

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09–029 to read as follows:

§ 165.T09–029 Safety Zone; Thunder on the Niagara, Gratiwick Riverside Park, North Tonawanda, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of the upper Niagara River located at 42°03′36″ N, 078°54′45″ W to 43°03′09″ N, 078°55′21″ W to 43°03′00″ N, 078°53′42″ W to 43°02′42″ N, 078°54′09″ W. All

Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(c) *Effective time and date.* This rule is in effect from 11 a.m. (local) on June 3, 2006 until 5 p.m. (local) on June 4, 2006. This rule will be enforced from 11 (local) a.m. until 5 p.m. (local) on June 3, 2006 and from 12 p.m. (local) until 5 p.m. (local) on June 4, 2006.

Dated: May 12, 2006.

S.J. Furguson,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E6–8067 Filed 5–24–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2006–24824]

RIN 2137–AE18

Hazardous Materials: Preemption Determinations; Procedural Regulations

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is revising its procedural regulations for issuing administrative determinations as to whether Federal hazardous material transportation law preempts a State, local, or Indian tribe requirement and for issuing waivers of preemption.

DATES: This rule is effective May 25, 2006.

FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, authorizes any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe to

apply to the Secretary of Transportation for a determination as to whether the requirement is preempted. 49 U.S.C. 5125(d)(1). The statutory criteria for preemption of a non-Federal requirement are set forth in section 5125(a), (b), (c), and (f). Section 5125(e) authorizes the Secretary of Transportation to waive preemption on a finding that the non-Federal requirement is not an unreasonable burden on commerce and provides the public at least as much protection as the requirements of Federal hazardous material transportation law and regulations.

The Secretary of Transportation has delegated authority to PHMSA to decide all requests for preemption determinations and waivers of preemption under 49 U.S.C. 5125, except those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration (FMCSA)). 49 CFR 1.53(b)(2), 1.73(d)(2). PHMSA’s procedural regulations implementing this authority (49 CFR part 107, subpart C (107.201–107.227)) currently designate PHMSA’s Associate Administrator for Hazardous Materials Safety to receive applications, conduct proceedings, and make decisions on applications for preemption determinations and waivers.

PHMSA is transferring these functions to its Chief Counsel and amending its procedural regulations accordingly. This change is made effective upon publication.

PHMSA also is amending its procedural regulations to provide that decisions on applications under 49 U.S.C. 5125(d) and (e), and decisions on petitions for reconsideration of these administrative actions, are final upon publication of the decision in the **Federal Register**. Accordingly, the filing of a petition for reconsideration will not postpone the 60-day period for filing a petition for judicial review of the decision under 49 U.S.C. 5127.

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5125 and 49 CFR 1.53(b)(2), and amends previously issued regulations relating to PHMSA’s authority to issue Federal preemption determinations and waivers of preemption.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final 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. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule has no economic impact, and preparation of a regulatory evaluation is not warranted.

C. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The final rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

D. Regulatory Flexibility Act and Executive Order 13272

I certify this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

There are no new information requirements in this final rule.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of \$120.7 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

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 the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR, Subtitle B, Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

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

■ 2. In § 107.201, revise paragraph (d) to read as follows:

§ 107.201 Purpose and scope.

* * * * *

(d) An application for a preemption determination that includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

■ 3. In § 107.203, revise paragraphs (a), (b)(1), and (d) to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State or political subdivision thereof or an Indian tribe, directly affected by any requirement of a State or political subdivision thereof or an Indian tribe, may apply to the Chief Counsel for a determination as to whether that requirement is preempted by § 107.202(a), (b), or (c).

(b) * * *

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Suite 8417, Washington, DC 20590–0001;

(ii) By facsimile to 202–366–7041; or

(iii) Electronically to the Chief Counsel at phmsachiefcounsel@dot.gov.

* * * * *

(d) Once the Chief Counsel has published notice in the **Federal Register** of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision thereof or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Chief Counsel under paragraph (a) of this section.

■ 4. In § 107.205, make the following changes:

■ a. In paragraph (a), remove the term "Associate Administrator" both times it appears and add in its place the term "Chief Counsel."

■ b. In paragraph (b), remove the term "Associate Administrator" and add in its place the term "Chief Counsel."

■ c. Revise paragraph (c).

The revisions read as follows:

§ 107.205 Notice.

* * * * *

(c) Each person submitting written comments to the Chief Counsel with respect to an application filed under this section must send a copy of the comments to the applicant and certify to the Chief Counsel that he or she has complied with this requirement. The Chief Counsel may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond. Late-filed comments are considered so far as practicable.

§ 107.207 [Amended]

■ 5. In § 107.207(a) and (b), remove the term "Associate Administrator" each time it appears (five times in total) and add in its place the term "Chief Counsel."

■ 6. In § 107.209, make the following changes:

■ a. In paragraphs (a) and (b), remove the term "Associate Administrator" and add in its place the term "Chief Counsel."

■ b. Revise paragraph (c) to read as follows:

§ 107.209 Determination.

* * * * *

(c) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the **Federal Register**, at which time the determination becomes a final agency action.

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■ 7. In § 107.211, make the following changes:

■ a. Revise paragraphs (a) and (d).

■ b. In paragraph (b), remove the term "Associate Administrator" and add in its place the term "Chief Counsel".

■ c. In paragraph (c), remove the term "Associate Administrator" both times it appears and add in its place the term "Chief Counsel."

The revisions read as follows:

§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in § 107.203(b), within 20 days of publication of the determination in the **Federal Register**.

* * * * *

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the **Federal Register**, at which time the decision on the petition for reconsideration becomes a final agency action.

■ 8. Revise § 107.213 to read as follows:

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

■ 9. In § 107.215, revise paragraph (a) introductory text and paragraph (b)(1) to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), a State or political subdivision thereof, or Indian tribe may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement—

* * * * *

(b) * * *

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Suite 8417, Washington, DC 20590-0001;

(ii) By facsimile to 202-366-7041; or
(iii) Electronically to the Chief Counsel at *phmsachiefcounsel@dot.gov*.

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§ 107.217 [Amended]

- 10. In § 107.217, make the following changes:
 - a. In paragraph (a), remove the phrases “to the Associate Administrator” and “filed with the Associate Administrator.”
 - b. In paragraph (b)(2), remove the phrase “filed with the Associate Administrator.”
 - c. In paragraph (c), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
 - d. In paragraph (d), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
 - e. In paragraph (e), remove the phrase “to the Associate Administrator” both times it appears and, in the last sentence, remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”

§ 107.219 [Amended]

- 11. In § 107.219, make the following changes:
 - a. In paragraphs (a) and (b), remove the term “Associate Administrator” each time it appears (four times in total) and add in its place the term “Chief Counsel.”
 - b. In the first sentence of paragraph (c), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
 - c. In the first sentence of paragraph (d), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”

- 12. In § 107.221, make the following changes:
 - a. In paragraph (a), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
 - b. In paragraph (b) remove the term “Associate Administrator” both times it appears and add in its place the term “Chief Counsel.”
 - c. In paragraph (c), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
 - d. Revise paragraph (d) to read as follows:

§ 107.221 Determination.

* * * * *

(d) The Chief Counsel provides a copy of the determination to the applicant

and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the **Federal Register**, at which time the determination becomes a final agency action.

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■ 13. In § 107.223, make the following changes:

- a. Revise paragraphs (a) and (d).
- b. In paragraph (b), remove the term “Associate Administrator” and add in its place the term “Chief Counsel.”
- c. In paragraph (c), remove the term “Associate Administrator” both times it appears and add in its place the term “Chief Counsel.”

The revisions read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under § 107.221 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in § 107.215(b), within 20 days of publication of the determination in the **Federal Register**.

* * * * *

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the **Federal Register**, at which time the decision on the petition for reconsideration becomes a final agency action.

■ 14. Revise § 107.227 to read as follows:

§ 107.227 Judicial review.

A party to a proceeding under § 107.215(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

Issued in Washington, DC on May 18, 2006.

Brigham A. McCown,
Acting Administrator.

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