

Subsec. (a)(2)(A). Pub. L. 103-311, §105(b)(1), (3), inserted “the State or Indian tribe” before “certifies” and “or Indian tribe” before “expends”.

Subsec. (a)(2)(B). Pub. L. 103-311, §105(b)(4), inserted “the State” before “agrees”.

Subsec. (a)(3). Pub. L. 103-311, §105(c), added par. (3).

Subsec. (i)(1). Pub. L. 103-311, §119(d)(2), as amended by Pub. L. 103-429, struck out “and section 5107(e) of this title” after “under this section”.

Subsec. (i)(3). Pub. L. 103-311, §119(d)(3), as amended by Pub. L. 103-429, substituted “5108(g)(2)” for “5107(e), 5108(g)(2).”

Subsecs. (j), (k). Pub. L. 103-311, §119(a), added subsecs. (j) and (k).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency”, “Administrators, and Director”, and “Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences” substituted for “Director of the Federal Emergency Management Agency”, “Administrator, and Directors”, and “Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences”, respectively, in subsecs. (f) to (h), on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-287, §6(b), Oct. 11, 1996, 110 Stat. 3398, provided that the amendment made by section 6(b) is effective Aug. 26, 1994.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-429, §7(c), Oct. 31, 1994, 108 Stat. 4389, provided that the amendment made by section 7(c) is effective Aug. 26, 1994.

SAVINGS CLAUSE

Pub. L. 114-94, div. A, title VII, §7203(c), Dec. 4, 2015, 129 Stat. 1591, provided that: “Nothing in this section [amending this section and section 5108 of this title] may be construed to prohibit the Secretary [of Transportation] from recovering and deobligating funds from grants that are not managed or expended in compliance with a grant agreement.”

§ 5117. Special permits and exclusions

(a) **AUTHORITY TO ISSUE SPECIAL PERMITS.**—(1) As provided under procedures prescribed by regulation, the Secretary may issue, modify, or terminate a special permit authorizing a variance from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person performing a function regulated by the Secretary under section 5103(b)(1) in a way that achieves a safety level—

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section 5112, for an additional period of not more than 2 years.

(b) **APPLICATIONS.**—When applying for a special permit or renewal of a special permit under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the special permit. The Secretary shall publish in the Federal Register notice that an application for a new special permit or a modification to an existing special permit has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. The Secretary shall make available to the public on the Department of Transportation’s Internet Web site any special permit other than a new special permit or a modification to an existing special permit and shall give the public an opportunity to inspect the safety analysis and comment on the application for a period of not more than 15 days. This subsection does not require the release of information protected by law from public disclosure.

(c) **APPLICATIONS TO BE DEALT WITH PROMPTLY.**—The Secretary shall issue or renew a special permit or approval for which an application was filed or deny such issuance or renewal within 120 days after the first day of the month following the date of the filing of such application, or the Secretary shall make available to the public a statement of the reason why the Secretary’s decision on a special permit or approval is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) **EXCLUSIONS.**—(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972¹ (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(e) **LIMITATION ON AUTHORITY.**—Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter may be granted a variance from this chapter.

(f) **INCORPORATION INTO REGULATIONS.**—

¹ See References in Text note below.

(1) IN GENERAL.—Not later than 1 year after the date on which a special permit has been in continuous effect for a 10-year period, the Secretary shall conduct a review and analysis of that special permit to determine whether it may be converted into the hazardous materials regulations.

(2) FACTORS.—In conducting the review and analysis under paragraph (1), the Secretary may consider—

- (A) the safety record for hazardous materials transported under the special permit;
- (B) the application of a special permit;
- (C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and
- (D) rulemaking activity in related areas.

(3) RULEMAKING.—After completing the review and analysis under paragraph (1) and after providing notice and opportunity for public comment, the Secretary shall either institute a rulemaking to incorporate the special permit into the hazardous materials regulations or publish in the Federal Register the Secretary's justification for why the special permit is not appropriate for incorporation into the regulations.

(g) DISCLOSURE OF FINAL ACTION.—The Secretary shall periodically, but at least every 120 days—

(1) publish in the Federal Register notice of the final disposition of each application for a new special permit, modification to an existing special permit, or approval during the preceding quarter; and

(2) make available to the public on the Department of Transportation's Internet Web site notice of the final disposition of any other special permit during the preceding quarter.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 776; Pub. L. 103-311, title I, §120(a), Aug. 26, 1994, 108 Stat. 1680; Pub. L. 109-59, title VII, §§7115(a)(1), (b)-(g), 7126, Aug. 10, 2005, 119 Stat. 1901, 1909; Pub. L. 112-141, div. C, title III, §33012(c), July 6, 2012, 126 Stat. 839; Pub. L. 114-94, div. A, title VII, §7204, Dec. 4, 2015, 129 Stat. 1592.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|------------------|--------------------------------------|--|
| 5117(a) | 49 App.:1806(a) (1st, 2d sentences). | Jan. 3, 1975, Pub. L. 93-633, §107, 88 Stat. 2158; Nov. 16, 1990, Pub. L. 101-615, §9, 104 Stat. 3259. |
| 5117(b) | 49 App.:1806(a) (3d-last sentences). | |
| 5117(c)(1) | 49 App.:1806(b). | |
| 5117(c)(2) | 49 App.:1806(c). | |
| 5117(d) | 49 App.:1806(d). | |

In subsection (a)(1), before clause (A), the words "or renew" and "subject to the requirements of this chapter" are omitted as surplus. In clause (A), the words "at least equal to the safety level required under this chapter" are substituted for "which is equal to or exceeds that level of safety which would be required in the absence of such exemption" to eliminate unnecessary words.

In subsection (a)(2), the words "issued or renewed" are omitted as surplus.

In subsection (b), the words "upon application" and "grant of such" are omitted as surplus. The words "give the public an opportunity to inspect" are sub-

stituted for "afford access to . . . public" for clarity. The words "described by subsection (b) of section 552 of title 5, or which is otherwise" are omitted as surplus.

In subsection (c)(1), clauses (A) and (B) are substituted for "any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section". Section 201 of that Act amended section 4417a of the Revised Statutes (classified at 46:391a prior to its repeal and reenactment as part of the codification of subtitle II of title 46 in 1983). Clauses (A) and (B) restate the exceptions provided by section 201 of that Act and by section 4417a of the Revised Statutes as subsequently amended. Clause (C) is substituted for "any other vessel regulated under such Act, to the extent of such regulation" because of the restatement.

In subsection (c)(2), before clause (A), the word "prescribed" is substituted for "issued" for consistency in the revised title and with other titles of the United States Code.

In subsection (d), the words "by which", "the requirements of", and "or relieved of the obligation to meet any requirements imposed under" are omitted as surplus.

Editorial Notes

REFERENCES IN TEXT

The Ports and Waterways Safety Act of 1972, referred to in subsec. (d)(1)(C), is Pub. L. 92-340, July 10, 1972, 86 Stat. 424, which was renamed the Ports and Waterways Safety Act by Pub. L. 95-474, §2, Oct. 17, 1978, 92 Stat. 1471, and was classified generally to chapter 25 (§1221 et seq.) of Title 33, Navigation and Navigable Waters, prior to repeal by Pub. L. 115-282, title IV, §402(e), Dec. 4, 2018, 132 Stat. 4264. See Transitional and Savings Provisions note preceding section 101 of Title 46, Shipping, and chapter 700 (§70001 et seq.) of Title 46.

AMENDMENTS

2015—Subsec. (b). Pub. L. 114-94, §7204(1), substituted "an application for a new special permit or a modification to an existing special permit" for "an application for a special permit" and inserted "The Secretary shall make available to the public on the Department of Transportation's Internet Web site any special permit other than a new special permit or a modification to an existing special permit and shall give the public an opportunity to inspect the safety analysis and comment on the application for a period of not more than 15 days." before "This subsection".

Subsec. (c). Pub. L. 114-94, §7204(2), substituted "a special permit or approval" for "the special permit" in two places, "120 days" for "180 days", and "make available to the public" for "publish", and struck out "in the Federal Register" after "a statement".

Subsec. (g). Pub. L. 114-94, §7204(3), added subsec. (g). 2012—Subsec. (f). Pub. L. 112-141 added subsec. (f).

2005—Pub. L. 109-59, §7115(a)(1), substituted "Special permits and exclusions" for "Exemptions and exclusions" in section catchline.

Subsec. (a). Pub. L. 109-59, §7115(b), substituted "Issue Special Permits" for "Exempt" in heading.

Subsec. (a)(1). Pub. L. 109-59, §7126, substituted "Secretary" for "Secretary of Transportation" in introductory provisions.

Pub. L. 109-59, §7115(c), in introductory provisions, substituted "issue, modify, or terminate a special permit authorizing a variance" for "issue an exemption" and "performing a function regulated by the Secretary under section 5103(b)(1)" for "transporting, or causing to be transported, hazardous material".

Subsec. (a)(2). Pub. L. 109-59, §7115(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary."

Subsec. (b). Pub. L. 109-59, §7115(e), substituted "the special permit" for "the exemption" and substituted "a

special permit” for “an exemption” wherever appearing.

Subsec. (c). Pub. L. 109-59, §7115(f), substituted “the special permit” for “the exemption” in two places.

Subsec. (e). Pub. L. 109-59, §7115(g), substituted “a special permit” for “an exemption” and “be granted a variance” for “be exempt”.

1994—Subsecs. (c) to (e). Pub. L. 103-311 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

SPECIAL PERMITS, APPROVALS, AND EXCLUSIONS

Pub. L. 112-141, div. C, title III, §33012(a), (b), July 6, 2012, 126 Stat. 838, provided that:

“(a) RULEMAKING.—Not later than 2 years after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways], the Secretary [of Transportation], after providing notice and an opportunity for public comment, shall issue regulations that establish—

“(1) standard operating procedures to support administration of the special permit and approval programs; and

“(2) objective criteria to support the evaluation of special permit and approval applications.

“(b) REVIEW OF SPECIAL PERMITS.—

“(1) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Secretary shall conduct a review and analysis of special permits that have been in continuous effect for a 10-year period to determine which special permits may be converted into the hazardous materials regulations.

“(2) FACTORS.—In conducting the review and analysis under paragraph (1), the Secretary may consider—

“(A) the safety record for hazardous materials transported under the special permit;

“(B) the application of a special permit;

“(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

“(D) rulemaking activity in related areas.

“(3) RULEMAKING.—After completing the review and analysis under paragraph (1), but not later than 3 years after the date of enactment of this Act, and after providing notice and opportunity for public comment, the Secretary shall issue regulations to incorporate into the hazardous materials regulations any special permits identified in the review under paragraph (1) that the Secretary determines are appropriate for incorporation, based on the factors identified in paragraph (2).”

§ 5118. Hazardous material technical assessment, research and development, and analysis program

(a) RISK REDUCTION.—

(1) PROGRAM AUTHORIZED.—The Secretary of Transportation may develop and implement a hazardous material technical assessment, research and development, and analysis program for the purpose of—

(A) reducing the risks associated with the transportation of hazardous material; and

(B) identifying and evaluating new technologies to facilitate the safe, secure, and efficient transportation of hazardous material.

(2) COORDINATION.—In developing the program under paragraph (1), the Secretary shall—

(A) utilize information gathered from other modal administrations with similar programs;

(B) coordinate with other modal administrations, as appropriate; and

(C) coordinate, as appropriate, with other Federal agencies.

(b) COOPERATION.—In carrying out subsection (a), the Secretary shall work cooperatively with regulated and other entities, including shippers, carriers, emergency responders, State and local officials, and academic institutions.

(c) COOPERATIVE RESEARCH.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Secretary may carry out cooperative research on hazardous materials transport.

(2) NATIONAL ACADEMIES.—The Secretary may enter into an agreement with the National Academies to support research described in paragraph (1).

(3) RESEARCH.—Research conducted under this subsection may include activities relating to—

(A) emergency planning and response, including information and programs that can be readily assessed and implemented in local jurisdictions;

(B) risk analysis and perception and data assessment;

(C) commodity flow data, including voluntary collaboration between shippers and first responders for secure data exchange of critical information;

(D) integration of safety and security;

(E) cargo packaging and handling;

(F) hazmat release consequences; and

(G) materials and equipment testing.

(Added Pub. L. 112-141, div. C, title III, §33007(a), July 6, 2012, 126 Stat. 835; amended Pub. L. 114-94, div. A, title VI, §6014, Dec. 4, 2015, 129 Stat. 1570.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5118, Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 777; Pub. L. 108-426, §2(c)(2), Nov. 30, 2004, 118 Stat. 2424, related to employment of additional hazardous material safety inspectors, prior to repeal by Pub. L. 109-59, title VII, §7115(h), Aug. 10, 2005, 119 Stat. 1901.

AMENDMENTS

2015—Subsec. (a)(2)(C). Pub. L. 114-94, §6014(1), added subpar. (C).

Subsec. (c). Pub. L. 114-94, §6014(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note