

misapplies benefits in a dedicated account, we will reduce future benefits payable to that recipient (or to that recipient and his or her spouse) by an amount equal to the total amount of the misapplied funds.

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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:** Final rule.

**SUMMARY:** PHMSA is revising 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:** *Effective date:* The effective date of these amendments is March 7, 2011. *Voluntary compliance date:* Voluntary compliance with the provisions of this final rule is authorized January 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Andrews or Mr. T. Glenn Foster, Standards and Rulemaking Division, PHMSA, at (202) 366-8553 or Mr. Ryan Paquet, Approvals and Permits Division, 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) 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. 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. In addition, 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). As currently specified in § 107.105(c), an 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) specification of the proposed mode or modes of transportation; (3) a detailed description of the proposed special permit (*e.g.*, alternative packaging, test, procedure or activity) 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; (6) if the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons; (7) identification and description 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; and (10) 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), certification by 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 that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

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 whether 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, *etc.*), and coordination, as applicable, with the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), and the U.S. Coast Guard to gather additional information relevant to the application and ensure the agency's concurrence with PHMSA's conclusions.

## II. Notice of Proposed Rulemaking

On July 27, 2010, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 43898) 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 also proposed to provide an on-line application option.

## III. Overview of Amendments

In this final rule, PHMSA is revising 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 revisions to the application procedures will allow PHMSA to more effectively assess the level of safety that will be achieved under a special permit. The revisions will also 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 further 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 removing 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 is inaccurate. Further, § 107.1 is being revised 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 final rule.

Finally, to increase flexibility and reduce the paperwork burden on applicants, in this final rule, PHMSA is implementing an on-line application capability for special permits, and is authorizing electronic service for several administrative practices and procedures.

## IV. Discussion of Comments

In response to the July 27, 2010 Notice of Proposed Rulemaking, PHMSA received comments from the following individuals and organizations:

Air Products  
 American Coatings Association  
 American Trucking Associations  
 Association of American Railroads  
 Association of HAZMAT Shippers  
 The Chlorine Institute  
 Commercial Vehicle Safety Alliance  
 Council on Safe Transportation of Hazardous Articles  
 Dangerous Goods Advisory Council  
 DELPHI  
 Gas and Welding Distributors Association  
 Industrial Packing Alliance of North America  
 Institute of Makers of Explosives  
 Matheson  
 National Propane Gas Association  
 Norris Cylinders  
 Northern Air Cargo  
 PPG Industries  
 Radiopharmaceutical Shippers and Carriers Conference  
 Stericycle, Inc.  
 Veolia Environmental Services

Most commenters express support for the Department's efforts to revise the procedures for applying for a special permit and allow an option for on-line application. However, many commenters question the justification for PHMSA's proposals to require additional data requirements such as the DUNS number, name of the company CEO, and known locations of where a special permit will be used. We address these comments under the heading entitled "Section-by-Section Review" in this rule. In addition, PHMSA also received three requests to extend the period to allow for the public to submit comments. Further, we received comments pertaining to fitness determinations discussed at a public meeting held at DOT headquarters on August 8, 2010. However, these comments are beyond the scope of this rulemaking and are not being addressed in this rulemaking.

## V. Section-by-Section Review

Following is a section-by-section review of the amendments in this final rule.

### 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 the NPRM, PHMSA proposed adding 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. PHMSA received comments from the Institute for Makers of Explosives (IME) and the American Truckers Associations (ATA) supporting the incorporation of electronic filing for special permit applications. PHMSA did not receive any comments opposing this requirement. Therefore, we are adopting this requirement as proposed.

### 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 the NPRM, we proposed several revisions pertaining to the application of modification of a special permit that would affect this section. For instance, to provide additional clarification, we proposed to revise paragraph (a) to require that all supporting documentation be written in English. PHMSA received no adverse comments to this proposed requirement, and is adopting this revision as proposed.

PHMSA proposed to revise paragraph (a)(1) of this section to require a table of contents be included in the application and to remove the requirement that applications must be submitted in duplicate. PHMSA received comments from PPG Industries, Dangerous Goods Advisory Council (DGAC), COSTHA, American Coatings Association, and DELPHI opposing the requirement to include a table of contents with a special permit application. One commenter suggests requiring a table of contents only for applications greater than 10 pages, while other commenters suggest replacing the table of contents with a checklist. While PHMSA appreciates the suggested alternatives, we believe a table of contents is the most effective tool for providing an efficient review of special permit applications, especially during the fitness review process, and is therefore adopting this revision as proposed.

