "Special permit" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

Issued in Washington, DC, on July 19, 2010, under authority delegated in 49 CFR part 106.

R. Ryan Posten,
Senior Director for Hazardous Materials Safety.

[FR Doc. 2010-18142 Filed 7-26-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 177

[Docket No. PHMSA-2005-22987 (HM-238)]

RIN 2137-AE06

Hazardous Materials: Requirements for the Storage of Explosives During Transportation

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in coordination with the Federal Motor Carrier Safety Administration (FMCSA), is proposing to enhance existing attendance requirements for explosives stored during transportation by designating the

National Fire Protection Association (NFPA) standard 498 as the Federally approved standard for the construction and maintenance of safe havens used for unattended storage of Division 1.1, 1.2, and 1.3 explosives.

DATES: Comments must be received by September 27, 2010.

ADDRESSES: You may submit comments identified by the docket number PHMSA-2005-22987 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rule. Note that all comments received will be posted without change, including any personal information provided. Please see the discussion of the Privacy Act below.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> at any time or to Room W12-140, Ground Level, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ben Supko, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and

Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Current Federal Requirements Applicable to Explosives Stored During Transportation

A. Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180

Transportation includes the storage of materials “incident to the[ir] movement.” (49 U.S.C. 5102(13)). The HMR require hazardous materials stored incidental to movement to meet all applicable requirements for packaging, hazard communication (including shipping papers and emergency response information), and handling that apply when shipments are actually moving in transportation. The HMR include specific carrier requirements for transportation of hazardous materials by rail, air, vessel, and highway, including requirements for loading and unloading, blocking and bracing, stowage, segregation, and compatibility (49 CFR parts 174, 175, 176, and 177, respectively).

Explosive (Class 1) materials are among the most stringently regulated hazardous materials under the HMR. The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so (49 CFR 173.50(a)). Class 1 materials are divided into six divisions depending on the degree and nature of the explosive hazard, as shown in the following table (49 CFR 173.50(b)).

| Division | Hazard | Description of hazard | Examples |
|----------|---|--|--|
| 1.1 | Mass explosion hazard | Instantaneous explosion of virtually the entire package or shipment. | grenades, mines, and nitroglycerin. |
| 1.2 | Projection hazard without a mass explosion hazard. | Fragments projected outward at some distance | rockets and warheads. |
| 1.3 | Fire hazard and either a minor projection hazard or minor blast hazard or both but not a mass explosion hazard. | Fire and possible projection of fragments outward at some distance. | projectiles, signal smoke, and tracers for ammunition. |
| 1.4 | Minor explosion hazard | Explosion largely confined to the package and no projection of fragments of any appreciable size or range is expected. | ammunition, airbags, and model rocket motors. |
| 1.5 | Very insensitive explosive | Mass explosion hazard, but low probability of initiation or detonation while in transportation. | blasting agents and ammonia-nitrate fuel oil mixture. |
| 1.6 | Extremely insensitive article | Negligible probability of accidental initiation or propagation. | insensitive article and military. |