



U.S. Department of Transportation
**Pipeline and Hazardous Materials Safety
Administration**
1200 New Jersey Avenue, SE
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MEMO TO FILE

From: Carolyn Nelson, P.E.
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Subject: Categorical Exclusion Determination
**HM-268Q: Allowing Fireworks Certification Agencies to Approve
Professional Fireworks**

FINAL ACTION

In this final rule, PHMSA is expanding the current authority of a Fireworks Certification Agency (FCA) to approve fireworks constructed to the APA 87-1A “Standard for the Construction, Classification, Approval, and Transportation of Consumer Fireworks” to include those fireworks constructed to the APA 87-1B “Standard for the Construction, Classification, Approval, and Transportation of Display Fireworks” and APA 87-1C “Standard for the Construction, Classification, Approval, and Transportation of Entertainment Industry and Technical (EI&T) Pyrotechnics.”

To accommodate the expansion of fireworks approvals under all three parts of the APA 87-1 standard, PHMSA is amending 49 CFR Part 107, 49 CFR Part 171, 49 CFR Part 172, and 49 CFR Part 173. In 49 CFR Part 107, PHMSA is revising § 107.402 to reference all three parts of APA 87-1. In 49 CFR Part 171, PHMSA is revising the definition for “FC number.” In 49 CFR Part 172, PHMSA is adding a new Special Provision 200 to state that fireworks may be certified for transportation by a DOT-approved FCA in accordance with the provisions of 49 CFR 173.65. PHMSA is also revising three proper shipping name entries in the Hazardous Material Table (HMT) in 49 CFR 172.101 to reference the revised Special Provision 200. In addition, PHMSA is amending § 172.320 “Explosive hazardous materials” to conform to these additions.

Finally, in 49 CFR Part 173, PHMSA is revising § 173.64 “Exceptions for Division 1.3 and 1.4 fireworks” to reference provisions applicable to FCAs and revising § 173.65 “Exceptions for Division 1.4G consumer fireworks” to retitle it to “Exceptions for Division 1.3G or 1.4G fireworks certification by a Fireworks Certification Agency” and facilitate the approval of

professional fireworks by FCAs. These amendments will streamline PHMSA's fireworks approval process and provide the industry with regulatory flexibility.

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

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:

¹ 23 CFR 771.117(c)(20)