In paragraph (a)(1)(iii), PHMSA proposed to provide the option for

applicants to submit applications on-line through the PHMSA Web site. PHMSA received comments from Veolia Environmental Services, IME, ATA, and COSTHA in support of providing applicants the option of submitting special permit applications on-line. PHMSA did not receive any comments opposing this requirement. Therefore, this requirement is being adopted as proposed.

In paragraph (a)(2) PHMSA proposed to request additional information about the applicant, including the physical address(es) of all known locations where the applicant will use the special permit, 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 Data Universal Numbering System (D-U-N-S) identifier. PHMSA received comments from Veolia Environmental Services, PPG Industries, DGAC, IME, ATA, Norris Cylinders, COSTHA, Northern Air Caro, Association of Hazmat Shippers, American Coatings Association, Radiopharmaceutical Shippers and Carriers Conference (RSCC), Stericycle Inc., DELPHI, Association of American Railroads, Matheson, and Air Products objecting to some or all of these requirements. Many of these commenters oppose requiring applicants to list the physical addressees of all known locations where the special permit would be used, stating that it would be impossible for applicants to correctly identify all of the locations where a special permit might be utilized. Other commenters express concern that such a list of known locations could number in the hundreds or thousands. We reiterate that our intention is to conduct a thorough a fitness evaluation of a company as possible. However, we acknowledge that all future locations may not be known at the time of the application. Therefore, for clarification, we stress that we are requiring applicants to report all known facilities that would use the special permit at the time of application. In addition, commenters generally did not believe that providing PHMSA with the name of the company CEO and a DUNS number should be necessary when applying for a special permit. We disagree. PHMSA believes that requiring the name of the company CEO and the DUNS number is necessary to ensure the proper identification and a thorough fitness evaluation of the location(s) where the special permit would be used. In addition, COSTHA recommends that PHMSA use the Federal taxpayer ID number in lieu of a DUNS number.

PHMSA notes that the Federal taxpayer ID is often a person's social security number, which could present unintended consequences such as identify theft for companies, especially small businesses. Therefore, PHMSA is incorporating this requirement as proposed.

For clarification, we editorially revised the language in paragraph (a)(3) to specify that if the applicant is not a resident of the United States, the applicant must identify and designate an agent for service in accordance with § 105.40.

In paragraph (a)(4), for a manufacturing special permit, PHMSA proposed to require the street address of each of the facilities of the applicant where manufacturing under the special permit would occur, and, if applicable, the symbol of the packaging manufacturer ("M" number). PHMSA did not receive any comments opposing this requirement. Therefore, we are adopting this revision as proposed.

PHMSA proposed adding 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. PHMSA also proposed to require applicants to provide a statement that the registration requirements are not required when these requirements do not apply. PHMSA received comments from the Association of HAZMAT shippers and RSCC objecting to this requirement. The commenter states that requiring a registration number for a special permit application could encourage companies already out of compliance with the registration requirement to decide against applying for a special permit. The RSCC states that whether a company is registered should have no bearing on applying for a special permit. While PHMSA acknowledges the arguments of the commenters, we believe that the requirement to include a registration number or statement that the applicant does not require registration will provide PHMSA with the necessary information to determine if the applicant is fit to ship hazardous materials under a special permit. In addition, the current requirement in § 107.503(b) states that no person may engage in the manufacture, assembly, certification, inspection, or repair of a cargo tank vehicle under the terms of a DOT special permit unless the person is registered with PHMSA. PHMSA believes that the vast majority of the hazmat community is diligent in complying with the hazmat registration

requirement and providing a registration number or statement that the applicant does not require registration at the time of the special permit application has a minimal impact. Therefore, PHMSA is adopting this revision as proposed.

In the NPRM, PHMSA proposed to revise, re-designate, and add several new paragraphs to paragraphs (c) and (d) of § 107.105 to ensure that a special permit application includes sufficient information on shipping and incident history, experience, and increased safety risk relating to the initial application, modification or renewal of a special permit. Specifically, in paragraph (c)(2), PHMSA proposed to require a description of all operational controls that would apply to the mode or modes of transportation that would 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. PHMSA received comments from IME and the American Coatings Association objecting to this proposal. IME expresses concern that the requirement for a description of operational controls for all modes of transportation was too vague. The American Coatings Association states that the proposed requirement would be unfairly burdensome because the information requested could potentially include a significant investment of time to complete. While PHMSA understands the concerns of the commenters, current regulations require operational controls be established when applying for a special permit. The purpose of this requirement is to provide us with further information so that we can determine whether the proposed special permit meets the safety equivalency standard set out in paragraph (d). Therefore, we are incorporating this requirement as proposed.

