DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, and 173

[Docket No. PHMSA–2010–0320 (HM–257)]

RIN 2137–AE70

Hazardous Materials: Revision to Fireworks Regulations (RRR)

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

ACTION: Final rule.

SUMMARY: PHMSA is revising the Hazardous Materials Regulations applicable to the approval of Division 1.4G consumer fireworks (UN0336 Fireworks) and establishing DOT-approved fireworks certification agencies that provide an alternative to the approval process for Division 1.4G consumer fireworks. PHMSA is also reformatting the procedural regulations pertaining to certification agencies. These actions clarify regulations with respect to PHMSA's fireworks approval process and provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks.

DATES: *Effective date:* August 15, 2013.

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I. Background

The pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers. The current Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that prior to being transported in the U.S., all explosives, including Division 1.4G consumer fireworks, are classed, approved, and issued a DOT classification approval number (EX number) by PHMSA. The EX number is a unique identifier that indicates a firework device has been classed and approved for transportation into, out of, and throughout the United States.

PHMSA is committed to sustaining the exemplary transportation safety record that Division 1.4G consumer fireworks have had over the past forty years, but seeks to reduce regulatory burden and increase flexibility by providing an alternative to PHMSA's current approval process. PHMSA has conducted an extensive review of the fireworks approval program and has determined that there is an unnecessary delay in the processing of EX approval applications under the current process.

In the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 30, 2012 [77 FR 52636] under Docket No. PHMSA 2010–0320 (HM–257), PHMSA proposed an alternative to the approval process for Division 1.4G consumer fireworks, allowing manufacturers, or designated U.S. agents, to submit applications for certification to a DOT-approved Fireworks Certification Agency (FCA), in lieu of submitting applications for approval directly to PHMSA. To ensure appropriate oversight of FCAs, the NPRM included reporting and recordkeeping requirements necessary to become a DOT-approved FCA. Additionally, PHMSA proposed to define the term ''consumer firework'' and revise the necessary requirements needed for approval as a certification agency by clearly describing each type of DOT-approved certification agency, and to add requirements for an FCA.

In this final rule, PHMSA has modified the proposed requirements in response to recommendations from commenters. Specifically, the approval process to become an FCA is described in detail, the identification sequence of FCA-certified devices is streamlined, and the FCA firework device review process is simplified to be more consistent with the current PHMSA process.

This final rule affects the following entities and establishes the following requirements:

Affected entities	Revisions
• Division 1.4G consumer fireworks manufacturers complying with part 173. • Division 1.4G consumer fireworks importers complying with part 173 • Division 1.4G consumer fireworks transporters complying with part 173 • Fireworks Certification Agencies • Lighter Testing Agencies • UN Package Testing Agencies • Portable tank and Multiple-Element Gas Container (MEGC) Certification Agencies. • State and local fire and police departments that utilize Division 1.4G consumer fireworks classification approvals under the HMR	• Provide alternative process to legally transport Division 1.4G consumer fireworks. • Require retention of a record by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer firework has been certified in a manner consistent with the requirements. • Provide approval process for a fireworks certification agency. • Clarify approval process for a certification agency for lighter testing agency, UN third-party certification agency (packaging), or Portable tank and MEGC certification agency.

As PHMSA is not requiring fireworks manufacturers to use an FCA, and to do so is completely voluntary, PHMSA is not imposing any additional costs. We estimate an FCA certification fee of between $100 and $450.[1] A firework manufacturer will not pay this fee

[1] The lowest estimate quoted in two comments to the NPRM is $100 and the highest estimate is $450; these estimates were based upon the inclusion of physical examination of a firework device requirement proposed in the NPRM, but not included in the final rule. PHMSA believes these figures still accurately reflect the possible range due to the complexity of firework designs.

unless it believes it is net beneficial to do so. Since the option should speed up the classification process, it could reduce some of the uncertainty as to when a manufacturer can process an importer's order for a firework device, and other supply chain issues. Manufacturers likely to use an FCA will be ones seeking certification relatively closer to peak sales periods (primarily before the 4th of July). If manufacturers plan accordingly and wait for PHMSA to issue an approval, they won't pay the FCA fee. The benefits for manufacturers using the FCA certification process to expedite shipments are difficult to quantify. However, we know that any rational manufacturer will not avail itself to this option unless it makes business sense.

Certain administrative fees arising from this rulemaking that are assessed on consumer fireworks manufacturers will primarily be due to a DOT-approved FCA coming into existence and to a company's expansion of services to act as an FCA. These costs may include expenses for office supplies, other non-capital equipment, and additional direct and indirect labor costs.

PHMSA assumes that a DOT-approved FCA will market to fireworks manufacturers and their U.S.-registered agents its ability to certify such fireworks as an advantage over applying for PHMSA approval because of expected faster certification by an FCA. However, PHMSA believes that, because the FCA will likely assess an explicit cost for its certification services, fireworks manufacturers will individually consider their businesses' potential to benefit from expedited processing against the expected costs of this certification fee. Comments to the NPRM indicated that most manufacturers are of the opinion that the expedited processing of fireworks certifications outweighs the expected costs of the certification fees and that the alternative certification process will not compromise the current level of transportation safety of Division 1.4G consumer fireworks.

A. Notice of Proposed Rulemaking

PHMSA issued an NPRM on August 30, 2012 [77 FR 52636] under Docket No. PHMSA 2010–0320 (HM–257), which proposed to revise Title 49 of the Code of Federal Regulations (CFR) applicable to the approval of Division 1.4G consumer fireworks (UN0336 fireworks) and establish a process for allowing a DOT-approved FCA to certify UN0336 fireworks as an alternative to the current PHMSA approval process. PHMSA also proposed to provide clarity by reformatting the procedural regulations pertaining to certification agencies.

Prior to the transportation into, out of, and throughout the United States, all explosives, including Division 1.4G consumer fireworks, must be classed, approved, and issued an EX number by PHMSA. The EX number is a unique identifier that indicates a specific firework device has been classed and approved for transportation.

In the NPRM, PHMSA proposed a new alternative to permit manufacturers, or their U.S agents, to apply to an FCA to review and certify that Division 1.4G consumer fireworks comply with APA Standard 87–1 and are safe for transportation in commerce. To provide oversight of the FCAs, PHMSA proposed reporting and recordkeeping requirements. PHMSA also proposed to revise subpart E of part 107 to clarify the approval process for designation as a certification agency. We also proposed to require the FCAs to physically examine a sample of the Division 1.4G consumer firework prior to initial shipment to determine whether the device meets the requirements of APA Standard 87–1 and matches the dimensions, chemical composition, and device type specified in the application for certification.

To become an FCA, in the NPRM we proposed that the applicant would be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. These procedures were to be designed by the applicant; however, PHMSA was to review the applicant's procedures to determine whether they are adequate to certify compliance with APA Standard 87–1 and whether the FCA certification process provides an equivalent level of oversight as the current approval process.

PHMSA stated in the NPRM that any domestic or foreign entity may apply to become an FCA provided that it is not directly or indirectly controlled by, or have a direct financial interest in, any entity that manufactures, transports, or imports fireworks, except for collection of fees for services as an FCA. We proposed that to qualify as an FCA, each applicant must: (1) Meet specific criteria designed to ensure that the FCA is an impartial, independent, unbiased, and qualified entity; (2) submit an application, including certification procedures; and (3) successfully complete a facility inspection performed by PHMSA. We indicated that to meet the specific qualification criteria, the applicant will be required to demonstrate knowledge of the applicable regulations, including subpart C of part 173 of the HMR and the APA Standard 87–1, and the ability to review and evaluate design drawings and applications in accordance with the APA Standard 87–1. If approved, PHMSA proposed to issue an approval and an identifying number unique to that FCA.

To differentiate between an approval issued by PHMSA and a certification issued by a DOT-approved FCA, PHMSA proposed to use an FX numbering scheme. Instead of issuing an EX number and approval through PHMSA for a fireworks device, which is the approval designation the Associate Administrator of PHMSA issues to all explosives, including fireworks, we proposed that the DOT-approved FCA would issue a unique identifier (FX number) for devices it certifies as Division 1.4G consumer fireworks. Given the long history and wide recognition of the EX numbering scheme, PHMSA sought specific comments on the supply chain implications, the economic impact and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the changes if they were adopted.

We requested specific comments on the underlying estimates of the analysis, including the percentage of entities that will choose to have their 1.4G consumer fireworks certified by FCAs instead of being approved by PHMSA, the manner in which records will be kept (i.e., electronic or paper), the estimated cost of the recordkeeping requirements, the number of affected entities (e.g., manufacturers and importers), and the estimated fee an FCA would charge for certification.

Based on the August 30, 2012, NPRM, and comments received, this final rule adopts an alternative option for Division 1.4G consumer fireworks in which manufacturers, or designated U.S. agents, may submit applications for certification to an FCA, in lieu of submitting applications for approval to PHMSA. The specific differences between the proposals in the NPRM and the amendments adopted in the final rule are discussed further below.

B. Comments on the NPRM

The comment period on the NPRM closed on October 29, 2012. PHMSA received comments from various industry associations, fireworks manufacturers, distributers, importers, and transporters. The majority of the comments were positive, citing that the proposed alternative would sustain the current level of safety while allowing

faster time to market for new consumer fireworks. Included with the positive responses, were suggestions on ways to refine or clarify the proposed changes. A number of the comments were beyond-the-scope of the rule as they suggested changes that were not addressed in the NPRM. Three commenters opposed all of the changes proposed in the NPRM; their comments are discussed in detail below. Overall comments were received from 37 entities; many of whom provided comments on a number of subjects. Thirty-three entities provided positive comments. Within the 33 who were in favor of the proposal, nine also provided comments that were beyond-the-scope of this rule. Three commenters provided comments in opposition to the proposal, with one providing an additional comment that was beyond-the-scope of this rule. In addition, these comments addressed issues or asked questions that have been addressed in this final rule. PHMSA has summarized comments to specific sections in the ''Section-by-Section Review'' discussion of this rulemaking. You may review comments in the docket for this action at *http://www.regulations.gov* under docket number PHMSA–2010–0320. For your convenience, a listing of the docket entries is provided below.

Commenter	Docket ID No.
American Fireworks Standards Laboratory (AFSL)	PHMSA–2010–0320–0016
American Pyrotechnics Association (APA)	PHMSA–2010–0320–0017
BJ Alan Company	PHMSA–2010–0320–0026
Elkton Sparkler Company	PHMSA–2010–0320–0005
Fireworks Over America	PHMSA–2010–0320–0010
Fireworks Pyrotechnique by Grucci, Inc.	PHMSA–2010–0320–0021
Forward Fireworks Co. Ltd.	PHMSA–2010–0320–0036
Hamburg Fireworks Display, Inc.	PHMSA–2010–0320–0008
International Technical and Quality Services Limited	PHMSA–2010–0320–0003
Jake's Fireworks, Inc.	PHMSA–2010–0320–0023
Kellner's Fireworks Inc.	PHMSA–2010–0320–0037
Keystone Novelties Distributors, LLC	PHMSA–2010–0320–0018
Legend Fireworks	PHMSA–2010–0320–0012
Legion Fireworks Co., Inc.	PHMSA–2010–0320–0024
Liberty Fireworks, Inc.	PHMSA–2010–0320–0022
Melrose Pyrotechnics, Inc.	PHMSA–2010–0320–0004
National Fireworks Association (NFA)	PHMSA–2010–0320–0039
Next FX and Stage FX	PHMSA–2010–0320–0014
North Central Industries, Inc.	PHMSA–2010–0320–0007
Precocious Pyrotechnics, Inc.	PHMSA–2010–0320–0028
S. Vitale Pyrotechnic Industries	PHMSA–2010–0320–0009
Sparks Fly	PHMSA–2010–0320–0027
Steve Anthony Coman	PHMSA–2010–0320–0033
Stonebraker Rocky Mountain Fireworks Co.	PHMSA–2010–0320–0035
The Alliance of Special Effects Pyrotechnic Operators, Inc.	PHMSA–2010–0320–0030
The International Fireworks Shippers Association (IFSA)	PHMSA–2010–0320–0013
Thunder Fireworks, Inc.	PHMSA–2010–0320–0032
THY Associated, Inc	PHMSA–2010–0320–0031
TNT Fireworks	PHMSA–2010–0320–0019
Tian Cheng Pyrotechnics Laboratory	PHMSA–2010–0320–0038
Veolia ES Technical Solutions, LLC	PHMSA–2010–0320–0034
Wald & Co. Charles Edward Wald	PHMSA–2010–0320–0025
Warpath Tribal Corp.	PHMSA–2010–0320–0006
Weeth Associates. LLC	PHMSA–2010–0320–0020
Western Enterprises, Inc.	PHMSA–2010–0320–0029
Win Da Hong (HK) Co., Ltd.	PHMSA–2010–0320–0011
Winco Fireworks International, LLC	PHMSA–2010–0320–0015

C. Comments Beyond-the-Scope

Allow FCAs To Certify Division 1.3G Fireworks

Four commenters—APA, AFSL, Fireworks By Grucci, Inc., and Melrose Pyrotechnics—suggested that Division 1.3G fireworks be included in § 173.65. Specifically, commenters claimed that Division 1.3G fireworks, like 1.4G consumer fireworks, possess an exemplary safe transportation record and are widely used in the United States. Commenters suggested the expansion of the original proposal in the NPRM to include Division 1.3G fireworks would increase the economic benefits of the original proposal. Specifically, expanding the proposal to include Division 1.3G fireworks would increase the amount of expedited shipments, would provide a cost savings to the industry, and would provide flexibility and innovation for U.S.-based companies. Finally, AFSL noted that an independent review and certification of Division 1.3G fireworks is already being done on a voluntary basis. This Display Fireworks Inspection program includes a factory audit program, product and packaging inspection, as well as container loading supervision requirements.[2]

Division 1.3 fireworks pose a greater hazard than Division 1.4 fireworks by definition.[3] In the NPRM, we proposed the FCA alternative for only the lowest hazard fireworks; i.e., Division 1.4G consumer fireworks. PHMSA noted in the NPRM that over the past forty years, there have been 35 reported transportation incidents in the United States involving fireworks that were

[2] *http://www.afsl.org/sites/default/files/AFSL-DISPLAY%20FIREWORKS%20STANDARDS%20FINAL%2004102012.pdf* (Accessed 02/21/2013).

[3] See 49 CFR 173.50 Class 1—Definitions.

declared hazardous materials. During this same period, there has never been a death or major injury attributed to fireworks while in transportation when there was compliance with the regulations. While there have been two incidents that resulted in fatalities in that forty year period, both involved the improper setup or storage of display fireworks, and were not attributed to the transportation of Division 1.4G consumer fireworks. Furthermore, the majority of PHMSA fireworks approvals (approximately 75 percent) are for Division 1.4G consumer fireworks devices. Limiting the FCA program to Division 1.4G consumer fireworks proved to be the safest and most effective manner to provide regulatory flexibility while maintaining safety.

As the NPRM proposed the FCA alternative for the lowest hazard fireworks only, Division 1.4G consumer fireworks, expanding the proposal in the NPRM to include Division 1.3G fireworks, is considered beyond the scope of this rulemaking. While PHMSA agrees the economic benefits of the original proposal in the NPRM may be increased by allowing other fireworks to be certified by FCAs, a more extensive safety and policy analysis would need to be completed before we expand the applicability beyond that proposed in the NPRM. We will continue to evaluate our fireworks approvals program and monitor the FCA certification process to ensure it provides an equivalent level of oversight as the current approvals process. Further, we will monitor the Consumer Product Safety Commission's (CPSC) compliance efforts and evaluate the appropriateness of a similar program. We may consider authorizing FCAs to certify Division 1.3G fireworks in the future. However, in this final rule, only Division 1.4G consumer fireworks will be authorized to be certified by an FCA.

Incorporate by Reference Revised APA Standard 87–1

Eight commenters [4] asked that we incorporate by reference a revised version of the American Pyrotechnics Association (APA) Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics (2001). Most of the commenters echoed the comments submitted by APA, which indicated:

> The currently-adopted version of APA Standard 87–1 was published in 2001, and went through a lengthy preparation process within the APA that was then followed by a lengthy review by DOT prior to its adoption into Title 49. It is, however, a fifteen year old document that outlines the basic construction and approval requirements for fireworks, novelties, and theatrical pyrotechnics. There have been many advances in the consumer fireworks industry during those 15 years, and even in the decade since it was formally adopted. In particular, a variety of new devices have been developed, including combination devices and girandole, and new technologies have come into the industry. More and more devices, for example, now contain multiple tubes, and represent combinations of effects that previously were limited to single tubes of separate items.

Further, the National Fireworks Association (NFA) suggests that we make various changes to the application form in APA Standard 87–1.

PHMSA understands that APA is working on a revision of the APA Standard 87–1 currently incorporated by reference in the HMR. However, until this updated version is finalized and published, PHMSA cannot adopt the revised APA Standard 87–1. As with any standard incorporated by reference in § 171.7, PHMSA periodically reviews and updates authorized industry consensus standards following a complete review and analysis of the safety and cost implications of that standard. When it is finalized and published by APA, and PHMSA determines that it is appropriate to incorporate that version of the standard, we will do so through the rulemaking process, providing opportunity for public comment. Until that time, we will continue to incorporate by reference the 2001 edition of the APA Standard 87–1, which continues to be used successfully and safely by PHMSA and the regulated community.

Provide Regulatory Relief for Transportation of Consumer Fireworks Shipped for Disposal

Veolia ES Technical Solutions, LLC requested PHMSA adopt certain regulatory relief for the transportation of consumer fireworks being shipped for disposal. They state:

> Consumer fireworks are routinely confiscated by local enforcement officials throughout the country and then packaged in UN specification drums awaiting disposal. Typically water is added to the drums to thoroughly wet the devices and eliminate any potential for ignition of the devices. These containers are then offered for shipment off-site to a disposal facility for destruction. Although this is proven safe practice for managing the consumer fireworks, it creates many issues for environmental management companies like Veolia when attempting to comply with the requirements of the HMR when shipping to a disposal facility.

We agree with Veolia that the transportation of consumer fireworks for disposal is an issue that must be considered. PHMSA is actively working with other Federal agencies to evaluate current fireworks disposal practices and consider changes to enhance the safe disposal of firework devices and debris. This joint effort may lead to future regulatory action. However, as the NPRM under this docket did not propose any requirements for waste consumer fireworks, this comment is considered beyond-the-scope of this rulemaking.

D. Comments Opposed to the FCA Process

Although the comments to the NPRM were predominantly positive, three commenters, Kellner's Fireworks, Inc., the International Fireworks Shippers Association (IFSA), and NFA, opposed the idea of establishing an alternative to the approval process for Division 1.4G consumer fireworks outright. The rationale of each of these commenters' opposition and PHMSA's response is detailed below. However, much of this opposition was predicated on the assumption that PHMSA would require FCAs to physically examine a firework device, which we are not requiring in this final rule.

FCAs Will Not Streamline Review Process

Kellner's Fireworks, Inc., IFSA, and NFA disagree that the alternative option for manufacturers or their designed U.S. agents to apply for certification from an FCA would expedite the process. Kellner's Fireworks Inc., believes that FCAs would take the same time to review applications as it takes PHMSA. They state:

> All of the EX number applications submitted will still need to be completely reviewed by either an FCA or PHMSA and therefore will not necessarily reduce the amount of time it takes to obtain an approval. If every company were to use the same few FCA's the same number of applications currently being reviewed will still only be reviewed by a few people and the FCA's will get bogged down with paperwork just as PHMSA has in the past.

PHMSA agrees with the portion of the above statement that volume of applications submitted should remain relatively constant with the introduction of FCA certification. However, PHMSA does not agree that the introduction of FCAs will have no positive effect on the overall speed of review of a Division 1.4G consumer firework application.

[4] APA, AFSL, Fireworks by Grucci, Inc., Fireworks Over America, Next FX and Stage FX, Precocious Pyrotechnics Inc., The Alliance of Special Effects & Pyrotechnic Operators, and Win Da Hong (HK) Co. Ltd.

PHMSA notes that with the introduction of FCAs, the number of reviewers of Division 1.4G consumer fireworks will increase and consequently divide the workload between FCAs and PHMSA. This division of workload will increase the capacity for applications of Division 1.4G consumer fireworks to be reviewed simultaneously and, therefore, decrease the backlog of fireworks applications awaiting review.

Both Kellner's Fireworks, Inc., and NFA assert that the proposals contained in the NPRM do not streamline the process for obtaining a certification for transportation of Division 1.4G consumer fireworks, and in fact the changes add steps to the process. PHMSA agrees that the requirement to physically examine a sample device of Division 1.4G consumer fireworks, as proposed in the NPRM, does add a layer of complexity not present under the current PHMSA review process. Accordingly, PHMSA has removed the requirement that FCAs physically examine a firework device in this final rule. With this modification, the FCA and PHMSA application review process parallel one another. PHMSA is confident that eliminating the requirement that FCAs physically examine a firework device resolves many of the issues both Kellner and NFA presented.

Proposal Adds Financial Burden

Furthermore, Kellner's Fireworks, Inc. and NFA's opposition to the NPRM is also rooted in their belief that the proposals in the NPRM will add a financial burden and that the NPRM is not in the spirit of Executive Order 13610. A full discussion of Executive Order 13610 is provided later in this document; however, the results of an economic analysis of both the NPRM and final rule demonstrate that establishing and implementing the FCA option to review and certify Division 1.4G consumer firework will be cost beneficial (see ''Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures'' section of this document and economic analysis in the rulemaking docket). In addition, although an FCA will charge a fee for its services, the use of an FCA is optional (not a required cost), and manufacturers will use the FCA option if it is net beneficial to do so; if it is not, they will use the PHMSA approval option.

Difficulty in Oversight

In addition to the comments shared with Kellner, NFA believes that since the vast majority of fireworks are produced in China, FCAs would be established in foreign countries. NFA notes that the location of these FCAs could provide PHMSA with challenges in oversight, specifically noting that monitoring for compliance would be difficult. PHMSA understands that FCAs may be established outside of the United States and does not see this as an impediment to successfully overseeing and monitoring FCAs. With the requirements adopted in this final rule an FCA will, in accordance with its approval, transmit FCA certifications to PHMSA on a regular basis. PHMSA will have the ability to review this documentation to ensure accuracy and consistency.

If the periodic review of the documentation reveals non-compliance, or an FCA does not abide by the terms and conditions of its approval, PHMSA may conduct enforcement investigations, impose penalties for violations and, if appropriate, suspend or terminate the FCA's approval to certify fireworks. Furthermore, cylinders, like fireworks, are manufactured outside of the United States and PHMSA successfully monitors the compliance of these foreign entities.

Applications Denials and Rejections

NFA states that in the NPRM, applications, denials, and rejections were not addressed. Specifically, NFA notes the NPRM does not address how an FCA would handle applications that are initially or repeatedly denied. While the NPRM did address reconsideration of an FCA's approval request, the NPRM did not explicitly address reconsideration of a manufacturer's, or a foreign manufacturer's designated U.S. agent's, certification application request to an FCA, if that request is denied.

In the NPRM, PHMSA proposed that to become a DOT-approved FCA, the applicant will be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. Although not explicitly stated, it is expected these procedures would include an FCA's proposed manner of handling denials and rejections of a manufacturer's, or a designated U.S. agent's, certification application request. Further, as the FCA certification process is designed to parallel the current approval process, PHMSA anticipates that denial and reconsideration procedures would be analogous to those provided for DOT-issued approvals specified in § 107.715.

Further, as part of its certification requirements, in addition to notifying the manufacturer of the reasons a firework device has been denied certification, an FCA must, as a condition of the FCA approval, report its denial of a specific firework device to PHMSA. If a manufacturer resubmits a certification request for the same device to an FCA, and the device is ultimately certified as compliant, the FCA will also submit this information to PHMSA. With respect to applications with formatting or minor editorial errors, PHMSA believes that each FCA would develop a method to expeditiously handle these errors without the need to reject an application.

Implementation Time

Finally, NFA states their belief that ''[e]stablishing a body of FCAs could take years to implement, fine tune, and regulate in an industry that needs relief immediately.'' While the time it will take to realize the full impact of the changes adopted in this final rule is difficult to determine, PHMSA believes the establishment of FCAs will be a long-term, sustainable, and safe solution. Further, PHMSA believes the impact of this alternative process will be realized faster than the time NFA asserts. As with any new regulation, implementing a change takes time, but to lessen the implementation time, PHMSA is updating the current guidance available [5] regarding the approval/certification process and the transportation of fireworks, to include information on the alternative FCA certification process.

Alternative Solution

IFSA voiced its opposition to the proposals in the NPRM and provided an alternative option to the proposals in the NPRM. Specifically, IFSA states ''[t]here is no need for additional FCA's to provide approvals. If PHMSA would modify their current approval process, then all of PHMSA cost, performance, and safety goals can be met.'' IFSA suggests that PHMSA change the current approval document to a checklist format with a certification signature. This checklist would consist of simple ''Yes'' or ''No'' validations to indicate that the device meets all of the requirements of APA Standard 87–1. This checklist application, it maintains, will eliminate the current typical issues of math and spelling errors, which cause the vast majority of PHMSA rejections. IFSA proposes that if PHMSA were to accept this proposed checklist approval document, a cost savings of $26 million

[5] *http://phmsa.dot.gov/hazmat/regs/sp-a/approvals/fireworks* (Accessed 02/21/2013).

per year could be realized by the fireworks industry.

As mentioned above, PHMSA has conducted an intensive retrospective review of the fireworks approval program and, prior to drafting this rulemaking, PHMSA evaluated multiple options to improve the fireworks approval program including options similar to that proposed by IFSA. PHMSA appreciates IFSA's suggestion; however, based on our review, the changes in this final rule will result in the most desirable long-term, sustainable, and safe solution. PHMSA has not verified the IFSA figure of $26 million per year savings for the firework industry, but questions whether the proposed checklist alone would have such a large impact. In addition, we do not believe that a checklist, with yes or no questions provides adequate oversight to the Division 1.4G consumer fireworks classification process. PHMSA believes that each fireworks manufacturer will individually consider its businesses' potential to benefit from expedited processing against the expected costs of this certification fee. Comments to the NPRM indicate that most manufacturers are of the opinion that the expedited processing of fireworks certifications outweighs the expected costs of the certification fees.

II. Amendments Adopted in Final Rule

Based on the August 30, 2012, NPRM, and comments received, this final rule adopts an alternative option for Division 1.4G consumer fireworks in which manufacturers may submit applications for certification to an FCA, in lieu of submitting applications for approval to PHMSA. To ensure oversight of FCAs, this final rule includes reporting and recordkeeping requirements. Additionally, PHMSA defines consumer fireworks and clarifies the approval process for designation as an FCA. The differences between this final rule and the NPRM include: removing the requirement that an FCA must physically examine a firework device; clarifying the FCA certification process; reformatting the certification process for other DOT-approved agencies; removing the requirement that an FCA must be inspected by PHMSA prior to approval; adding preamble discussion regarding the information that will be contained in the FCA approval documentation issued by PHMSA; revising the alpha-numeric scheme for fireworks certified by FCAs; and clarifying the content of the approval issued by PHMSA for designation as an FCA.

The following is a summary of the amendments PHMSA is adopting in the final rule.

- Section 107.401 is amended to include Division 1.4G consumer fireworks.
- Section 107.402 paragraphs (a) and (b) are amended to clarify the application process for designation as a certification agency.
- Section 107.402 paragraph (c) is amended to specify the application procedure to become a third-party packaging certification agency.
- Section 107.402 paragraph (d) is added to specify the application procedure to become a designated fireworks certification agency and a renewal process is established for such agencies.
- Section 107.402 paragraph (e) is added to specify the application procedure to become a designated lighter certification agency.
- Section 107.402 paragraph (f) is added to specify the application procedure to become designated portable tank and MEGC certification agencies.
- Section 107.403 paragraph (c) is amended to clarify the procedures for reconsideration and appeal.
- Section 107.403 paragraph (d) is added to clarify where to find the conditions under which the Associate Administrator may modify, suspend or terminate an approval.
- Section 171.8 is revised to define the term ''FC number.''
- The listing for Fireworks, Division 1.4G in § 172.101, the Hazardous Materials Table, column (7), is amended to refer to new Special Provision 200.
- Special Provision 200 is added to state that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65.
- Sections 172.320(b) and 172.320(d) are amended to allow for firework certification (FC) numbers issued by Firework Certification Agencies (FCAs) in lieu of EX numbers issued by PHMSA.
- Section 173.56(b) is amended to except new fireworks devices meeting the criteria in new §§ 173.64 and 173.65 from the specified requirements for examining, classifying and approving new explosives.
- Section 173.56(b)(1) is amended to indicate EX numbers will be issued to all new explosives by the Associate Administrator, except for Division 1.4G consumer fireworks, which may be issued EX numbers by the Associate Administrator or FC numbers issued by an FCA as set forth in § 173.65.
- A definition for ''consumer fireworks' is added in § 173.59.
- Section 173.64 is added and the current exception, in § 173.56(j), for Divisions 1.3 and 1.4 fireworks to be offered for transportation if they are manufactured in accordance with APA Standard 87–1 and pass a thermal stability test, is moved to this section.
- Section 173.65 is added to provide a new exception for Division 1.4 G consumer fireworks manufacturers, or designated U.S. agents on behalf of a foreign manufacturer, to apply for certification through an FCA.

III. Section-by-Section Review

The following is a section-by-section review of the amendments proposed in the August 30, 2012 NPRM, the comments received in response to those amendments and the modified amendments adopted in this final rule.

Part 107

Part 107 subpart E sets forth procedures for persons seeking approval to serve as a certification agency, including lighter certification agencies, which certify lighter designs, UN third-party packaging certification agencies, which test packaging for compliance with UN recommendations, and independent inspection agencies, which evaluate and certify cylinder manufacturers. PHMSA is revising subpart E of part 107 to clarify the approval process and requirements for new and existing certification agencies and establish alternative procedures used to review and certify Division 1.4G consumer fireworks.

In the NPRM, to clarify and provide consistency in the procedural process for designation as a certification agency, the subpart E heading was proposed to be retitled ''Designation of Certification Agencies.'' PHMSA received no comments on the title change, thus in the final rule PHMSA is adopting the title change as proposed.

Section 107.401

Section 107.401 provides the purpose and scope of the designation of certification agencies. In the NPRM published under this docket no modifications were proposed to § 107.401; however, PHMSA did propose other revisions to procedural regulations pertaining to certification agencies. In this final rule PHMSA is modifying § 107.401 paragraph (a) to reflect revisions to procedures pertaining to certification agencies found in § 107.402. These revisions are editorial in nature and simply denote the types of certification agencies PHMSA currently approves (i.e., packagings, lighters, portable tanks, multiple-element gas containers (MEGC)s, and Division 1.4G consumer fireworks).

Section 107.402

In the NPRM, PHMSA proposed modifications to part 107 subpart E to address the requirements of certification agencies. No new application requirements specific to any certification agencies were proposed in the NPRM. Specifically, PHMSA proposed that:

- The words ''as an approval or'' would be removed from § 107.402.
- General application requirements for designation as a certification agency would be moved to § 107.402(b);
- Application requirements specific to Packaging Certification Agencies and Lighter Certification Agencies would be moved to § 107.402(c); and
- Application requirements specific to Fireworks Certification Agencies would be provided in § 107.402(d).

PHMSA did not receive comments on the words ''as an approval or'' being removed from § 107.402 therefore this editorial change was adopted. Although PHMSA did not receive comments on the formatting of § 107.402, for the purposes of clarity in the final rule, PHMSA is adopting a modified structure of § 107.402. Specifically, the adopted text identifies each type of certification agency PHMSA currently authorizes. These revisions are editorial in nature and simply list the certification agencies PHMSA currently approves (i.e., packagings, lighters, portable tanks, MEGCs, and Division 1.4G consumer fireworks). In this final rule, paragraphs (a) and (b) are revised to provide general application requirements for designation as a certification agency.

This final rule adopts additional editorial changes to the format of § 107.402. Specifically, the application requirements specific to UN Third Party Packaging Certification Agencies are provided in § 107.402(c). The application requirements specific to Lighter Certification Agencies are specified in § 107.402(e). The application requirements specific to Portable Tank and MEGC Certification Agencies are specified in § 107.402(f). No new application requirements specific to UN Third Party Packaging Certification Agencies, Lighter Certification Agencies, or Portable Tank and MEGC Certification Agencies were added and this is simply a formatting change.

In the NPRM, PHMSA proposed modifications to part 107 subpart E to address the parameters of becoming an FCA. Specifically, the proposed amendments specified in § 107.402(d) stated that to be considered an FCA, an applicant would be required to submit an application with procedures it will use to review and certify Division 1.4G consumer fireworks, and PHMSA would review the applicant's procedures to determine whether they are adequate to certify compliance with APA Standard 87–1 and whether they provide a certification process equivalent to the current approval process. Specifically, the proposed language in § 107.402(d) required ''[a] statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.'' AFSL expressed its concern with this proposed language. AFSL contends that:

> This expertise is possessed by independent organizations like AFSL, as well as the independent testing organizations retained by AFSL to conduct fireworks testing . . . AFSL, for example, is an independent, 501(c)(3) corporation whose primary purpose is to improve the quality and safety of fireworks distributed or used in the U.S. marketplace. Although members of the fireworks industry are represented on the AFSL Board of Directors, AFSL is not financially dependent, controlled, or owned either in whole or in part by any entity that manufactures, transports, or imports fireworks. AFSL offers the only independent third-party testing and certification service for manufacturers and importers to ensure that their products comply with state of the art technical requirements for fireworks. AFSL standards, developed by the independent AFSL Standards Committee comprised of representatives from the fireworks industry, federal and state regulatory authorities, consumers, and technical experts, incorporate all CPSC and DOT fireworks regulations, as well as provisions that go above and beyond the federal regulations to further improve safety and ensure good manufacturing practices for producing consistent, high quality fireworks products.

The intent of the language in § 107.402(d) is to ensure that entities that evaluate and certify fireworks are technically competent to perform the prescribed functions, and free from undue influence by persons who manufacture, own, transport or cause transportation, of firework devices. This is consistent with the current requirements for all other independent certification agencies.

International Technical and Quality Services Limited noted that in the NPRM we neglected to mention if an FCA would be required to periodically renew its authority with PHMSA. PHMSA does intend to establish a renewal process for FCAs. Consistent with other authorization time periods for third-party certification agencies, such as explosive labs, lighter labs, and independent inspection agencies, we will establish a renewal period for FCAs in each separate FCA approval to ensure that FCAs continue to meet the criteria set forth in part 107, subpart E; however, FCA approvals are generally expected to be issued with a maximum five-year renewal period.

In the NPRM we proposed that before an FCA is approved, it would have to successfully complete a facility inspection performed by PHMSA. This requirement was designed to ensure that the FCA is capable of physically examining a firework device. International Technical and Quality Services Limited asked who would bear the cost of such inspections. In this final rule, we are removing the proposed requirement that FCAs physically examine a sample device (see the review of part 173) and, therefore, we do not believe there is a need for a facility inspection as a requirement to be approved as an FCA. For this reason, we are not including pre-approval inspections as a requirement to become an approved FCA in this final rule. We anticipate that inspections of FCAs will be added to our overall field operations inspection program. Since we are not requiring pre-approval inspections of an FCA, FCAs will not incur costs for those inspections.

In the NPRM, we proposed that the FCA applicant would be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks. We stated that these procedures would be designed by the applicant, but that PHMSA would review the applicant's procedures to determine whether they are adequate to certify compliance with the APA Standard 87–1 and whether the FCA certification process provides an equivalent oversight as the PHMSA explosives approval process.

AFSL and APA stated that the procedures developed by AFSL to test consumer fireworks for compliance with AFSL's voluntary fireworks safety standards would be an ideal model for developing criteria for FCAs. Standards developed by AFSL's Standards Committee incorporate CPSC and DOT performance and labeling requirements. Also, the Committee developed provisions above and beyond the Federal regulations to further improve safety and provide good manufacturing practices for producing consistent, high quality products. As we are not requiring FCAs to physically examine a firework device as part of the certification process in this final rule, we do not believe it is necessary to establish a rigid set of criteria for FCA procedures; however, we will require the FCA to submit standard operating

procedures with their approval application, which PHMSA will review to ensure that each FCA is capable of performing review and certification that is equivalent to the current PHMSA approval process.

As mentioned above, although not explicitly stated, it is expected these procedures would include an FCA's proposed manner of handling denials and rejections of manufacturer or a foreign manufacturer's designated U.S. agent's application requests. Further, as the FCA certification process is designed to parallel the current approvals process, PHMSA anticipates that denial and reconsideration procedures would be analogous to those provided for DOT-issued approvals specified in § 107.715.

While we indicated in the NPRM that the required FCA qualifications would be detailed in each FCA approval, in response to International Technical and Quality Services Limited's comment that ''[i]t is suggested that detailed and specific requirements and procedures are drawn up in order to standardize the work done by different FCAs in the market,'' in addition to the general application requirements for a certification agency specified in § 107.402(b), in this final rule we detail specific requirements in § 107.402(d). The FCA applicant must meet the following requirements:

- Be a U.S. citizen, or have a designated U.S. agent representative as specified in § 105.40;
- Employ personnel with work experience in manufacturing or testing of Division 1.4G consumer fireworks; or a combination of work experience in manufacturing or testing of Division 1.4G consumer fireworks and a degree in the physical sciences or engineering from an accredited university;
- Have the ability to:
  - Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and
  - Verify thermal stability test procedures and results.
- Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship; and
- Submit an application that includes the following information:
  - Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;
  - Detailed description of the qualifications[6] of each individual the applicant proposes to employ to review, and certify that the requirements specified in part 173 and the APA Standard 87–1 have been met.
  - Written operating procedures to be used by the fireworks certification agency to review, and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;
  - Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent, and any direct or indirect ownership interest in each subsidiary or division of the applicant; and
  - A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

As with approvals issued to other third-party certification agencies, in addition to the information required in § 107.402(d), the FCA approval documentation issued by PHMSA to the FCA will include additional information detailing operational requirements. PHMSA may also include additional information on the FCA approval documentation as needed. The FCA approval documentation will include:

- The FCA's unique identifier;
- Requirements for the periodic renewal of an FCA;
- Details regarding the submission process and method of transmitting FCA certifications to PHMSA;
- Instructions on issuance of FCs, including unique identifier sequence and tracking numbers;
- Recordkeeping requirements specific to the FCA.
- Qualifications of each employee conducting FCA reviews; and
- Procedures to notify PHMSA in the event of operational changes or modifications (i.e., reporting changes in employment status, hiring of new personnel or changes to standard operating procedures).

Section 107.403

In the NPRM, PHMSA proposed the word ''approval'' would be replaced with ''certification'' in the § 107.403 heading. PHMSA received no comments on the title change thus in the final rule, PHMSA is adopting the title change as proposed.

In the NPRM, PHMSA proposed that if an applicant is denied designation as an FCA, that it may request that PHMSA reconsider the denial in accordance with § 107.403(c). This is consistent with the procedural requirements of subpart H of part 107. Further, we proposed a new subparagraph (d) to be added to § 107.403 to reference the regulations pertaining to modification, suspension, and termination of approvals. In this final rule, we have revised § 107.403(c) to further clarify that a certification agency applicant would be afforded the same reconsideration and appeal process as all other applicants seeking approvals. New subparagraph (d) is adopted as proposed in the NPRM.

Section 107.404

No changes were proposed to § 107.404; therefore, this section remains unchanged.

Section 107.405

Section 107.405 was proposed to be deleted and reserved. PHMSA received no comments on these changes therefore the amendments will be adopted as proposed.

Part 171

Section 171.8 Definitions and Abbreviations

In the NPRM, we proposed to define the term ''FX number'' in § 173.65. In this final rule we are revising ''FX' to ''FC'' (see the review of part 173) and moving the definition of 'FC number'' to the more appropriate § 171.8, which provides definitions and abbreviations. This is consistent with how PHMSA has defined ''EX number.''

Part 172

Section 172.101 Hazardous Materials Table and § 172.102 Special Provisions

In the NPRM, an amendment was proposed to the Hazardous Materials Table (HMT; § 172.101), column (8A), to reference the new § 173.65. PHMSA has concluded that it is more appropriate to add a special provision to the HMT, column (7), as § 173.65 does not provide an exception from regulations as column (8A) implies, rather it provides an alternative certification method for Division 1.4G consumer fireworks. PHMSA is revising the listing for Division 1.4G, Fireworks in § 172.101, the HMT, column (7), to refer to new Special Provision 200 and concurrently establishing Special Provision 200 in § 172.102 to indicate that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65. PHMSA did not receive any comments on the proposed amendment.

Section 172.320

In the NPRM, PHMSA proposed revising § 172.320(b) to indicate that

[6] While the regulations will not specify exact qualifications, applicants should have either work or educational experience, or a combination thereof, with regard to fireworks.

each package containing Division 1.4G consumer fireworks certified in accordance with § 173.65, must be marked with a FX number issued by a fireworks certification agency in lieu of an EX Number. Furthermore PHMSA proposed revising § 172.320(d) to indicate if the FX number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a) of this part, that the requirements of § 172.320 do not apply.

We received no comments on these revisions and, therefore, PHMSA is revising § 172.320(b) to indicate that each packaging containing Division 1.4G consumer fireworks certified in accordance with § 173.65, must be marked with an FC number issued by a FCA in lieu of an EX number. Furthermore, we are also revising § 172.320(d) to indicate if the FC number of each explosive item described under a proper shipping description is shown in association with the shipping description on a shipping paper required by § 172.202(a) of this part, that the requirements of § 172.320 do not apply. These changes provide consistency with the current hazard communication requirements for other explosives and reflect the change from FX to FC number that is described in more detail below.

Part 173

The requirements for the classification and packaging of Class 1 explosive materials are specified in part 173, subpart C of the 49 CFR. Fireworks are considered a Class 1 explosive material and must be classed under one of five hazard Divisions and compatibility groups (1.1G, 1.2G, 1.3G, 1.4G, and 1.4S). As currently specified in the HMR, prior to transportation into, out of, and within the United States, all explosives, including fireworks, must be approved and assigned a classification by PHMSA based on actual testing. Alternatively, Divisions 1.3 and 1.4 fireworks may be approved in accordance with the APA Standard 87–1.

Section 173.56

In the NPRM, we proposed moving the current requirements of § 173.56(j), which authorize Divisions 1.3 and 1.4 fireworks and 1.4 articles, pyrotechnic, to be classed and approved by the Associate Administrator without prior examination and offered for transportation if the device is manufactured in accordance with the APA Standard 87–1 and passes a thermal stability test, to a stand-alone new § 173.64 entitled ''Exceptions for Division 1.3 and 1.4 fireworks.'' Furthermore, PHMSA proposed to modify paragraph (b) of § 173.56 to replace the references to paragraph (j) with references to the new § 173.64. PHMSA did not receive specific comments on the proposed changes; thus, we are adopting the amendments as proposed.

Section 173.59

In the NPRM, PHMSA proposed to add a definition for ''consumer firework'' to § 173.59. Specifically, in the NPRM we proposed that a consumer firework was:

> Any completed firework device that is packaged in a form intended for use by the public that complies with the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in Title 16, CFR Parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17(a)(8).

Since PHMSA did not receive any comments on the definition, we are adopting the amendment as proposed, with minor editorial corrections.

Section 173.64

In the NPRM, PHMSA proposed revising and moving the current requirements of § 173.56(j) to a stand-alone new § 173.64 entitled ''Exceptions for Division 1.3 and 1.4 fireworks.'' As PHMSA did not receive any comments on this amendment specifically, we are adopting the amendment with minor edits.

Section 173.65

In the NPRM, PHMSA proposed to establish new § 173.65, to allow manufacturers to apply for a firework certification from an FCA as an alternative to the PHMSA approval process for Division 1.4G consumer fireworks. In the NPRM we proposed that the process for FCA certification of a device would require the device to be manufactured in accordance with the APA Standard 87–1, pass a thermal stability test, and be physically examined by the FCA.

APA, AFSL, Fireworks Over America and Next FX and Stage FX supported the concept of a physical examination of a sample to determine the per-tube and total per-device weights of pyrotechnic composition and verify that the device meets the requirements in the APA Standard 87–1 for classification as Fireworks 1.4G, UN0336. However, all commenters in favor of physical examination indicated that we need to make clear if the examination requires qualitative chemical analysis.

Kellner's Fireworks Inc., and the NFA opposed the requirement for physical examination of the firework device. Kellner stated that:

> Currently PHMSA only looks at a chemical composition sheet to determine that all of the chemicals used in an item are in compliance with APA 87–1. Requiring a full chemical analysis only adds another time consuming process to the procedures for obtaining an EX number.

The NFA stated:

> The requirement that samples must be supplied to the FCAs in addition to the paper Application Form in no way streamlines the application process and only adds an additional meaningless burden on the manufacturer since the submitted sample would not necessarily represent accurately a production version of the product.
>
> The requirement of samples also means that FCAs could not be established in the USA as it would be impossible to ship physical live samples for inspection without an EX number already in place. This regulation would take jobs away from the domestic market and even if a variance was established the cost to ship samples from China would be prohibitive and as noted already, it is questionable whether the samples would truly represent production made products.

The intent of the proposed requirement was to help ensure that the per-tube and total per-device weights of pyrotechnic composition of a Division 1.4G consumer firework complied with the APA Standard 87–1. However, PHMSA agrees with Kellner and the NFA that the proposed language does little but add an unnecessary and time-consuming requirement to the certification process. Therefore, in this final rule PHMSA is removing the condition that the device must be physically examined under the FCA certification process. The removal of this proposed requirement more closely aligns the FCA certification process with the current PHMSA approval process for Division 1.4G consumer fireworks, providing consistency between the two methods, and reducing potential confusion.

In the proposed § 173.65(a) we also set forth a numbering scheme to discern EX approvals from FCA certifications. We proposed that firework devices certified by FCAs are assigned an ''FX'' number. Given the long history and wide recognition of the EX numbering scheme, in the NPRM PHMSA sought specific comments on the supply chain implications, the economic impact, and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the changes if they are adopted. A number

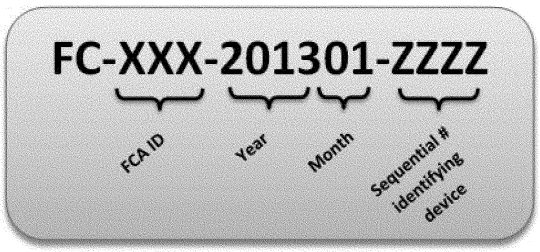
of commenters indicated that the use of ''FX'' would cause confusion. Next FX and Stage FX, and the Alliance of Special Effects & Pyrotechnic Operators, Inc., noted that in the fireworks industry, ''FX'' is used as an abbreviation for term ''effects.'' APA suggested that we include the letters ''EX'' in the beginning of the sequence of letters and numbers, stating that ''[p]eople know what the EX number signifies and may not understand the FX system.''

We agree with the commenters that the letters FX may cause confusion. Further, we understand that that the letters ''EX'' are familiar to people in the fireworks supply chain; however, the definition of ''approval'' is ''a written authorization from the Associate Administrator (AA)'' and an ''EX approval'' is the approval designation the AA issues to explosives, including fireworks. In response to the comments received to the NPRM we are replacing the proposed ''FX'' numbering scheme, with an ''FC'' scheme to denote fireworks certifiers. Furthermore, we are revising the numbering scheme in this final rule to parallel the EX numbering scheme where the year, month and number of devices certified in that month are included.

An example of an FC number would be ''FC–XXX–201301–ZZZZ,'' where ''XXX'' represents the fireworks certification agency's unique identifier assigned by PHMSA, ''201301'' represents the year (i.e. 2013) and month (i.e. 01 as January), and ''ZZZZ'' represents the sequential number issued that month by that specific FCA identifying a particular device. Again, in this final rule we are more closely aligning the identifier issued by an FCA with an approval issued by PHMSA for Division 1.4G consumer fireworks. The diagrams below illustrate the EX identifier for explosives approvals, and the new FC identifier for Division 1.4G consumer fireworks certified by FCAs.

EX Approval Unique Identifiers

FC Certification Unique Identifiers



In this final rule, as with the existing number scheme for EX numbers, the FC numbering scheme is not detailed in the HMR; however, it will be specified in each FCA approval. PHMSA may, in a future rulemaking, propose to assign ''FC'' numbers to all Division 1.4G consumer fireworks, regardless of whether they are certified by an FCA or approved by PHMSA. This would serve to separate and distinguish the lowest hazard fireworks from all other explosives.

Weeth and Associates questioned the need for unique EX numbers for each individual firework device. They state that:

> [Th]e adoption of the UN classification system and APA Standard 87–1 combined with a comprehensive Emergency Response Guidebook negates the need for unique EX numbers.

They further state that:

> [G]iven how rare it is for a shipment to involve only one type of Fireworks, tracing the source of an incident with a high degree of certainty to one of the hundreds of Fireworks in a shipment is virtually impossible.

EX approvals are written approval from PHMSA that allows a manufacturer to ship or transport a specific explosive device. PHMSA's Approvals and Permits and Field Operations Divisions rely on these unique identifiers to track firework devices to ensure that the device that was approved is the same device that is being transported. This method has enabled PHMSA to identify unapproved fireworks in shipments. Further, as the elimination of unique ''EX'' numbers was not considered in the NPRM, it is beyond-the-scope of this final rule.

We received three comments from AFSL, APA, and Fireworks by Grucci, Inc., on the proposed recordkeeping and record retention requirements in § 173.65(b). In the NPRM we proposed that a copy of this record must be retained by the FCAs, manufacturers or designated U.S. agents, and importers for five years after the material is imported. APA recommended that the record retention period proposed in the NPRM be extended to the life of the product. APA states:

> Many consumer fireworks have a shelf life of far more than five years, justifying a longer record retention period. Furthermore, the APA does not expect that an extended record retention period would impose any undue burden on applicants. Furthermore, in the case of a manufacturer that must reapply for device approvals that have expired, the expiration has no impact on downstream transporters or users. Because the life of the product extends beyond five years, the APA recommends that the record retention period be equal to the life of the product.

We agree with APA that the records should be available for the life of the product; however, requiring an FCA or fireworks manufacturer or importer to maintain records for Division 1.4G consumer fireworks for an indefinite period after their function in the transportation stream is complete would be counter to our expressed goal to ease the overall industry burden for transporting Division 1.4G consumer fireworks. While manufacturers are accountable for ensuring that the device that is transported is represented by the unique identifier accompanying the shipment, we believe that the five-year retention period is sufficient for the manufacturer recordkeeping requirements, as well as the FCA and importer recordkeeping requirements. PHMSA notes that FCAs, manufacturers or foreign manufacturers' designated U.S. agents, and importers are permitted to keep records indefinitely if they so choose. Furthermore, as with PHMSA's current practice of retaining approval documentation indefinitely, PHMSA will retain FCA certification records indefinitely.

In this final rule we are adopting the recordkeeping requirements specified in § 173.65(b) as proposed in the NPRM for firework manufacturers and importers; however, we removing reference to the recordkeeping requirement for FCAs.

Although the recordkeeping requirement for FCAs will be consistent with those of firework manufacturers and importers, we will specify the recordkeeping requirements for each FCA in each separate FCA approval. PHMSA believes the FCA approval document is a more appropriate location for the FCA recordkeeping requirements than the HMR as the approval will provide the operational requirements for the FCA. Furthermore, each FCA approval will note that the FC certification for each firework device is to be provided by the manufacturer to any subsequent importer of the certified firework device and be accessible at or through its principal place of business and be made available, upon request, to the Associate Administrator or designated official.

PHMSA believes this record retention period will provide a mechanism for confirmation of shipments of Division 1.4G consumer fireworks throughout the supply chain. During that five-year period, the certification record must be made available to a representative of PHMSA upon request. In addition, FCAs must submit all applications and certification data provided by the manufacturers to PHMSA as stipulated in the FCA approval documentation issued by PHMSA to the FCA.

AFSL and Fireworks by Grucci, Inc., both suggest that we clarify our recordkeeping requirements to require that records that are stored electronically must have DOT-review capability. AFSL indicated that it maintains a database that is accessible to CPSC so that they may easily verify importer compliance with the requirement without the need to contact individual companies directly and that ''a simple modification of that database would allow AFSL to store documents that could be accessible to DOT through a password-protected portal.'' AFSL stated:

> This database would be accessible by AFSL member companies as well as DOT (and CPSC) personnel, and should thereby provide a significant paperwork and record-keeping reduction benefit for our members, as well as a time-saving and useful source of information for DOT at very minimal additional cost.

AFSL suggests that a database of FCA certifications be established and maintained. Further, AFSL suggests that the database should permit FCAs to upload certificates of compliance, indicating that fireworks are certified to meet the requirements of § 173.65, similar to the current database maintained by AFSL for the CPSC.

PHMSA agrees that such an electronic system that is uniform and easily accessible would provide benefits. However, PHMSA is concerned that the system described by AFSL would lead to the use of multiple systems that would create confusion and a burden for both the regulated community and the Federal government. PHMSA appreciates AFSL's offer to expand their current capabilities with the CPSC to PHMSA; however, PHMSA is not requiring FCAs to maintain records in the manner described by AFSL. Rather, as with other third-party certification agency approvals, the approval provided by PHMSA to the FCA will delineate the manner in which documents must be submitted to PHMSA. Required documents will include the FCA certification indicating that the firework device complies with § 173.65, the manufacturer's signed and certified application, relevant background data, and copies of all applicable drawings, and test results for each device certified by the FCA. A PHMSA-operated system would ensure information security of PHMSA information technology infrastructure, provide PHMSA the ability to modify the system as needed, and allow PHMSA to ensure all information posted to the database is accurate. As with EX approvals, PHMSA plans to publish FC certifications on our Web site as they become valid, to provide public access.

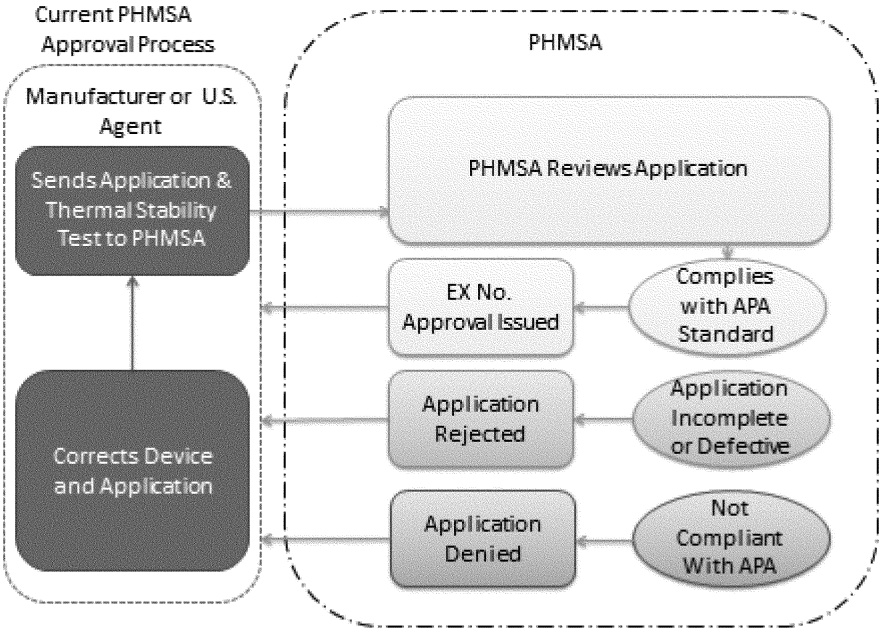
As described above, the database and the manner in which an FCA provides the required documentation will be detailed in each FCA approval. We are further clarifying in this final rule that the FCA certification is not valid until it has been provided to PHMSA and the FCA has received an acknowledgement from PHMSA. Once the FCA receives acknowledgement from PHMSA, the FCA's unique FC identifier that is traceable to the specific device will be valid.

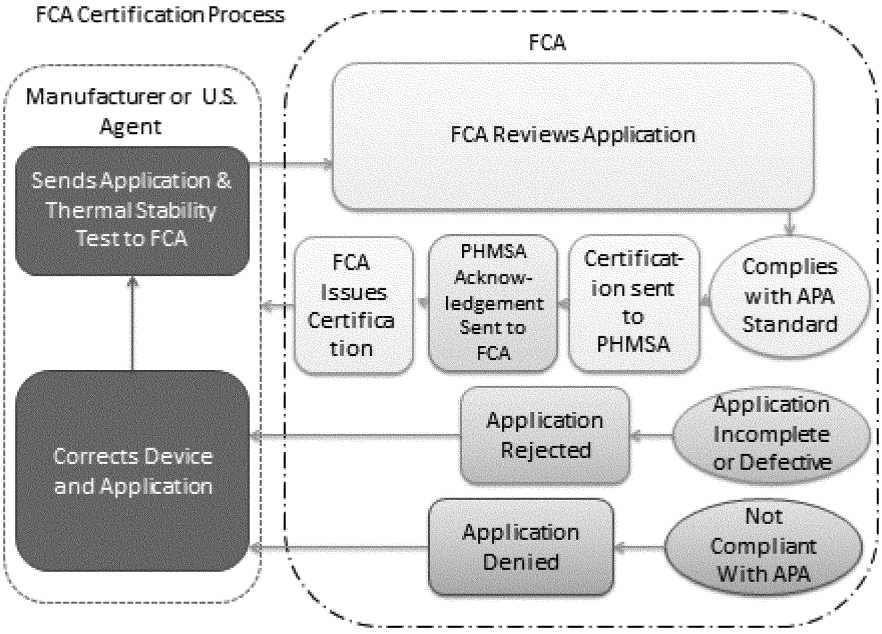
In the NPRM, recordkeeping requirements proposed included the following information: (1) The FX number unique to the FCA that certified that the firework device complies with APA Standard 87–1, including a certification report identifier that is traceable to the manufacturer and specific firework device transported; (2) a copy of the approval application submitted to the DOT-approved fireworks certification agency; and (3) a copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures. PHMSA did not receive any comment on this section; however, upon further review, PHMSA is simplifying the recordkeeping requirements for importers and manufacturers or foreign manufactures' designated agents. Specifically, importers and manufacturers, or foreign manufactures' designated agents, will only be required to retain the certification document issued by the FCA for each Division 1.4G consumer firework certified under § 173.65(a).

As a condition of the DOT approval, the FCA will be required to retain (1) The certification document issued by the FCA; (2) a copy of the certification application submitted to the DOT-approved FCA; and (3) a copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures. Further, in this final rule, in § 173.65(a)(iv) we are instructing manufacturers whose application is denied by an FCA that they may seek reconsideration from the FCA or may appeal the reconsideration decision to PHMSA's Administrator.

In the NPRM, hazard communication requirements for Division 1.4G consumer fireworks were proposed to be specified in paragraph (c) of the new § 173.65. PHMSA did not receive any comment on this section. However, after further consideration PHMSA is not adopting the communication requirements in § 173.65 because § 173.65 does not provide any relief from subparts D and E of part 172 and, therefore, it is redundant to indicate that Division 1.4G consumer firework must be marked and labeled in accordance with subpart D and E of part 172.

The following diagrams show the two alternative processes.





Effective Date of the Rule

In the NPRM published under this docket number, PHMSA requested comment on how to implement the changes if they are adopted. In response to this request PHMSA received comments from the APA, Fireworks Over America and Melrose Pyrotechnic requesting that we implement proposed amendments quickly. Specifically, comments requested that PHMSA expedite the effective date of the rule. Fireworks Over America stated ''We feel that it is imperative that the rule be adopted as soon as possible to eliminate the problems that we incur daily with the existing procedure.''

PHMSA understands that the fireworks industry would like to use the alternative process as soon as possible. For this reason, we are establishing an effective date of thirty days after the publication of this final rule. However, although PHMSA will accept FCA approval applications as of that effective date, PHMSA will require time to review the applications, once received, to ensure that any prospective FCA meets the criteria set forth in this rule. Furthermore, PHMSA anticipates that initial submissions of FCA approval applications may need to be modified as FCAs become familiar with new requirements. Once an FCA is approved by PHMSA, an FCA may begin to certify firework devices and issue FC numbers. Also, PHMSA intends to update the current guidance available on our Web site with respect to the approval/certification process and the transportation of fireworks to include information regarding the FCA process.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This rule provides an alternative to the current process for approving Division 1.4G consumer fireworks more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This rulemaking is considered a non-significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirmed the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; and (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

PHMSA has evaluated our fireworks approval program for effectiveness and identified areas that could be modified to enhance the program and increase flexibility for the regulated community while maintaining the current level of safety. In this final rule, the amendments to the HMR will not impose increased compliance costs on the regulated industry. By amending the HMR to allow for an alternative to the approval process for Division 1.4G consumer firework devices, PHMSA is reducing regulatory burden and increasing flexibility to industry, while maintaining an equivalent alternative review process and oversight.

A summary of the regulatory evaluation used to support the proposals presented in this final rule are discussed below. A copy of the full regulatory evaluation explaining the rationale behind PHMSA's conclusions is available in the docket for this rulemaking.

Regulatory Evaluation

For the regulatory evaluation of this final rule, PHMSA assumes that between 25 and 90 percent of applicants will choose to file a Division 1.4G consumer fireworks application with an FCA instead of filing an application with PHMSA. Comments from the APA and AFSL suggested that by not incorporating by reference the most recent revision to APA Standard 87–1, the actual redirected rate could be much less than the initial estimated range used. PHMSA assumes that domestic manufacturers and importers of Division 1.4G consumer fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA. Finally, PHMSA anticipates that existing DOT-approved explosive test laboratories will likely apply for approval as an FCA. Given the uncertainty in the number of manufacturers that will use this alternative and that PHMSA is not aware factors manufacturers will use to weigh their decisions to use the services of an FCA, the benefits of this rule are difficult to quantify.

Current fireworks classification methods have proven effective in achieving a high level of transportation safety. This high level of transportation safety is demonstrated by the fact that over the past 40 years no transportation incidents resulted in death or serious injury while transporting consumer fireworks. Although the current process for classification and approval of fireworks devices has a successful safety history, the process is not without its drawbacks. PHMSA reviews an average of 13,370 applications per year for approval of fireworks. Approximately 75% of these fireworks approvals are for Division 1.4G consumer fireworks devices. This high volume of applications results in an approximate review time of 120 days. The fireworks industry has voiced its frustration with aspects of the current approval process, specifically the time it takes to receive approval for firework devices. Delays in fireworks approvals can have adverse economic impacts on the fireworks industry such as storage costs and the inability to introduce new products in a seasonal market.

This final rule allows an optional method for firework device manufacturers to certify their 1.4G consumer fireworks are properly classified for transportation using an FCA instead of PHMSA's approval process. Without this rulemaking, manufacturers of firework explosive devices will continue to be affected by additional time spent awaiting PHMSA adjudication on Division 1.4G consumer fireworks approval applications. This rulemaking will alleviate industry of some of the time spent, and possibly forgone sales because of added time, awaiting PHMSA action on applications while maintaining the current level of safety.

Manufacturers will use the FCA certification option if it is net beneficial to do so; they will use the PHMSA approval option if it is not. As PHMSA is not requiring manufacturers to use an FCA, and to do so is completely voluntary, PHMSA is not imposing any costs. PHMSA estimates an FCA certification fee of between $100 and $450. Since the option should speed up the certification process it could reduce some of the uncertainty with respect to ordering and other supply chain issues. Those likely doing so will be ones seeking classification relatively closer to peak sales periods (primarily the 4th of July). If manufacturers plan accordingly and wait for PHMSA to issue an approval, they won't pay the FCA fee. The benefits for manufacturers using the FCA certification process to expedite shipments are difficult to quantify. However, we know that any rational business will not use this option unless it makes business sense. The complete

regulatory evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This rule will preempt State, local, and Indian tribe requirements but does not contain any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses all the covered subject areas above and will preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. Furthermore, this rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be thirty days from the date of publication of this final rule in the **Federal Register**.

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 rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

PHMSA expects that U.S. manufacturers and importers of consumer fireworks will be affected by this rulemaking and estimates that there are 10 consumer firework manufactures in the U.S. and between 62 and 211 U.S. importers. The estimate of U.S. consumer firework manufacturers is derived from an analysis of PHMSA's registration data, which indicates that all U.S. consumer firework manufacturers are considered small businesses.

The estimate of U.S. importers is provided as a range, which is a result of combining estimated import data with data provided by a consumer fireworks trade association. The figure of 62 was derived from import data gathered from a survey of fireworks experts, while the figure of 211 was derived from statistics available from the American Fireworks Safety Laboratory (AFSL), a consumer fireworks trade association. PHMSA assumes nearly all U.S. importers are small businesses. Thus, between 72 and 221 U.S. small businesses will be affected by this rule.

The rule provides for an alternative method to certify Division 1.4G consumer fireworks for transportation. This alternative method will require the retention of certification records by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer fireworks classification has been certified in accordance with the regulations. The certification records will be required to be retained for five years and the requirements apply to FCAs, manufacturers that choose certification by a FCA, and importers of fireworks certified by a FCA.

For consumer firework manufacturers, the alternative method is not mandatory and these businesses can voluntarily choose whether using an FCA makes economic sense for their operations. Manufacturers choosing this method will not be responsible for the preparation of certification records and no new professional skills will be needed for record retention.

Foreign consumer firework manufacturers using an FCA will result in additional record retention requirements for consumer firework importers that import from these foreign manufacturers. Consumer firework importers will be required to retain certification records for five years after the importation of the product. Importers will not be responsible for the preparation of the report or record, thus no new professional skills will be needed.

A retrospective review of the fireworks approval program that determined that there is a delay in the processing of EX approval applications under the current process was the impetus for this rule. The purpose of this rule is to maintain the current level of safety while reducing burden and increasing flexibility for the regulated community by providing an alternative to PHMSA's approval process. Benefits of the certification option will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. By providing increased regulatory flexibility, this rule should reduce the compliance burden on the regulated industry, including small entities, without compromising transportation safety.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of

the public and affected agencies an opportunity to comment on information and recordkeeping requests. Comments received from industry indicate that the recordkeeping requirements proposed in the NPRM were not unduly burdensome. PHMSA currently has an approved information collection under OMB Control Number 2137–0557, entitled ''Approvals for Hazardous Materials,'' with an expiration date of May 31, 2014. PHMSA will submit a request that OMB approve a revised information collection request to account for the recordkeeping and retention requirements in this rule. PHMSA has developed burden estimates to reflect changes in this rule and estimates that the information collection and recordkeeping burdens will be revised as follows:

OMB Control No. 2137–0557

Increase in Annual Number of Respondents: 211

Increase in Annual Responses: 5,175

Increase in Annual Burden Hours: 430

Increase in Annual Burden Costs: $14,875

While this rule may result in a slight increase in the annual paperwork burden and cost to OMB Control Number 2137–0557 for minor record-keeping requirements under §§ 173.64 and 173.65, this rule should result in a net benefit to the fireworks industry by increasing regulatory flexibility, which will provide manufacturers of Division 1.4G consumer fireworks with an alternative that should be more efficient than the current approval process.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. 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 $141.3 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.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Following an intensive retrospective review of the fireworks approval program, PHMSA determined that there is a delay in the processing of EX approval applications under the current regulatory scheme. For this reason, PHMSA is establishing an alternative option for Division 1.4G consumer fireworks in which applicants will submit applications for certification to a Fireworks Certification Agency (FCA), in lieu of submitting applications for approval to PHMSA.

Description of Action:

Docket No. PHMSA–2010–0320 (HM–257)] Final Rule

Adopted Amendments to the HMR:

- Section 107.401 is amended to include Division 1.4G consumer fireworks.
- Section 107.402 paragraphs (a) and (b) are amended to clarify the application process for designation as a certification agency.
- Section 107.402 paragraph (c) is amended to specify the application procedure to become a third-party packaging certification agency.
- Section 107.402 paragraph (d) is added to specify the application procedure to become a designated fireworks certification agency and a renewal process is established for such agencies.
- Section 107.402 paragraph (e) is added to specify the application procedure to become a designated lighter certification agency.
- Section 107.402 paragraph (f) is added to specify the application procedure to become designated portable tank and MEGC certification agencies.
- Section 107.403 paragraph (c) is amended to clarify the procedures for reconsideration and appeal.
- Section 107.403 paragraph (d) is added to clarify where to find the conditions under which the Associate Administrator may modify, suspend or terminate an approval.
- Section 171.8 is revised to define the term ''FC number.''
- The listing for Fireworks, Division 1.4G in § 172.101, the Hazardous Materials Table, column (7), is amended to refer to new Special Provision 200.
- Special Provision 200 is added to state that Division 1.4G consumer fireworks may be certified by a DOT-approved FCA in accordance with the provisions of § 173.65.
- Sections 172.320(b) and § 172.320(d) are amended to allow for firework certification (FC) Numbers issued by Firework Certification Agencies (FCAs) in lieu of EX Numbers issued by PHMSA .
- Section 173.56(b) is amended to except new fireworks devices meeting the criteria in new §§ 173.64 and 173.65 from the specified requirements for examining, classifying and approving new explosives.
- Section 173.56(b)(1) is amended to indicate EX numbers will be issued to all new explosives by the Associate Administrator, except for Division 1.4G consumer fireworks, which may be issued EX numbers by the Associate Administrator or FC numbers issued by an FCA as set forth in § 173.65.
- A definition for ''consumer fireworks' is added in § 173.59.
- Section 173.64 is added and the current exception, in § 173.56(j), for Divisions 1.3 and 1.4 fireworks to be offered for transportation if they are manufactured in accordance with APA Standard 87–1 and pass a thermal stability test is moved to this section.
- Section 173.65 is added to provide a new exception for Division 1.4 G consumer fireworks manufacturers, or designated U.S. agents, to apply for certification through an FCA.

Alternatives Considered:

Alternative (1)—No action alternative: Leave the HMR as is; do not adopt above-described amendments.

PHMSA periodically reviews and updates various regulations to improve the clarity of the HMR and provide relief for safe alternatives when necessary. If PHMSA chose the no-action alternative, the public would not receive the benefits of the alternate process for certification of Division 1.4G consumer fireworks, which will provide an equivalent level of oversight as PHMSA's approval process, while lessening the time to market of Division

1.4G consumer fireworks. Therefore, PHMSA rejected the do-nothing alternative.

Alternative (2)—Allow Manufacturers to Self-certify: PHMSA considered allowing manufacturers to self-declare Division 1.4G consumer fireworks in accordance with a specified standard and require manufacturers to maintain records on the product design, classification, and thermal stability testing. This would have placed the burden of proof of compliance with the manufacturers and their designated agents.

Though there might be cost savings to the consumer fireworks industry and to PHMSA by reducing the paperwork burden on the industry and a reduction in the costs associated with processing, reviewing, and maintaining thousands of approval records each year, they are likely outweighed by the negative safety implications of self-declaration of Division 1.4G fireworks (and thus the resulting social costs). The approach would remove a critical control that has been in place successfully for decades. In 2010, after implementing new processing procedures, over 60 percent of firework applications were initially denied. PHMSA's review of recent denials, where the denial was made for technical reasons, found numerous applications were submitted with potentially dangerous errors to include: firework designs with illegal pyrotechnic compounds; misclassified firework devices (e.g., 1.1G vice 1.4G); and designs that did not conform with APA Standard 87–1, such as improper fusing and devices with electronic matches integrated, which is forbidden. Had the applicants been allowed to self-classify their designs, it is likely that misclassified and illegal fireworks would have been introduced into transportation and eventually used by U.S. consumers. These findings suggest that this alternative would not have served to assure safe transportation in commerce of Division 1.4G consumer fireworks and, as such, was rejected.

Alternative (3)—Preferred Alternative: Go forward with the proposed amendments to the HMR in the NPRM with some revisions, as described above.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. Generally, the regulations require each shipper to classify a material in accordance with these hazard classes and packing groups. The process of classifying a hazardous material is itself a form of hazard analysis. Currently, prior to the transportation all explosives (Hazard Class 1), including Division 1.4G consumer fireworks, must be classed, approved, and issued an EX number by PHMSA. The EX number is a unique identifier that indicates a specific firework device has been classed and approved for transportation.

Further, the regulations require the shipper to communicate a material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. Unless otherwise noted in part 173, subpart C or § 173.7(a)) all Class 1 (explosive) materials are assigned a Packing Group II. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause human death or injury, the loss of ecological resources (e.g., wildlife habitats), and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

PHMSA believes that the regulatory changes adopted in this rulemaking present no environmental impact on the quality of the human environment because both alternatives deal with the processing of applications. Specifically, these amendments have no impact on: the risk of release and resulting environmental impact; human safety; longevity of the packaging; and none of these amendments would be carried out in a defined geographic area. Furthermore, the amendments only affect the authorization process that deems Division 1.4G consumer fireworks safe for transport and has no impact on any other transport requirements (e.g., packaging, hazard communication, etc.). The action would provide an additional application process that would not impact the exemplary safety record that Division 1.4G consumer fireworks have demonstrated over the past forty years as the same consensus industry standard would be used by both PHMSA and the FCAs when evaluating Division 1.4G consumer fireworks.

Conclusion

PHMSA sought comment on the environmental assessment contained in the August 30, 2012 [77 FR 52636], NPRM published under Docket No. PHMSA 2010–0320. PHMSA did not receive any comments on the environmental assessment contained in that rulemaking. This action has been thoroughly reviewed by PHMSA. The regulatory changes adopted in this rulemaking simply allow an alternate authorization process for the certification of Division 1.4G consumer fireworks. The new process will not impact on the quality of the human environment. Therefore, PHMSA concludes that no significant environmental impact will result from this rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), which may be viewed at *http://www.dot.gov/privacy*.

K. International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or will be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public. We have assessed the effects of the rule, and find that because the alternative process parallels the current approval process, it will not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act.

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies.

This rulemaking involves one technical standard: American Pyrotechnics Association (APA), APA Standard 87–1 Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version. This technical standard is listed in 49 CFR 171.7.

List of Subjects

49 CFR Part 107

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

49 CFR Part 171

Applicability, General information, Regulations, and Definitions.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

Authority: 49 U.S.C. 5101–5128, 44701; 101 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.81, 1.96 and 1.97.

■ 2. Revise §§ 107.401 and 107.402 to read as follows:

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods), and for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks in conformance with the requirements of this subchapter. Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.

§ 107.402 Application for designation as a certification agency.

(a) Any organization or person seeking to be approved as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH–32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington DC 20590–0001. Alternatively, the application in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (email) to: *approvals@dot.gov*. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for approval as a certification agency must be in English and include the following information:

(1) Information required by the provisions in subpart H of this part;

(2) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 of this subchapter to serve as agent for service of process. A person approved as a certification agency is not a PHMSA agent or representative;

(3) A statement acknowledging that the Associate Administrator or a designated official may inspect, on demand, its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections; and

(4) Any additional information relevant to the applicant's qualifications, upon request of the Associate Administrator or a designated official.

(c) *UN Third-Party Packaging Certification Agency.* In addition to the requirements in paragraph (b) of this section, the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought;

(2) A statement showing proof that the applicant has:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) The knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards;

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) *Fireworks Certification Agency.* Prior to reviewing, and certifying Division 1.4G consumer fireworks (UN0336) for compliance with the APA Standard 87–1 (IBR, see § 171.7 of this chapter) as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as an Fireworks Certification Agency.

(1) *Fireworks Certification Agency applicant requirements.* The Fireworks Certification Agency applicant must—

(i) Be a U.S. citizen, or for non-U.S. citizens, have a designated U.S. agent representative as specified in § 105.40;

(ii) Employ personnel with work experience in manufacturing or testing of Division 1.4G consumer fireworks; or a combination of work experience in manufacturing or testing of Division 1.4G consumer fireworks and a degree in the physical sciences or engineering from an accredited university;

(iii) Have the ability to:

(A) Review design drawings, and applications to certify that they are in accordance with the APA Standard 87–1; and

(B) Verify that the applicant has certified the thermal stability test procedures and results.

(iv) Must be independent of and not owned by any consumer fireworks manufacturer, distributor, import or export company, or proprietorship.

(2) *Fireworks Certification Agency application submittal requirements.* In addition to the requirements of paragraphs (b) and (d)(1) of this section, the Fireworks Certification Agency application must include—

(i) Name, address, and country of each facility where Division 1.4G consumer fireworks applications are reviewed and certified;

(ii) A detailed description of the qualifications of each individual the applicant proposes to employ to review, and certify that the requirements specified by part 173 of this chapter and the APA Standard 87–1 have been met;

(iii) Written operating procedures to be used by the Fireworks Certification Agency to review and certify that a Division 1.4G consumer fireworks application meets the requirements specified in the APA Standard 87–1;

(iv) Name, address, and principal business activity of each person having any direct or indirect interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant; and

(v) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks.

(e) *Lighter Certification Agency.* Prior to examining and testing lighters (UN1057) for compliance with the requirements of § 173.308 of this chapter a person must apply to, and be approved by, the Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) Name and address of each facility where lighters are examined and tested; and

(2) Detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by § 173.308 of this chapter have been met.

(f) *Portable tank and MEGC Certification Agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for compliance with the requirements of § 180.605(k) of this chapter, requirements for periodic testing, inspection and repair of portable tanks, and § 178.74 of this chapter, approval of MEGCs, a person must apply to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of this section, the application must provide the following information:

(1) Name and address of each facility where the portable tank or MEGC is examined and tested; and

(2) Detailed description of the applicant's qualifications and ability to, examine and test portable tanks or MEGCs and certify that the requirements specified by § 178.273 of this chapter, specifications for UN portable tanks, or § 178.74 of this chapter, approval of MEGCs, of this chapter have been met.

■ 3. In § 107.403 the section heading and paragraph (c) are revised, and paragraph (d) is added to read as follows.

§ 107.403 Designation of certification agencies.

* * * * *

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If the application is denied by the Associate Administrator of Hazardous Materials Safety, the applicant may, within 20 days of receipt of the decision, request reconsideration by the Associate Administrator as set forth in § 107.715. If the reconsideration is denied by the Associate Administrator, the applicant may appeal the Associate Administrator's decision, within 30 days of the Associate Administrator's decision, to the Administrator of PHMSA, as specified in § 107.717.

(d) The Associate Administrator may modify, suspend, or terminate an approval submitted under this subpart as set forth in § 107.713.

■ 4. Section 107.405 is removed and reserved to read as follows:

§ 107.405 [Reserved]

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 6. In § 171.8, add new definition for ''FC number'' in appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

FC number means a number preceded by the prefix ''FC'', assigned by a Fireworks Certification Agency to a Division 1.4G Consumer firework device that has been certified under the provisions of § 173.65 of this subchapter.

* * * * *

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

■ 7. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 8. In § 172.101, the Hazardous Materials Table is amended by revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE].												
	*		*	*		*	*		*	*			
	Fireworks	1.4G	UN 0336	II	1.4G	108, 200	None	62	None	Forbidden	75 kg	02	25
	*		*	*		*	*		*	*			

■ 9. In § 172.102(c)(1), Special Provision 200 is added in numerical sequence to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

200 Division 1.4G consumer fireworks may be certified for transportation by a DOT-approved Fireworks Certification Agency in accordance with the provisions of § 173.65 of this subchapter.

* * * * *

■ 10. In § 172.320, paragraph (b) and paragraph (d) are revised to read as follows:

§ 172.320 Explosive hazardous materials.

* * * * *

(b) Except for fireworks approved in accordance with § 173.64 of this subchapter, a package of Class 1 materials may be marked as follows, in lieu of the EX number required by paragraph (a) of this section:

(1) With a national stock number issued by the Department of Defense or identifying information, such as a product code required by regulations for commercial explosives specified in 27 CFR part 555, if the national stock number or identifying information can be specifically associated with the EX number assigned; or

(2) For Division 1.4G consumer fireworks reviewed by a Fireworks Certification Agency approved in accordance with 49 CFR part 107 subpart E and certified in accordance with § 173.65, with the FC number assigned by a DOT-approved Fireworks Certification Agency.

* * * * *

(d) The requirements of this section do not apply if the EX number, FC number, product code or national stock number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a). Product codes and national stock numbers must be traceable to the specific EX number assigned by the Associate Administrator or FC number assigned by a DOT-approved Fireworks Certification Agency.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 11. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 12. In § 173.56, the introductory text for paragraph (b) is revised to read as follows, and paragraph (j) is removed and reserved.

§ 173.56 New explosives—definitions and procedures for classification and approval.

* * * * *

(b) Examination, classification and approval. Except as provided in §§ 173.64 and 173.65, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:

* * * * *

(j) [Reserved]

* * * * *

■ 13. In § 173.59, add new definition for ''consumer firework'' in appropriate alphabetical sequence to read as follows:

§ 173.59 Description of terms for explosives.

* * * * *

Consumer firework. Any finished firework device that is in a form intended for use by the public that complies with any limits and requirements of the APA Standard 87–1 (IBR, see § 171.7 of this subchapter) and the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in 16 CFR parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17 (a)(8).

* * * * *

■ 14. Add new § 173.64 to subpart C to read as follows:

§ 173.64 Exceptions for Division 1.3 and 1.4 fireworks.

(a) Notwithstanding the requirements of § 173.56(b), Division 1.3 and 1.4 fireworks (see § 173.65 for Division 1.4G consumer fireworks) may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test conducted by a third-party laboratory, or the manufacturer. The test must be performed by maintaining the device, or a representative prototype of a large device such as a display shell, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA Standard 87–1, and is notified in writing by the Associate Administrator that the fireworks have been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate application has been submitted to a fireworks certification agency. If the application is denied, the manufacturer will be notified in writing of the reasons for the denial. The Associate Administrator may require that the fireworks be examined by an agency listed in § 173.56(b)(1).

(b) [Reserved]

■ 15. Add new § 173.65 to subpart C to read as follows.

§ 173.65 Exceptions for Division 1.4G consumer fireworks.

(a) Notwithstanding the requirements of §§ 173.56(b), 173.56(f), 173.56(i), and 173.64, Division 1.4G consumer fireworks may be offered for transportation provided the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test. The test must be performed by maintaining the device, or a representative prototype of the device, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component,

those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer of the Division 1.4G consumer firework applies in writing to a DOT-approved Fireworks Certification Agency, and is notified in writing by the DOT-approved Fireworks Certification Agency that the firework has been:

(i) Certified that it complies with APA Standard 87–1, and meets the requirements of this section; and

(ii) Assigned an FC number.

(4) The manufacturer's application must be complete and include:

(i) Detailed diagram of the device;

(ii) Complete list of the chemical compositions, formulations and quantities used in the device;

(iii) Results of the thermal stability test; and

(iv) Signed certification declaring that the device for which certification is requested conforms to the APA Standard 87–1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate applications have been submitted to PHMSA. If the application is denied, the Fireworks Certification Agency must notify the manufacturer in writing of the reasons for the denial. As detailed in the DOT-approval issued to the Fireworks Certification Agency, following the issuance of a denial from a Fireworks Certification Agency, a manufacturer may seek reconsideration from the Fireworks Certification Agency, or may appeal the reconsideration decision of the Fireworks Certification Agency to PHMSA's Administrator.

(b) *Recordkeeping requirements.* Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, the manufacturer and importer must maintain a paper record or an electronic image of the certificate, demonstrating compliance with this section. Each record must clearly provide the unique identifier assigned to the firework device and the Fireworks Certification Agency that certified the device. The record must be accessible at or through its principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location. