

(2) \* \* \*

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier;

\* \* \* \* \*

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.225–7027 and 252.225–7028 [Amended]

■ 30. Sections 252.225–7027 and 252.225–7028 are amended in the introductory text by removing “225.7308” and adding in its place “225.7307”.

[FR Doc. 05–23721 Filed 12–8–05; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 106, 107, 110, 171, 172, 173, 174, 175, 176, 177, 178 and 180

[Docket No. PHMSA–2005–22208 (HM–240)]

RIN 2137–AE12

### Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. These amendments include revising the definitions of “hazmat employee” and “hazmat employer;” revision of shipping paper retention requirements; providing a security plan exception for farmers; adding conditional applicability of postal laws and regulations; and replacement of “Exemption” with “Special permit.”

**DATES:** *Effective date:* January 9, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Cameron Satterthwaite or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## List of Topics

- I. Background
- II. Summary of Issues
  - A. Definitions of “hazmat employee” and “hazmat employer”
  - B. Revision of shipping paper retention requirements
  - C. Security plan exception for farmers
  - D. Applicability of postal laws and regulations
  - E. Replacement of “Exemption” with “Special permit”
- III. Regulatory Analysis
  - A. Statutory/Legal Authority for This Rulemaking
  - B. Executive Order 12866 and DOT Regulatory Policies and Procedures
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  - E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  - F. Unfunded Mandates Reform Act of 1995
  - G. Paperwork Reduction Act
  - H. Environmental Impact Analysis
  - I. Regulation Identifier Number (RIN)

### I. Background

Section 5103 of the Federal Hazardous Materials Transportation Law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) authorizes the Pipeline and Hazardous Materials Safety Administration (PHMSA) to prescribe safety and security regulations for the transportation of hazardous materials in interstate, intrastate, and foreign commerce. The Hazardous Materials Safety and Security Reauthorization Act of 2005 (the Act; Title VII of Pub. L. 109–59, 119 Stat. 1144 (August 10, 2005)) amended Federal hazmat law by revising certain terminology, definitions, and requirements. This final rule revises the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and the hazardous materials program and rulemaking procedures in 49 CFR parts 105, 106 and 107 to be consistent with changes mandated by the Act.

Because these amendments are mandated and self-executing, notice and public procedure are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of Title 49, Code of Federal Regulations.

The following is a summary of the changes made in this final rule.

### II. Summary of Issues

The Act mandates revisions to the following provisions of the HMR and the hazardous materials program and rulemaking procedures:

- A. Definitions of “hazmat employee” and “hazmat employer”
- B. Revision of shipping paper retention requirements

- C. Security plan exception for farmers
- D. Applicability of postal laws and regulations
- E. Replacement of “Exemption” with “Special permit”

#### A. Definitions of “Hazmat Employee” and “Hazmat Employer”

We are revising the definitions of “hazmat employee” and “hazmat employer” in § 171.8 for consistency with editorial revisions adopted under the Act. We are revising the definitions of “hazmat employee” and “hazmat employer” to specify both of these definitions include self-employed individuals. Also, both definitions are revised to include persons that represent, mark, certify, or sell packaging components as qualified for use in transporting hazardous materials in commerce. In addition, the Act amends § 5107 of Federal hazmat law to mandate general awareness and safety training pursuant to § 172.704 of the HMR for railroad maintenance-of-way employees and railroad signalmen. Therefore, we are also revising the definition of “hazmat employee” to include railroad maintenance-of-way employees and railroad signalmen. To provide rail carriers with sufficient time to implement the new training requirements, we are requiring initial training for maintenance-of-way employees and railroad signalmen to be completed by October 1, 2006.

Section 172.704 requires each hazmat employee to receive general awareness/familiarization training, function-specific training, safety training, and security awareness training. Function-specific training is not necessary for railroad maintenance-of-way employees and railroad signalmen who do not perform functions specifically regulated under the HMR. Thus, we are revising § 172.704(e) to provide an exception from function-specific training for such railroad maintenance-of-way employees and railroad signalmen. We are also excepting railroad maintenance-of-way employees and railroad signalmen from the requirement in § 172.704(a)(4) for security awareness training because such training is not mandated under the Act. However, we may consider requiring such training for railroad maintenance-of-way employees and railroad signalmen in a future rulemaking.

#### B. Revision of Shipping Paper Retention Requirements

Under the HMR, each person who provides a shipping paper must retain a copy of the shipping paper for 375 days after the hazardous material is accepted by the initial carrier. Each carrier must

also retain a copy of the shipping paper for 375 days. The Act amends § 5110 of Federal hazmat law to require shippers to retain a copy of a shipping paper for a period of two years after the shipping paper is provided to a carrier and to require carriers to retain a copy of a shipping paper for a period of one year after the date the shipping paper is received from the shipper. Therefore, we are revising §§ 172.201(e), 174.24, 175.30, 176.24, and 177.817 of the HMR to incorporate the shipping paper retention requirements in the Act. For purposes of shipping paper retention, a year is calculated from the exact date the shipping paper is provided to the initial carrier until the same date the following year. For example, a carrier who receives a shipping paper on October 1, 2006, must retain a copy of the shipping paper through September 30, 2007. Shippers and carriers of a hazardous waste must continue to retain a shipping paper for 3 years after the material is accepted by the initial carrier.

#### C. Security Plan Exception for Farmers

The Act exempts certain agricultural operations from the requirement in subpart I of part 172 of the HMR for persons who offer for transportation or transport certain hazardous materials in commerce to develop and implement security plans. Therefore, we are adding a new paragraph (c) to § 172.800 to provide an exemption from the security plan requirements for farmers who generate less than \$500,000 annually in gross receipts from the sale of agricultural commodities and products; transport hazardous materials in direct support of their farming operations; and transport hazardous materials by highway or rail within 150-mile radius of their farming operations.

#### D. Applicability to Postal Laws and Regulations

The Act amends § 5126(b) of Federal hazmat law with respect to its applicability to postal laws and regulations. Consistent with the Act, we are revising § 171.1(d)(7) of the HMR to clarify the HMR do not apply to any matter subject to the postal laws and regulations of the United States, except in the case of an "imminent hazard." "Imminent hazard" is defined in the Act as the "existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding

begun to lessen the risk of that death, illness, injury, or endangerment."

#### E. Replacement of "Exemption" With "Special Permit"

The Act amends section 5117 of Federal hazmat law to change the term "exemption" to "special permit" and provides for an initial effective period of two years and renewals of up to four years. In this final rule we are replacing most of the appearances of the word "exemption" with "special permit." This amendment will apply to various forms of "exemption," such as plural, singular, e-mail addresses, and mailing addresses.

In addition, we are making the following revisions to the HMR:

- Current exemptions will be effective until they expire, are terminated, or become due for renewal. Current exemptions will be replaced by special permits at the time when a renewal application is submitted and approved by the Associate Administrator.
- Packagings and shipping papers prepared in accordance with a new special permit issued on or after October 1, 2005 must be marked with "DOT-SP" and the appropriate special permit number, unless otherwise specified by the special permit.
- Packagings and shipping papers previously marked "DOT-E" in accordance with a current exemption generally may continue in use so long as the provisions in the exemption remain valid. Continued use of pre-printed shipping papers and "DOT-E" markings on packagings will be evaluated on a case-by-case basis when current exemptions become due for renewal.
- An initial special permit will be valid for up to two years before it expires or becomes due for renewal. For the purposes of a party to a special permit, a new applicant is considered to be a "new" holder for assigning an expiration date. If renewed, a special permit will be valid for up to four years before the next renewal.
- The Office of Hazardous Materials Exemptions and Approvals (OHMEA) is renamed the Office of Hazardous Materials Special Permits and Approvals (OHMSPA).
- The e-mail address for OHMSPA is revised from *Exemptions@rspa.dot.gov* to *Specialpermits@dot.gov*.

### III. Regulatory Analyses and Notices

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

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. The amendments in this final rule are being adopted for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005.

#### 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).

The cost impact of the changes effected by this final rule is expected to be minimal. The major cost impact will be incurred by rail carriers to comply with the new requirements for providing general awareness and safety training to maintenance-of-way employees and railroad signalmen. We estimate approximately 7,000 rail employees will be affected. Because rail carriers already are required to provide this training to hazmat employees, carriers will not incur costs to develop the training. Thus, total training costs will be those associated with time lost from work for the training. We estimate the training will require 3 hours to complete; therefore, using an average employment cost of \$22.00/hour, total training costs for the first year will be 7,000 employees × \$22.00/hour × 3 hours or \$462,000. Hazmat employees must receive recurrent training every three years; thus, for subsequent years, rail carriers will incur a total of \$154,000 in annual costs to train maintenance-of-way employees and railroad signalmen.

This final rule will result in reduced costs for persons who apply to renew special permits because a special permit may now be renewed for four years rather than two years as is currently the case.

#### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132

("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, preparation of a federalism assessment is not warranted.

#### D. Executive Order 13175

This final rule has been 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, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply.

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

I certify this final rule will not have a significant economic impact on a substantial number of small entities. This rule amends the HMR for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. The cost impacts of this rule are expected to be minimal. As noted above, the major cost impact will be incurred by rail carriers to comply with the new requirements for providing general awareness and safety training to maintenance-of-way employees and railroad signalmen. We estimate first year compliance costs will total \$462,000, with subsequent year annual costs at \$154,000. This final rule will result in reduced costs for persons who apply to renew special permits because a special permit may now be renewed for four years rather than two years as is currently the case.

#### F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

#### H. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

#### I. 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 can be used to cross-reference this action with the Unified Agenda.

#### List of Subjects

##### 49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

##### 49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Special permits.

##### 49 CFR Part 107

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

##### 49 CFR Part 110

Disaster assistance, Education, Grant programs—environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

##### 49 CFR Part 171

Applicability, Hazardous materials transportation, Reporting and recordkeeping requirements.

##### 49 CFR Part 172

Education, Hazardous materials transportation, Markings, Packaging and containers, Reporting and recordkeeping requirements, Special permits.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements, Special permits.

##### 49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements.

##### 49 CFR Part 175

Hazardous materials transportation, Air carriers, Reporting and recordkeeping requirements.

##### 49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Reporting and recordkeeping requirements.

##### 49 CFR Part 177

Hazardous materials transportation, Motor carriers, Reporting and recordkeeping requirements.

##### 49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

##### 49 CFR Part 180

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements, Special permits.

In consideration of the foregoing, amend 49 CFR Chapter I 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 § 105.5, make the following changes:

■ a. In paragraph (b), revise paragraph (2) of the definition for "Competent Authority Approval"; and

■ b. In paragraph (b), remove the definition for "Exemption" and add a definition for "Special permit" in appropriate alphabetical order.

The revisions read as follows:

#### § 105.5 Definitions.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

*Competent Authority Approval* means

\* \* \*

(2) A special permit or approval issued under subchapter A or C of this chapter.

\* \* \* \* \*

*Special permit* means a document issued by the Associate Administrator 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). The terms "special permit" and

“exemption” have the same meaning for purposes of subchapter A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5127. An exemption issued prior to October 1, 2005 remains valid until it is past its expiration date, terminated by the Associate Administrator, or is issued as a special permit, whichever occurs first.

**§ 105.15 [Amended]**

■ 3. In § 105.15, remove the term “Exemption” and add the term “Special permit” in alphabetical order.

■ 4. In § 105.25, revise paragraphs (a)(2) and (b)(2)(iv) to read as follows:

**§ 105.25 Reviewing public documents.**

\* \* \* \* \*

(a) \* \* \*

(2) Applications for special permits numbered DOT-E or DOT-SP 11832 and above. Also available are supporting data, memoranda of any informal meetings with applicants, related Federal Register notices, public comments, and decisions granting or denying applications for special permits.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) Applications for special permits numbered below DOT-E or DOT-SP 11832 and related background information are available for public review and copying at the Office of Hazardous Materials Safety, Office of Hazardous Materials Special Permits and Approvals, U.S. Department of Transportation, Room 8100, 400 7th Street, SW., Washington, DC 20590-0001.

\* \* \* \* \*

**§ 105.30 [Amended]**

■ 5. In § 105.30, in the introductory text, remove the term “exemption” and add the term “special permit” in its place.

■ 6. In § 105.40, revise paragraph (d) to read as follows:

**§ 105.40 Designated agents for non-residents.**

\* \* \* \* \*

(d) *Address.* Send your designation to: Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, Attn: PHH-30, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

\* \* \* \* \*

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

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

**Authority:** 49 U.S.C. 5101-5127, 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.

**PART 107—[NOMENCLATURE CHANGE]**

■ 8. In part 107, remove the term “exemption” and add the term “special permit” in its place in each place it appears, as follows:

- a. Section 107.117(e);
- b. Section 107.117(g) in two places;
- c. Section 107.305(a);
- d. Section 107.309(a);
- e. Section 107.311(a);
- f. Section 107.311(b)(1);
- g. Section 107.335;
- h. Section 107.337;
- i. Appendix A to Subpart D, Part IV. F.;
- j. Section 107.402(b)(3);
- k. Section 107.503(a)(6);
- l. Section 107.801(a)(3);
- m. Section 107.807(a); and
- n. Section 107.807(b)(2).

■ 9. In part 107, remove the term “exemptions” and add the term “special permits” in its place in each place it appears, as follows:

- a. Subpart B heading;
- b. Section 107.101; and
- c. Appendix A to subpart D, part IV. F. in the heading and text.
- 10. In part 107, remove the phrase “an exemption” and add the phrase “a special permit” in its place in each place it appears, as follows:
- a. Section 107.329(a);
- b. Section 107.329(b);
- c. Section 107.501(a);
- d. Section 107.502(b);
- e. Section 107.801(a)(2); and
- f. Section 107.803(c)(3).

■ 11. In § 107.1, revise the definitions for “Applicant,” “Application,” “Competent Authority Approval,” “Holder,” and “Party”; remove the definitions for “Exemption” and “Manufacturer exemption”; and add a definition for “Special permit” and “Manufacturing special permit” in the appropriate alphabetical order, to read as follows:

**Section 107.1 Definitions**

\* \* \* \* \*

*Applicant* means the person in whose name a special permit, approval, registration, a renewed or modified special permit or approval, or party status to a special permit is requested to be issued.

*Application* means a request under subpart B of this part for a special permit, a renewal or modification of a special permit, party status to a special permit, or a request under subpart H of this part for an approval, or renewal or modification of an approval.

\* \* \* \* \*

*Competent Authority Approval* means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) A special permit or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

\* \* \* \* \*

*Holder* means the person in whose name a special permit or approval has been issued.

\* \* \* \* \*

*Manufacturing special permit* means a special permit from compliance with specified requirements that otherwise must be met before representing, marking, certifying (including requalifying, inspecting, and testing), selling or offering a packaging or container as meeting the requirements of subchapter C of this chapter governing its use in the transportation in commerce of a hazardous material. A manufacturing special permit is a special permit issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the special permit.

*Party* means a person, other than a holder, authorized to act under the terms of a special permit.

\* \* \* \* \*

*Special permit* means a document issued by the Associate Administrator 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). The terms “special permit” and “exemption” have the same meaning for purposes of subchapter A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5127. An

exemption issued prior to October 1, 2005 remains valid until it is past its expiration date, terminated by the Associate Administrator, or is issued as a special permit, whichever occurs first.

\* \* \* \* \*

■ 12. In § 107.105, revise the section heading and paragraphs (a)(1), (a)(4), (c), and (d) to read as follows:

**§ 107.105 Application for special permit.**

(a) \* \* \*

(1) Be submitted for timely consideration, at least 120 days before the requested effective date, in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to:

*Specialpermits@dot.gov*;

\* \* \* \* \*

(4) For a manufacturing special permit, a statement of the name and street address of each facility where manufacturing under the special permit will occur.

\* \* \* \* \*

(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) 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.

(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), an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

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

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

(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, 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.

■ 13. In § 107.107, revise paragraphs (a), (b)(1), (b)(2), (b)(5), and (d) to read as follows:

**§ 107.107 Application for party status.**

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

(b) \* \* \*

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to:

*Specialpermits@dot.gov*;

(2) Identify by number the special permit application or special permit to which the applicant seeks to become a party;

\* \* \* \* \*

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

\* \* \* \* \*

(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.

■ 14. Revise § 107.109 to read as follows:

**§ 107.109 Application for renewal.**

(a) Each application for renewal of an exemption or special permit or party status to an exemption or special permit must:

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH-31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (e-mail) to:

*Specialpermits@dot.gov*;

(2) Identify by number the exemption or special permit for which renewal is requested;

(3) State the name, street and mailing addresses, e-mail address optional, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address optional, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the exemption or special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant shall so certify. When known to the applicant, the statement should indicate the approximate number of shipments made or packages shipped, as the case may be, and 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 an exemption or special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew an exemption or 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.

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

■ 15. In § 107.113, revise paragraphs (a), (b), (f)(2)(i), (f)(5), (h), and (j) to read as follows:

**§ 107.113 Application processing and evaluation.**

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

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

(b) An application, that is not a renewal, party to, or emergency special permit application, and is determined to be complete is docketed. Notice of the application is published in the **Federal Register**, and an opportunity for public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) Is at least equal to that required by the regulation from which the special permit is sought, or

\* \* \* \* \*

(5) The applicant is fit to conduct the activity authorized by the exemption or 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.

\* \* \* \* \*

(h) The initial exemption or 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 an exemption or special permit, unless otherwise stated, terminates on the date that the exemption or special permit expires.

\* \* \* \* \*

(j) The Associate Administrator publishes in the **Federal Register** a list of all special permit grants, denials, and modifications and all special permit applications withdrawn under this section.

■ 16. In § 107.121, revise the section heading and paragraphs (a), (b), and (c) to read as follows:

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

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

(1) Modification is necessary so that the exemption or 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 an exemption or special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the exemption, 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 exemption, 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 exemption, 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 exemption or special permit.

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

(1) The holder or party may file a written response that shows cause why the proposed action should not be taken within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing of the final decision with a brief statement of reasons.

\* \* \* \* \*

■ 17. In § 107.123, revise paragraph (a) introductory text to read as follows:

**§ 107.123 Reconsideration.**

(a) An applicant for special permit, a special permit holder, or an applicant for party status to an exemption or 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—

\* \* \* \* \*

■ 18. In § 107.127, revise paragraph (a) to read as follows:

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Special Permits and Approvals, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001, Room 8102. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered 11832 and above may also be viewed at the website address http://dms.dot.gov.

§ 107.227 [Amended]

■ 19. In § 107.227, the term "district court" is removed and "court of appeals" is added in its place.

■ 20. In § 107.307, revise paragraph (a) introductory text, and paragraph (b) to read as follows:

§ 107.307 General.

(a) When the Associate Administrator and the Office of Chief Counsel have reason to believe that a person is knowingly engaging or has knowingly engaged in conduct which is a violation of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any exemption, special permit, or order issued thereunder, for which the Associate Administrator or the Office of Chief Counsel exercise enforcement authority, they may—

(b) In the case of a proceeding initiated for failure to comply with an exemption or special permit, the allegation of a violation of a term or condition thereof is considered by the Associate Administrator and the Office of Chief Counsel to constitute an allegation that the special permit holder or party to the special permit is failing, or has failed to comply with the underlying regulations from which relief was granted by the special permit.

Appendix A To Subpart D of Part 107—[Amended]

■ 21. In part 107, in Appendix A to subpart D, in the table in section II,

Guidelines for Civil Penalties, remove the term "exemption" and add the term "exemption or special permit" each place it appears.

■ 22. In § 107.705, revise paragraph (a)(3) to read as follows:

§ 107.705 Registrations, reports, and applications for approval.

(3) If a report is required by an approval, a registration or a special permit, identify the approval, registration or special permit number;

■ 23. In § 107.805, paragraphs (a), (c)(2), (d), and (f) are revised to read as follows:

§ 107.805 Approval of cylinder requalifiers.

(a) General. A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification under subpart C of part 178 or subpart C of part 180 of this chapter or under the terms of a special permit issued under this part.

(2) The DOT specification/special permit cylinders that will be inspected, tested, repaired, or rebuilt at the facility;

(d) Issuance of requalifier identification number (RIN). The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification/special permit cylinders if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this chapter.

(f) Exceptions. Notwithstanding the requirements in paragraphs (b) and (c) of this section, a person who only performs inspections in accordance with § 180.209(g) of this chapter may submit an application that, in addition to the information prescribed in § 107.705(a), identifies the DOT specification/special permit cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA pamphlet incorporated by reference in § 171.7 of this chapter applicable to the requalifiers' activities; and includes the signature of the person making the

certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart. After May 31, 2004, no person may requalify a DOT specification/special permit cylinder in accordance with § 180.209(g) of this chapter unless that person has been issued a RIN as provided in paragraph (d) of this section.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

■ 24. The authority citation for part 110 continues to read as follows:

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

§ 110.30 [Amended]

■ 25. In § 110.30, in paragraphs (b)(2) and (c)(2), the phrase "two fiscal years" is removed and "five fiscal years" is added in its place each place it appears.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101-5127, 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.

PART 171—[NOMENCLATURE CHANGE]

■ 27. In part 171, remove the phrase "an exemption" and add the phrase "an exemption or special permit" in its place each place it appears, as follows:

- a. Section 171.1(g);
■ b. Section 171.2(b) in two places;
■ c. Section 171.2(c) in two places;
■ d. Section 171.2(e);
■ e. Section 171.2(f); and
■ f. Section 171.2(i) in two places;
■ g. Section 171.2(m) in three places.
■ 28. In § 171.1, revise paragraph (d)(7) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

(7) Any matter subject to the postal laws and regulations of the United States, except in the case of an imminent hazard.

■ 29. In § 171.2, revise paragraphs (g) and (h) to read as follows:

**§ 171.2 General requirements.**

(g) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter. No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of an exemption, a special permit, approval, or registration issued under this subchapter or subchapter A of this chapter unless the packaging or container is manufactured, fabricated,

marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of the exemption, special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. The requirements of this paragraph apply whether or not the packaging or container is used or to be used for the transportation of a hazardous material.

(h) The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include:

- (1) Specification identifications that include the letters "ICC", "DOT", "CTC", "MC", or "UN";
- (2) Exemption, special permit, approval, and registration numbers that

include the letters "DOT", "EX", "M", or "R"; and  
 (3) Test dates associated with specification, registration, approval, retest, exemption, or special permit markings indicating compliance with a test or retest requirement of the HMR, or an exemption, special permit, approval, or registration issued under the HMR or under subchapter A of this chapter.

■ 30. In § 171.6, in paragraph (b)(2), in the table, revise the entry for OMB control number 2137-0051 to read as follows:

**§ 171.6 Control numbers under the Paperwork Reduction Act.**

- (b) \* \* \*  
 (2) Table

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
* * * * *	* * * * *	* * * * *
2137-0051 .....	Rulemaking and Special Permit Petitions .....	§§ 105.30, 105.40, 106.95, 106.110, 107.105, 107.107, 107.109, 107.113, 107.117, 107.121, 107.123, 107.125, 107.205, 107.211, 107.215, 107.217, 107.219, 107.221, 107.223.
* * * * *	* * * * *	* * * * *

■ 31. In § 171.8, revise the definitions of "hazmat employee" and "hazmat employer"; remove the definition for "Exemption"; and add a definition for "Special permit" in the appropriate alphabetical order to read as follows:

**§ 171.8 Definitions and abbreviations.**

*Hazmat employee* means: (1) A person who is:  
 (i) Employed on a full-time, part time, or temporary basis by a hazmat employer and who in the course of such full time, part time or temporary employment directly affects hazardous materials transportation safety;  
 (ii) Self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous materials in commerce who in the course of such self-employment directly affects hazardous materials transportation safety;  
 (iii) A railroad signalman; or  
 (iv) A railroad maintenance-of-way employee.  
 (2) This term includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or who is self-employed, who during the course of employment:  
 (i) Loads, unloads, or handles hazardous materials;

(ii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.  
 (iii) Prepares hazardous materials for transportation;  
 (iv) Is responsible for safety of transporting hazardous materials;  
 (v) Operates a vehicle used to transport hazardous materials.  
*Hazmat employer* means:  
 (1) A person who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis; and who:  
 (i) Transports hazardous materials in commerce;  
 (ii) Causes hazardous materials to be transported in commerce; or  
 (iii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce;  
 (2) A person who is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting materials in commerce; and who:

(i) Transports hazardous materials in commerce;  
 (ii) Causes hazardous materials to be transported in commerce; or  
 (iii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce; or  
 (3) A department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or an Indian tribe; and who:  
 (i) Transports hazardous materials in commerce;  
 (ii) Causes hazardous materials to be transported in commerce; or  
 (iii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous materials in commerce.  
 \* \* \* \* \*  
*Special permit* means a document issued by the Associate Administrator 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). The terms "special permit" and "exemption" have the same meaning for purposes of subchapter A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5127. An exemption issued prior to October 1, 2005 remains valid until it is past its expiration date, terminated by the Associate Administrator, or issued as a special permit, whichever occurs first.

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

■ 32. The authority citation for part 172 continues to read as follows:

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

**§ 172.102 [Amended]**

■ 33. In § 172.102, in paragraph (c)(1), amend special provision 139 to remove the term "exemption" and add the term "special permit" in its place.

■ 34. In § 172.201, revise paragraph (e) to read as follows:

**§ 172.201 Preparation and retention of shipping papers.**

\* \* \* \* \*

(e) *Retention and Recordkeeping.* Each person who provides a shipping paper must retain a copy of the shipping paper required by § 172.200(a), or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper must be retained for two years after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier, except that, for rail, vessel, or air shipments, the date on the shipment waybill, airbill, or bill of lading may be used in place of the date of acceptance by the initial carrier. A motor carrier (as defined in § 390.5 of subchapter B of chapter III of subtitle B) using a shipping paper without change for

multiple shipments of one or more hazardous materials having the same shipping name and identification number may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

■ 35. In § 172.203, revise paragraph (a) to read as follows:

**§ 172.203 Additional description requirements.**

(a) *Special permits.* Except as provided in § 173.23 of this subchapter, each shipping paper issued in connection with a shipment made under a special permit must bear the notation "DOT-SP" followed by the special permit number assigned and located so that the notation is clearly associated with the description to which the special permit applies. Each shipping paper issued in connection with a shipment made under an exemption or special permit issued prior to October 1, 2007, may bear the notation "DOT-E" followed by the number assigned and so located that the notation is clearly associated with the description to which it applies.

\* \* \* \* \*

■ 36. In § 172.301, revise paragraph (c) to read as follows:

**§ 172.301 General marking requirements for non-bulk packagings.**

\* \* \* \* \*

(c) *Special permit packagings.* Except as provided in § 173.23 of this subchapter, the outside of each package authorized by a special permit must be plainly and durably marked "DOT-SP" followed by the special permit number assigned. Packages authorized by an exemption issued prior to October 1, 2007, may be plainly and durably marked "DOT-E" in lieu of "DOT-SP" followed by the number assigned as specified in the most recent version of that exemption.

\* \* \* \* \*

■ 37. In § 172.302, revise paragraph (c) to read as follows:

**§ 172.302 General marking requirements for bulk packagings.**

\* \* \* \* \*

(c) *Special permit packagings.* Except as provided in § 173.23 of this subchapter, the outside of each package used under the terms of a special permit must be plainly and durably marked "DOT-SP" followed by the special permit number assigned. Packages authorized by an exemption issued prior to October 1, 2007 may be plainly and

durably marked "DOT-E" in lieu of "DOT-SP" followed by the number assigned as specified in the most recent version of that exemption.

\* \* \* \* \*

■ 38. In § 172.704, revise paragraphs (a)(2)(i) and (e) to read as follows:

**§ 172.704 Training requirements.**

(a) \* \* \*

(2) \* \* \*

(i) Each hazmat employee must be provided function-specific training concerning requirements of this subchapter, or exemptions or special permits issued under subchapter A of this chapter, that are specifically applicable to the functions the employee performs.

\* \* \* \* \*

(e) *Limitations.* The following limitations apply:

(1) A hazmat employee who repairs, modifies, reconditions, or tests packagings, as qualified for use in the transportation of hazardous materials, and who does not perform any other function subject to the requirements of this subchapter, is not subject to the training requirement of paragraph (a)(3) of this section.

(2) A railroad maintenance-of-way employee or railroad signalman, who does not perform any function subject to the requirements of this subchapter, is not subject to the training requirements of paragraphs (a)(2), (a)(4), or (a)(5) of this section. Initial training for a railroad maintenance-of-way employee or railroad signalman in accordance with this section must be completed by October 1, 2006.

■ 39. In § 172.800, add a new paragraph (c) to read as follows:

**§ 172.800 Purpose and applicability.**

\* \* \* \* \*

(c) *Exceptions.* Transportation activities of a farmer, who generates less than \$500,000 annually in gross receipts from the sale of agricultural commodities or products, are not subject to this subpart if such activities are:

- (1) Conducted by highway or rail;
- (2) In direct support of their farming operations; and
- (3) Conducted within a 150-mile radius of those operations.

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

■ 40. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

- 41. In § 173.5, add a new paragraph (f) to read as follows:

**§ 173.5 Agricultural operations.**

\* \* \* \* \*

(f) See § 172.800(b) pertaining to security plans.

- 42. In § 173.22, revise paragraphs (a)(2)(v), (a)(3)(i), and (a)(3)(ii) to read as follows:

**§ 173.22 Shippers responsibility.**

(a) \* \* \*

(2) \* \* \*

(v) An exemption or special permit issued under subchapter A of this chapter.

(3) \* \* \*

(i) Except for the marking on the bottom of a metal or plastic drum with a capacity over 100 L which has been reconditioned, remanufactured or otherwise converted, the manufacturer's certification, specification, approval, or exemption or special permit marking (see §§ 178.2 and 179.1 of this subchapter); or

(ii) With respect to cargo tanks provided by a carrier, the manufacturer's identification plate or a written certification of specification or exemption or special permit provided by the carrier.

\* \* \* \* \*

- 43. Revise § 173.22a to read as follows:

**§ 173.22a Use of packagings authorized under special permits.**

(a) Except as provided in paragraph (b) of this section, no person may offer a hazardous material for transportation in a packaging the use of which is dependent upon an exemption or special permit issued under subpart B of part 107 of this title, unless that person is the holder of or a party to the exemption or special permit.

(b) If an exemption or special permit authorizes the use of a packaging for the transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption or special permit, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption or special permit subject to the terms specified therein. Copies of exemptions and special permits may be obtained by accessing the Hazardous Materials Safety Web site at [http:// hazmat.dot.gov/specialpermits\\_index.htm](http://hazmat.dot.gov/specialpermits_index.htm) or by writing to the Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Attention: Records Center.

(c) When an exemption or special permit issued to a person who offers a hazardous material contains requirements that apply to a carrier of the hazardous material, the offeror shall furnish a copy of the current exemption or special permit to the carrier before or at the time a shipment is tendered.

- 44. In § 173.23, a new paragraph (h) is added to read as follows:

**§ 173.23 Previously authorized packaging.**

\* \* \* \* \*

(h) An exemption packaging or shipping paper that is permanently marked "DOT-E" prior to October 1, 2007, may continue in use as long as the exemption or special permit remains valid, unless otherwise specified in the exemption or special permit.

**§ 173.124 [Amended]**

- 45. In § 173.124, amend paragraph (a)(1)(ii)(A) to replace the phrase "An exemption" with the phrase "A special permit."

46. In § 173.301, revise paragraph (j) and paragraph (l) introductory text to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical vessels.**

\* \* \* \* \*

(j) *Non-specification cylinders in domestic use.* Except as provided in paragraphs (k) and (l) of this section, a filled non-DOT specification cylinder, other than a DOT exemption or special permit cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309, may not be offered for transportation or transported to, from, or within the United States.

\* \* \* \* \*

(l) *Filling of foreign cylinders for export.* A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a DOT specification or exemption or special permit, may be filled with a gas in the United States and offered for transportation and transported for export, if the following conditions are met:

\* \* \* \* \*

- 47. In § 173.403, in the definition for "Exemption Value," the last sentence is revised to read as follows:

**§ 173.403 Definitions.**

\* \* \* \* \*

Exemption value \* \* \* An exemption value is different from an exemption, as specified under the definition for special permit in § 171.8 of this subchapter.

\* \* \* \* \*

**PART 174—CARRIAGE BY RAIL**

- 48. The authority citation for part 174 continues to read as follows:

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

**§ 174.24 [Amended]**

- 49. In § 174.24, in paragraph (b), remove the phrase "375 days" and add the phrase "one year" in its place.

**PART 175—CARRIAGE BY AIRCRAFT**

- 50. The authority citation for part 175 continues to read as follows:

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

**§ 175.30 [Amended]**

- 51. In § 175.30, in paragraph (a)(2), remove the phrase "375 days" and add the phrase "one year" in its place.

**§ 175.33 [Amended]**

- 52. In § 175.33, in paragraph (a)(10) remove the phrase "an exemption" and add the phrase "a special permit" in its place.

**PART 176—CARRIAGE BY VESSEL**

- 53. The authority citation for part 176 continues to read as follows:

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

**§ 176.24 [Amended]**

- 54. In § 176.24, in paragraph (b), remove the phrase "375 days" and add the phrase "one year" in its place.

- 55. Section 176.31 is revised to read as follows:

**§ 176.31 Special permits.**

If a hazardous material is being transported by vessel under the authority of an exemption or special permit and a copy of the exemption or special permit is required to be on board the vessel, it must be kept with the dangerous cargo manifest.

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

- 56. The authority citation for part 177 continues to read as follows:

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

**§ 177.817 [Amended]**

- 57. In § 177.817, in paragraph (f), remove the phrase "375 days" and add the phrase "one year" in its place.

**PART 178—SPECIFICATIONS FOR PACKAGINGS**

■ 58. The authority citation for part 178 continues to read as follows:

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

**§ 178.3 [Amended]**

■ 59. In § 178.3, in paragraph (d) remove the word “exemption” and add the word “special permit” in its place in two places.

**PART 179—SPECIFICATIONS FOR TANK CARS**

■ 60. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR part 1.53.

**PART 179—[NOMENCLATURE CHANGE]**

■ 61. In part 179, remove the phrase “an exemption” and add the phrase “a

special permit” in its place each place it appears, as follows:

- a. Section 179.3(c); and
- b. Section 179.4(a).

**PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

■ 62. The authority citation for part 180 continues to read as follows:

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

**PART 180—[NOMENCLATURE CHANGE]**

■ 63. In part 180, remove the term “exemption” and add the term “special permit” in its place each place it appears, as follows:

- a. Section 180.3(b)(2);
- b. Section 180.201;
- c. Section 180.205(b);
- d. Section 180.205(c) introductory text in two places;
- e. Section 180.205(f)(1);

- f. Section 180.205(f)(4);
- g. Section 180.205(h)(4)(iii);
- h. Section 180.205(i)(1)(vii) in three places;
- i. Section 180.205(i)(1)(viii); and
- j. Section 180.213(f) introductory text.

■ 64. In part 180, remove the phrase “an exemption” and add the phrase “a special permit” in its place each place it appears, as follows:

- a. Section 180.3(a);
- b. Section 180.3(b)(3); and
- c. Section 180.205(i)(1)(iv).

■ 65. In § 180.209, in paragraph (a)(1), in “Table 1—Requalification of Cylinders”, the entry for “exemption cylinder” is revised to read as follows:

**§ 180.209 Requirements for requalification of specification cylinders.**

- (a) \* \* \*
- (1) \* \* \*

TABLE 1.—REQUALIFICATION OF CYLINDERS <sup>1</sup>

Specification under which cylinder was made	Minimum test pressure (psig) <sup>2</sup>	Requalification (years)
* * *	* * *	* * *
Exemption or special permit cylinder .....	See current exemption or special permit .....	See current exemption or special permit
* * *	* * *	* * *

**§ 180.215 [Amended]**

■ 66. Section 180.215 is amended in paragraphs (a)(5), (b) introductory text,

and (b)(2), by removing the term “exemption” and adding the term “special permit” each place it appears.

Issued in Washington, DC, on December 1, 2005, under authority delegated in 49 CFR part 1.

**Brigham A. McCown,**  
*Acting Administrator.*

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