PHMSA proposed to revise paragraph (c)(3) to require that alternative hazard communication, including labeling and marking requirements, be included in the detailed description of the proposed special permit. PHMSA received comments from the Association of HAZMAT Shippers and the American Coatings Association objecting to these requirements. Specifically, both commenters indicate that such requirements are already covered in part 172 of the HMR. While PHMSA agrees that these requirements can be found in other sections of the HMR, we believe it is necessary to require this information with respect to specific special permit applications to ensure

that these shipments are being transported in a safe manner. Therefore, PHMSA is incorporating this requirement as proposed.

PHMSA proposed to revise paragraph (c)(5) to require, for transportation by air, a statement outlining the reason(s) the hazardous material would be transported by air if other modes are available. PHMSA received comments from PPG Industries, DGAC, IME, COSTHA, Association of HAZMAT Shippers, RSCC, and DELPHI objecting with these proposed requirements. Commenters reasoned that if PHMSA believes a shipment is safe for transportation under one mode, it should be considered safe for all modes. Other commenters expressed concern that they would no longer be able to make shipments by air. We disagree. We believe that the transportation of hazardous materials by air presents unique circumstances not found in transportation by rail, highway, or water, and note that the HMR contain several air-specific requirements. In addition, we emphasize that this requirement as proposed requests a justification from applicants for shipments under a special permit by air, but does not prohibit such shipments. Therefore, in this final rule, we are adopting this requirement as proposed.

PHMSA proposed 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. PHMSA received comments from PPG Industries, DGAC, American Coatings Association, and Stericycle Inc. objecting to this proposed requirement. Commenters note that any such quantity would be an estimate, and potentially inaccurate. PHMSA acknowledges that the specific quantity of each hazardous material planned for transportation under a special permit may not be known during the application process. However, we believe an estimate based on the applicant's best available information will enable PHMSA to better evaluate the applicant's ability to safely transport hazardous materials under the conditions of the special permit. Therefore, in this final rule, PHMSA is adopting this requirement as proposed with the additional clarification that an estimate of the quantity of each shipment of the hazardous material planned for transportation is required.

In addition, PHMSA proposed to redesignate paragraph (c)(10) as new paragraph (c)(13), and 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. PHMSA received comments from DGAC, IME, ATA, COSTHA, Association of HAZMAT Shippers, RSCC, and Stericycle Inc. objecting to the proposed requirement that applicants estimate the number of shipments expected to be transported under a special permit. Some commenters believe that PHMSA failed to justify its request for the quantity of hazardous materials or operations expected to be conducted under a special permit. Other commenters expressed concern that estimating the quantity of hazardous materials to be shipped under a special permit will be too difficult to provide a reasonable estimate. We disagree. For clarification, we expect applicants to provide an estimate of the number of shipments based on the best available knowledge, and are adopting this requirement as proposed.

In paragraph (c)(11) PHMSA proposed to require an estimate of the number of packagings expected to be manufactured under the special permit. PHMSA received comments on this proposal from IME and COSTHA. IME states that it did not object to quantifying the number of packages manufactured under a special permit, but acknowledged that it would be an estimate. COSTHA states that there would be very little value in PHMSA knowing the number of packages manufactured under a special permit, and a true estimate would be very difficult to determine. As previously stated, PHMSA expects applicants to provide an estimate of the number of shipments based on the best available knowledge at the time the application is submitted. Therefore, PHMSA is adopting this requirement as proposed.

In paragraph (c)(12) PHMSA proposed to require a statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action. PHMSA received comments from IME, COSTHA, and the American Coatings Association objecting to this requirement. IME states that it is unclear how PHMSA is going to use this information. COSTHA indicates a belief that false allegations against a company could preclude it from obtaining a special permit. PHMSA believes it is relevant whether the

applicant is applying for the special permit in response to a compliance review, inspection activity or enforcement action, and that this information will assist us in the determination of the fitness of an applicant and will help us to ensure that compliance data pertaining to an applicant is accurate. Therefore, we are adopting this requirement as proposed.

