



U.S. Department of Transportation
**Pipeline and Hazardous Materials Safety
Administration**
1200 New Jersey Avenue, SE
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DATE 08/03/2026

MEMO TO FILE

From: Carolyn Nelson, P.E.
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Subject: Categorical Exclusion Determination
HM-268F: Reducing Burdens by Allowing Continued Use of DOT Special
Permit Packaging

FINAL ACTION

In this final rule, PHMSA is revising 49 CFR 173.23 to allow for the continued use of a Department of Transportation (DOT) special permit (SP) packaging (*i.e.*, packaging associated with a manufacture, mark, or sale (MMS) special permit) for which the special permit has expired but the packaging remains otherwise safe and usable. Specifically, PHMSA is allowing SP packaging to be used for the duration of their usable life regardless of the status of the grantee and whether the special permit has been renewed. Authorizing continued use of such packaging relieves economic burdens without compromising public safety.

APPLICABLE CATEGORICAL EXCLUSION

Categorical exclusions (CE) are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or an environmental impact statement (EIS). [DOT Order 5610.1D](#), DOT's current National Environmental Policy Act (NEPA) procedures, notes in paragraph 9(f) that "[a]n OA may apply a CE established in another OA's procedures." PHMSA coordinated with the Federal Highway Administration (FHWA) to determine that the following FHWA CE is applicable to the action described above and can be used by PHMSA per Section 9(f) of DOT Order 5610.1D:

*Promulgation of rules, regulations, and directives.*¹

¹ 23 CFR 771.117(c)(20)

UNUSUAL CIRCUMSTANCES

Based on the scope of the action, PHMSA has determined that this rulemaking action does not meet the criteria for unusual circumstances listed in 23 CFR 771.117(b), which would require PHMSA to conduct appropriate environmental studies to determine if the CE classification is proper.

DETERMINATION

PHMSA analyzed the final rule and determined that the rulemaking will not adversely affect safety and will not significantly affect the quality of the human and natural environment. Based on the information provided in the Notice of proposed rulemaking (NPRM), including a review of unusual circumstances, PHMSA finds the final action qualifies as a Categorical Exclusion in accordance with Section 102 of the National Environmental Policy Act, 42 U.S.C. § 4332, DOT Order 5610.1D, Departmentwide National Environmental Policy Act Implementing Procedures, and 23 CFR 771.

Approved by the Environmental Analysis and Compliance Division:
