

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

* * * * *

■ 3. Section 73.5008 is amended by revising paragraph (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(c)(1) An attributable interest in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2 to § 73.3555. In addition, any interest held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder.

(2) Notwithstanding paragraph (c)(1) of this section, where the winning bidder is an eligible entity, the combined equity and debt of the interest holder in the winning bidder may exceed the 33 percent threshold therein without triggering attribution, provided that:

(i) The combined equity and debt of the interest holder in the winning bidder is less than 50 percent, or

(ii) The total debt of the interest holder in the winning bidder does not exceed 80 percent of the asset value of the winning bidder and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity. For purposes of paragraph (c)(2) of this section, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

(A) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

(B) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(C) More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

[FR Doc. 2010-11161 Filed 5-13-10; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 10-62; FCC 10-38]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Amateur Radio Service rules to make certain non-substantive revisions to these rules. The rules are necessary to amend the amateur service rules or conform them to prior Commission decisions. The effect of this action is to enhance the usefulness of the amateur service rules by making them conform with other Commission rules, thereby eliminating licensee confusion when applying the rules to amateur service operations.

DATES: Effective July 13, 2010.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-0680, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* (Order), adopted March 11, 2010, and released March 16, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

1. By this action, we are amending the amateur service rules to revise 47 CFR 97.313(c) to limit Novice Class operators and Technician Plus Class operators to two hundred watts peak envelope power when these licensees are the control operator of a station transmitting in the segments of the 80, 40, 15, and 10 meter bands in which they may control an amateur station.

2. Also, by this action, we are also amending the amateur service rules to revise 47 CFR 97.301 and 97.303 related to the 40m, 60 m, 70 cm, and 9 cm bands to conform to the Table of Frequency Allocations in part 2 of our rules, and to references within the relevant sections of our rules. We also revise the frequency sharing requirements in 47 CFR 97.303 to limit the summary to those frequency bands that are allocated to the amateur service on a secondary basis, and to present the requirements more clearly.

3. In addition, we move transmitter power limit information that applies to stations transmitting a spread spectrum emission from 47 CFR 97.303(s) to 47 CFR 97.313. Transmitter power standards. Finally, we amend 47 CFR 97.103(c) to delete the cross-reference to 47 CFR 0.314(x), which was removed in 1999; and we remove the entry "1260-1270 MHz" from 47 CFR 97.207(c), which lists the frequency bands authorized to amateur space stations, because footnote 5.282 to the Table limits the use of that segment to earth station transmissions.

4. In the *Order*, we amend the amateur service rules to conform them to previous Commission decisions. The amended rules apply exclusively to individuals who are licensees in the Amateur Radio Service. Such amendments are in the public interest because they will clarify and conform the amateur service rules to other parts of the Commission's rules and previous decisions. The rule changes do not result in any mandatory change in manufactured amateur radio equipment or have any impact on business entities because such entities are not eligible for licensing in the amateur service. Therefore, we certify that the rules reflected in this *Order* will not have a significant economic impact on a substantial number of small entities.

5. The amended rules are set forth below, effective July 13, 2010.

6. This *Order* and the rule amendments are issued under the authority contained in 47 U.S.C. 154(i) and (j), 303(r) and 403.

7. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order*, including the Initial

and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Radio.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 2. Section 97.103 is amended by revising paragraph (c) to read as follows:

§ 97.103 Station licensee responsibilities.

* * * * *

(c) The station licensee must make the station and the station records available for inspection upon request by an FCC representative.

■ 3. Section 97.207 is amended by revising paragraph (c)(2) to read as follows:

§ 97.207 Space station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz,

2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

■ 4. Section 97.301 is revised to read as follows:

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region, and outside any area where the amateur service is regulated by any authority other than the FCC.

(a) For a station having a control operator who has been granted a Technician, Technician Plus, General, Advanced, or Amateur Extra Class operator license, who holds a CEPT radio amateur license, or who holds any class of IARP:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
6 m .....	.....	50–54	50–54	(a)
2 m	144–146.	144–148	144–148	(a), (k)
1.25 m .....	.....	219–220 .....	.....	(l)
Do .....	.....	222–225 .....	.....	(a)

UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	430–440	(a), (b), (m)
33 cm .....	.....	902–928 .....	.....	(a), (b), (e), (n)
23 cm	1240–1300	1240–1300	1240–1300	(b), (d), (o)
13 cm	2300–2310	2300–2310	2300–2310	(d), (p)
Do	2390–2450	2390–2450	2390–2450	(d), (e), (p)

SHF	GHz	GHz	GHz	
9 cm .....	.....	3.3–3.5	3.3–3.5	(a), (b), (f), (q)
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (e), (r)
3 cm	10.0–10.5	10.0–10.5	10.0–10.5	(a), (b), (k)
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(b), (d), (e)

EHF	GHz	GHz	GHz	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	
4 mm	76–81	76–81	76–81	(c), (f), (s)
2.5 mm	122.25–123.00	122.25–123.00	122.25–123.00	(e), (t)
2 mm	134–141	134–141	134–141	(c), (f)
1 mm	241–250	241–250	241–250	(c), (e), (f)
	Above 275	Above 275	Above 275	(f)

(b) For a station having a control operator who has been granted an

Amateur Extra Class operator license, who holds a CEPT radio amateur

license, or who holds a Class 1 IARP license:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)
HF	MHz	MHz	MHz	
80 m	3.500–3.600	3.500–3.600	3.500–3.600	(a)
75 m	3.600–3.800	3.600–4.000	3.600–3.900	(a)

HF	MHz	MHz	MHz	
60 m		See § 97.303(h)		(h)
40 m	7.000–7.200	7.000–7.300	7.000–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.000–14.350	14.000–14.350	14.000–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.000–21.450	21.000–21.450	21.000–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(c) For a station having a control operator who has been granted an operator license of Advanced Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)

HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a)
75 m	3.700–3.800	3.700–4.000	3.700–3.900	(a)
60 m		See § 97.303(h)		(h)
40 m	7.025–7.200	7.025–7.300	7.025–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.175–14.350	14.175–14.350	14.175–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.225–21.450	21.225–21.450	21.225–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(d) For a station having a control operator who has been granted an operator license of General Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)

HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a)
75 m		3.800–4.000	3.800–3.900	(a)
60 m		See § 97.303(h)		(h)
40 m	7.025–7.125	7.025–7.125	7.025–7.125	(i)
Do	7.175–7.200	7.175–7.300	7.175–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.225–14.350	14.225–14.350	14.225–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.275–21.450	21.275–21.450	21.275–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(e) For a station having a control operator who has been granted an operator license of Novice Class,

Technician Class, or Technician Plus Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a) (i)
40 m	7.025–7.125	7.025–7.125	7.025–7.125	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
10 m	28.0–28.5	28.0–28.5	28.0–28.5	
VHF	MHz	MHz	MHz	(a)
1.25 m .....	.....	222–225 .....	.....
UHF	MHz	MHz	MHz	(d), (o)
23 cm	1270–1295	1270–1295	1270–1295	

■ 5. Section 97.303 is revised to read as follows:

§ 97.303 Frequency sharing requirements.

The following paragraphs summarize the frequency sharing requirements that apply to amateur stations transmitting in the frequency bands specified in § 97.301 of this part. Each frequency band allocated to the amateur service is designated as either a secondary service or a primary service. A station in a secondary service must not cause harmful interference to, and must accept interference from, stations in a primary service.

(a) Where, in adjacent ITU Regions or sub-Regions, a band of frequencies is allocated to different services of the same category (*i.e.*, primary or secondary services), the basic principle is the equality of right to operate. Accordingly, stations of each service in one Region or sub-Region must operate so as not to cause harmful interference to any service of the same or higher category in the other Regions or sub-Regions.

(b) Amateur stations transmitting in the 70 cm band, the 33 cm band, the 23 cm band, the 9 cm band, the 5 cm band, the 3 cm band, or the 24.05–24.25 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government in the radiolocation service.

(c) Amateur stations transmitting in the 1900–2000 kHz segment, the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, or the 241–248 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government, the FCC, or other nations in the radiolocation service.

(d) Amateur stations transmitting in the 430–450 MHz segment, the 23 cm band, the 3.3–3.4 GHz segment, the 5.65–5.85 GHz segment, the 13 cm band, or the 24.05–24.25 GHz segment, must

not cause harmful interference to, and must accept interference from, stations authorized by other nations in the radiolocation service.

(e) Amateur stations receiving in the 33 cm band, the 2400–2450 MHz segment, the 5.725–5.875 GHz segment, the 1.2 cm band, the 2.5 mm band, or the 244–246 GHz segment must accept interference from industrial, scientific, and medical (ISM) equipment.

(f) Amateur stations transmitting in the following segments must not cause harmful interference to radio astronomy stations: 3.332–3.339 GHz, 3.3458–3.3525 GHz, 76–77.5 GHz, 78–81 GHz, 136–141 GHz, 241–248 GHz, 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz, or 926–945 GHz. In addition, amateur stations transmitting in the following segments must not cause harmful interference to stations in the Earth exploration-satellite service (passive) or the space research service (passive): 275–277 GHz, 294–306 GHz, 316–334 GHz, 342–349 GHz, 363–365 GHz, 371–389 GHz, 416–434 GHz, 442–444 GHz, 496–506 GHz, 546–568 GHz, 624–629 GHz, 634–654 GHz, 659–661 GHz, 684–692 GHz, 730–732 GHz, 851–853 GHz, or 951–956 GHz.

(g) Amateur stations transmitting in the 1900–2000 kHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the fixed, mobile except aeronautical mobile, and radionavigation services.

(h) Amateur stations may only transmit single sideband, suppressed carrier (emission type 2K80J3E), upper sideband on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz. Amateur operators shall ensure that their station's transmission occupies only 2.8 kHz centered at each of these frequencies. Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

(1) The United States Government, the FCC, or other nations in the fixed service; and

(2) Other nations in the mobile except aeronautical mobile service.

(i) Amateur stations transmitting in the 7.2–7.3 MHz segment must not cause harmful interference to, and must accept interference from, international broadcast stations whose programming is intended for use within Region 1 or Region 3.

(j) Amateur stations transmitting in the 30 m band must not cause harmful interference to, and must accept interference from, stations by other nations in the fixed service. The licensee of the amateur station must make all necessary adjustments, including termination of transmissions, if harmful interference is caused.

(k) For amateur stations located in ITU Regions 1 and 3: Amateur stations transmitting in the 146–148 MHz segment or the 10.00–10.45 GHz segment must not cause harmful interference to, and must accept interference from, stations of other nations in the fixed and mobile services.

(l) *In the 219–220 MHz segment:*

(1) Use is restricted to amateur stations participating as forwarding stations in fixed point-to-point digital message forwarding systems, including intercity packet backbone networks. It is not available for other purposes.

(2) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

(i) The FCC in the Automated Maritime Telecommunications System (AMTS), the 218–219 MHz Service, and the 220 MHz Service, and television stations broadcasting on channels 11 and 13; and

(ii) Other nations in the fixed and maritime mobile services.

(3) No amateur station may transmit unless the licensee has given written notification of the station's specific geographic location for such

transmissions in order to be incorporated into a database that has been made available to the public. The notification must be given at least 30 days prior to making such transmissions. The notification must be given to: The American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111-1494.

(4) No amateur station may transmit from a location that is within 640 km of an AMTS coast station that operates in the 217–218 MHz and 219–220 MHz bands unless the amateur station licensee has given written notification of the station's specific geographic location for such transmissions to the AMTS licensee. The notification must be given at least 30 days prior to making such transmissions. The location of AMTS coast stations using the 217–218/219–220 MHz channels may be obtained as noted in paragraph (l)(3) of this section.

(5) No amateur station may transmit from a location that is within 80 km of an AMTS coast station that uses frequencies in the 217–218 MHz and 219–220 MHz bands unless that amateur station licensee holds written approval from that AMTS licensee. The location of AMTS coast stations using the 217–218/219–220 MHz channels may be obtained as noted in paragraph (l)(3) of this section.

(m) In the 70 cm band:

(1) No amateur station shall transmit from north of Line A in the 420–430 MHz segment. See § 97.3(a) for the definition of Line A.

(2) Amateur stations transmitting in the 420–430 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC in the land mobile service within 80.5 km of Buffalo, Cleveland, and Detroit. See § 2.106, footnote US230 for specific frequencies and coordinates.

(3) Amateur stations transmitting in the 420–430 MHz segment or the 440–450 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the fixed and mobile except aeronautical mobile services.

(n) In the 33 cm band:

(1) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

- (i) The United States Government;
- (ii) The FCC in the Location and Monitoring Service; and
- (iii) Other nations in the fixed service.

(2) No amateur station shall transmit from those portions of Texas and New Mexico that are bounded by latitudes 31°41' and 34°30' North and longitudes 104°11' and 107°30' West; or from outside of the United States and its Region 2 insular areas.

(3) No amateur station shall transmit from those portions of Colorado and Wyoming that are bounded by latitudes 39° and 42° North and longitudes 103° and 108° West in the following segments: 902.4–902.6 MHz, 904.3–904.7 MHz, 925.3–925.7 MHz, and 927.3–927.7 MHz.

(o) Amateur stations transmitting in the 23 cm band must not cause harmful interference to, and must accept interference from, stations authorized by:

(1) The United States Government in the aeronautical radionavigation, Earth exploration-satellite (active), or space research (active) services;

(2) The FCC in the aeronautical radionavigation service; and

(3) Other nations in the Earth exploration-satellite (active), radionavigation-satellite (space-to-Earth) (space-to-space), or space research (active) services.

(p) In the 13 cm band:

(1) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by other nations in fixed and mobile services.

(2) Amateur stations transmitting in the 2305–2310 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC in the fixed, mobile except aeronautical mobile, and radiolocation services.

(q) Amateur stations transmitting in the 3.4–3.5 GHz segment must not cause harmful interference to, and must accept

interference from, stations authorized by other nations in the fixed and fixed-satellite (space-to-Earth) services.

(r) In the 5 cm band:

(1) Amateur stations transmitting in the 5.650–5.725 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the mobile except aeronautical mobile service.

(2) Amateur stations transmitting in the 5.850–5.925 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC and other nations in the fixed-satellite (Earth-to-space) and mobile services and also stations authorized by other nations in the fixed service. In the United States, the use of mobile service is restricted to Dedicated Short Range Communications operating in the Intelligent Transportation System.

(s) Authorization of the 76–77 GHz segment for amateur station transmissions is suspended until such time that the Commission may determine that amateur station transmissions in this segment will not pose a safety threat to vehicle radar systems operating in this segment.

(t) Amateur stations transmitting in the 2.5 mm band must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government, the FCC, or other nations in the fixed, inter-satellite, or mobile services.

Note to § 97.303: The Table of Frequency Allocations contains the complete, unabridged, and legally binding frequency sharing requirements that pertain to the Amateur Radio Service. See 47 CFR 2.104, 2.105, and 2.106. The United States, Puerto Rico, and the U.S. Virgin Islands are in Region 2 and other U.S. insular areas are in either Region 2 or 3; see Appendix 1 to part 97.

■ 6. Section 97.305 is amended by revising the last entry in the table following paragraph (c) to read as follows:

§ 97.305 Authorized emission types.

*	*	*	*	*
(c)	*	*	*	*

Wavelength band	Frequencies	Emission types authorized	Standards <i>see</i> § 97.307(f), paragraph:
*	*	*	*
	Above 275 GHz	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).

■ 7. Section 97.313 is amended by revising paragraphs (c) introductory text

and (c)(2) and adding paragraph (i) to read as follows:

§ 97.313 Transmitter power standards.

*	*	*	*	*
---	---	---	---	---

(c) No station may transmit with a transmitter power output exceeding 200 W PEP:

* * * * *

(2) On the 3.525–3.60 MHz, 7.025–7.125 MHz, 21.025–21.20 MHz, and 28.0–28.5 MHz segment when the control operator is a Novice Class, Technician Class, or Technician Plus Class operator; or

* * * * *

(i) No station may transmit with an effective radiated power (ERP) exceeding 50 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a dipole or the equivalent calculation in decibels. A half-wave dipole antenna will be presumed to have a gain of 1. Licensees using other antennas must maintain in their station records either the antenna manufacturer data on the antenna gain or calculations of the antenna gain.

[FR Doc. 2010-11385 Filed 5-13-10; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, 171, 173, 174, 176, 177, and 179

[Docket No. PHMSA-2009-0289 (HM-233A)]

RIN 2137-AE39

Hazardous Materials: Incorporation of Special Permits Into Regulations

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations so long as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

DATES: *Effective Dates:* The effective date of these amendments is October 1, 2010.

Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson or Dirk Der Kinderen, Office of Hazardous Materials Standards, (202) 366-8553, or Diane LaValle, Office of Hazardous Materials Special Permits and Approvals, (202) 366-4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Overview of Amendments
- III. Summary Review of Amendments
- IV. Regulatory Analyses and Notices

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations or that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which 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 production and the transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Hazardous materials transported under the terms of a special permit must achieve a level of safety at least equal to the level of safety achieved when transported under the HMR. Implementation of new

technologies and operational techniques enhances safety because the authorized operations or activities may achieve a greater level of safety than currently required under the regulations. 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.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for conversion into regulations of broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether or not a specific special permit is a candidate for regulatory action include the safety record for hazardous materials transported or operations conducted under a special permit; potential broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Several of the special permits addressed in this final rule have hundreds of party status grantees. Party status is granted to a person who would like to offer for transport or transport a hazardous material, or perform an operation in association with a hazardous material in the same manner as the original applicant. Several special permits addressed in this final rule provide for the manufacture, marking, sale and use of certain packagings for transportation of hazardous materials. These manufacturing special permits are issued to the packaging manufacturer and provide for use of the packagings by hundreds and possibly thousands of distributors and users.

The amendments in this final rule will eliminate the need for approximately 510 current grantees to reapply for renewal of 44 special permits every four years and for PHMSA to process those renewal applications. These amendments also apply to any special permits this agency issues during the development of this final rule whose provisions are identical in every respect to those described in the rulemakings issued under this docket. To emphasize this, we preface the