In paragraph (d)(3)(i), PHMSA proposed to add the phrase "failure mode and effect analysis (FMEA)" as an example of documentation that is acceptable to substantiate that the proposed alternative sought in the special permit application will achieve a level of safety that is at least equal to that required by the regulation from which the applicant is requesting relief. PHMSA received comments from COSTHA, Northern Air Cargo, Association of HAZMAT Shippers, American Coatings Association, DGAC, ATA and Stericycle Inc. expressing concerns about the requirement to conduct a FMEA. For clarification, we stress that we are not requiring applicants to conduct a FMEA. Rather, our intention is to require that applicants substantiate the required level of safety by using a risk assessment, with applicable analyses, data or test results. We provided a FMEA as an example of a tool that can be used in order to demonstrate such an equivalent level of safety, but emphasize that it is not to be construed as a requirement. In addition, as discussed in the NPRM, 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 potential failure of a cylinder due to excessive hoop stress, fatigue, and corrosion. We believe the applicant requesting a special permit is the most suitable party to perform a "failure mode and effect analysis (FMEA)" or other risk assessment that identifies the associated risks and ways to control the risk for a requested special permit. Therefore, PHMSA is incorporating this requirement as proposed.

#### Section 107.107

In § 107.107, PHMSA proposed to revise the requirements for submitting an application for party status to an application or an existing special permit. In paragraph (a), PHMSA proposed 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 proposed to require applicants to submit the same information that would be required from an applicant for a special permit, including the physical address(es) of all known locations where the special permit would be used, a point of contact, the name of the company president or CEO, and DUNS identifier. For clarification, we editorially revised the language in paragraph (b)(4) to specify that if the applicant is not a resident of the United States, the applicant must identify and designate an agent for service in accordance with § 105.40. PHMSA also proposed 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 would follow renewal procedures as specified in § 107.109. PHMSA received comments from PPG Industries, American Coatings Association, and Stericycle Inc. repeating the previous concerns from the comments to the proposed requirements for § 107.105 regarding the requirement to provide the CEO name and DUNS number. Stericycle Inc. expresses concern that revealing a list of all known locations where a special permit will be used would require them to reveal proprietary information. We note that the HMR already has procedures in § 105.30(a) for applicants who wish to protect proprietary information. Under this section, information is submitted to PHMSA with “confidential” written on each page along with an explanation on why the information should remain confidential. PHMSA then notifies the applicant on whether or not its information will be treated as confidential. PHMSA believes that requiring this information is essential to ensuring that an applicant is fit to conduct business under the guidelines of a special permit and is adopting this requirement as proposed.

#### Section 107.109

Section 107.109 of the HMR 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 proposed 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 CEO and a DUNS identifier. PHMSA received comments from DGAC, Norris Cylinder, American Coatings Association, and Stericycle Inc. again questioning the proposed requirement that applicants report all known locations where a special permit would be used. Commenters note this proposed revision would require some applicants to list hundreds, or perhaps thousands, of locations where the special permit will be used. We addressed similar comments pertaining to this issue in the discussion found under § 107.105. However, we reiterate the importance for applicants to list to the best of their knowledge all known locations using the best available information when applying for a special permit. Therefore, PHMSA is incorporating this requirement as proposed.

In paragraph (a)(4), for clarification, PHMSA provides examples of supporting documentation that may require updating when an application for renewal of the special permit is submitted. PHMSA did not receive any comments opposing this requirement. Therefore, in this final rule, we are adopting this requirement as proposed.

In paragraph (a)(5), PHMSA proposed 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. The American Coatings Association objects to this proposal stating that the current application process already captures information on incidents, and the additional information requirement would create a burden. PHMSA believes it is imperative for the applicant to provide information about operational controls in order to better assess that such operational controls are in place and are being adhered to as we make a determination whether the applicant can provide an equivalent level of safety. Therefore, in this final rule, we are incorporating this revision as proposed.

In the NPRM, PHMSA proposed to add new paragraphs (a)(7) and (a)(8) to this section. In paragraph (a)(7), PHMSA proposed to require the applicant to submit additional information for a renewal that is requested after the expiration date of the special permit. Specifically, we proposed 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. DGAC objects to the proposed requirement stating its belief that such information violates the Paperwork Reduction Act (PRA). We disagree. PHMSA carefully reviewed this proposed requirement and determined that such a scenario would likely be an infrequent occurrence and, therefore, would require a minimal amount of time to add the required statements when it does occur. In addition, we adjusted the information collection burden to account for such an occasion and included it in the calculations when a revised information collection was submitted to the Office of Management and Budget (OMB). Therefore, in this final rule, PHMSA is adopting this requirement as proposed.

In paragraph (a)(8), PHMSA proposed to require applicants 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. DGAC and Northern Air cargo objected to including this requirement, with DGAC claiming that the requirement was an unnecessary information collection under the PRA. As previously stated, PHMSA reviewed this proposed requirement for PRA implications and determined that such a scenario would also be an infrequent occurrence and would require a minimal amount of time on the part of the applicant when it does occur. Accordingly, we adjusted the information collection burden to account for such an occurrence when a revised information collection was submitted to OMB. Therefore, in this final rule, PHMSA is adopting this requirement as proposed.

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

In the NPRM, PHMSA proposed 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; and (4) renewal of a special permit. In the NPRM, PHMSA proposed 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 under the special permit, we are also specifying 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. PHMSA received comments from IME and the American Coatings Association expressing concerns about this proposed requirement. IME thinks that the requirement is unclear. The American Coatings Association notes that this requirement is a new element in the application process that has not been submitted for notice and comment under the Administrative Procedure Act (APA). PHMSA disagrees that this process is a violation of the APA because it solicited comment on the provision in the NPRM, as required by the APA, and because it already retains the authority to conduct inspections under § 107 during the special permit application process. This requirement is being included under this section to increase applicant's awareness of the ability of PHMSA to conduct inspections specified under § 107. PHMSA did not receive any additional comments opposing this requirement, and is adopting this requirement as proposed.

Section 107.117 specifies the requirements for submitting an application for emergency processing. In paragraph (d)(5), PHMSA is updating 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 for water transportation as the initial mode of transport submitted on an emergency basis. PHMSA did not receive any comments opposing this requirement and is adopting this requirement as proposed.

PHMSA also proposed 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 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." COSTHA objects to the removal of the word "exemptions" from the regulations because the term is still used in international regulation and could cause confusion. PHMSA disagrees with this comment and believes that removing the word "exemption" from the HMR is needed to keep terminology consistent within the HMR. Therefore PHMSA is incorporating this revision as proposed.

The affected sections are as follows:

§ 107.109

§ 107.113

§ 107.121

§ 107.123

§ 171.8

## VI. Rulemaking Analyses and Notices

### A. Statutory/Legal Authority for This Rulemaking

This final rule 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. The final rule amends 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 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

(OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). In this final rule, PHMSA is revising 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 final 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 final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would preempt State, local and Indian Tribe requirements but does not contain 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 governments. 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 final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final 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. This final rule 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 final rule would not have a significant economic impact on a substantial number of small entities.

*F. Unfunded Mandates Reform Act of 1995*

This final 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 final rule 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. Much of this increased burden will be minimized because of changes to allow for electronic means for all special permits and approvals actions, and 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. PHMSA developed burden estimates to reflect changes in this final rule and submitted a revised information collection request to OMB for approval based on the requirements in this final rule. PHMSA estimates that the additional information collection and recordkeeping burden in this rule will be as follows:

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

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Standards and Rulemaking Division (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

*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 requires additional, more detailed information from applicants and strengthen agency oversight, this change in regulation will increase safety and environmental protections. There are no significant environmental impacts associated with this final 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, 49 CFR part 105, 49 CFR part 107, and 49 CFR part 171 are amended 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, paragraph (a)(4) is added 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, the definition for “special permit” is revised 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 subchapters 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. Section 107.105 is revised 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: General Approvals and 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 electronically by e-mail to: *Specialpermits@dot.gov* or online 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 would 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 would 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 name of the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet 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 that is a permanent resident of the United States 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;

(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 an estimated quantity of each shipment of the hazardous materials planned for transportation under the special permit or;

(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; and

(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), a certification from 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 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. Section 107.107 is revised 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: General Approvals and 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 electronically by e-mail to: [Specialpermits@dot.gov](mailto: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 would 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 would 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 name of the company Chief Executive Officer (CEO) or president, and the Dun and Bradstreet 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 that is a permanent resident of the United States 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), a certification from 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 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. Section 107.109 is revised 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: General Approvals and 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 electronically by e-mail to: [Specialpermits@dot.gov](mailto: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 would 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 would 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 name of the company Chief Executive Officer (CEO) or president, and the Dun and Bradstreet 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 ensure 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, and 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, paragraphs (a), (d), (f)(5), (g), and (h) are revised to read as follows:

**§ 107.113 Application processing and evaluation.**

(a) The Associate Administrator reviews an application for a special permit, modification of a special permit, party to a 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 a special permit, modification of a special permit, or party to a 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 deficiency.

(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, paragraph (d)(5) is revised 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; 202-372-1420 (day); 1-800-424-8802 (night).

\* \* \* \* \*

■ 10. Section 107.121 is revised 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.

(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.

(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.

(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. Section 107.123 is revised 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, paragraphs (a)(1) and (c) are revised 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. In § 171.8, the definition for “Special permit” is revised 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 December 29, 2010 under authority delegated in 49 CFR part 106.

**Cynthia L. Quarterman,**

*Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2010–33316 Filed 1–4–11; 8:45 am]

**BILLING CODE 4910–60–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**RIN 0648–XA125**

**Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; notification of U.S. fish quotas.

**SUMMARY:** NMFS announces that fish quotas are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

**DATES:** Effective January 1, 2011, through December 31, 2011. Expressions of interest regarding U.S. fish quota allocations for all species except

Division 3L shrimp and Division 3M redfish will be accepted throughout 2011. Expressions of interest regarding the U.S. 3L shrimp and 3M redfish quota allocations and the 3LNO yellowtail flounder to be transferred by Canada will be accepted through January 20, 2011.

**ADDRESSES:** Expressions of interest regarding U.S. quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of International Affairs, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: [Pat.Moran@noaa.gov](mailto:Pat.Moran@noaa.gov)).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Allison McHale, at the NMFS Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978–281–9103, fax: 978–281–9135, e-mail: [allison.mchale@noaa.gov](mailto:allison.mchale@noaa.gov)) and from NAFO on the World Wide Web at <http://www.nafo.int>.

**FOR FURTHER INFORMATION CONTACT:**

Patrick E. Moran, 301–713–2276.

**SUPPLEMENTARY INFORMATION:**

**Background**

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, hake, capelin, shrimp, skates and squid. At the 2010 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks to be fished during 2011. Please note that NAFO has eliminated the Division 3M shrimp effort allocation for 2011 due to conservation concerns. Fishing opportunities for this stock will be re-opened when the NAFO Scientific Council advice estimates that the stock is showing signs of recovery.

The species, location, and allocation (in metric tons) of 2011 U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2011 NAFO Conservation and Enforcement Measures, are as follows:

(1) Redfish .....	NAFO Division 3M.	69 mt.
(2) Squid ( <i>Illex</i> )	NAFO Subareas 3 & 4.	453 mt.
(3) Shrimp .....	NAFO Division 3L.	334 mt.

Additionally, the United States may be transferred up to 1,000 mt of 3LNO

yellowtail flounder from Canada’s quota allocation for express use by U.S. vessels if the United States requests a transfer before January 1 of 2011, or any succeeding year through 2017. If such a request is made, an additional 500 mt of 3LNO yellowtail flounder could be made available on the condition that the United States transfers its 3L shrimp allocation to Canada or through some other arrangement. Participants in this fishery will be restricted to an overall bycatch harvest limit for American plaice equal to 15% of the total yellowtail fishery.

Further, U.S. vessels may be authorized to fish any available portion of the 385 mt allocation of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K available to NAFO members that are not also members of the Northeast Atlantic Fisheries Commission. Fishing opportunities may also be authorized for U.S. fishermen in the “Others” category for: Division 3LNO yellowtail flounder (85 mt); Division 3NO white hake (353 mt); Division 3LNO skates (444 mt); Division 3M cod (40 mt), 3LN redfish (35 mt) and Division 3O redfish (100 mt). Procedures for obtaining NMFS authorization are specified below.

**U.S. Fish Quota Allocations**

Expressions of interest to fish for any or all of the 2011 U.S. fish quota allocations, including the up to 1,500 mt of yellowtail flounder to be transferred by Canada under the circumstances described above, and “Others” category allocations in NAFO will be considered from U.S. vessels in possession of, or eligible for, a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (*see ADDRESSES*). All expressions of interest should be directed in writing to Patrick E. Moran (*see ADDRESSES*). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing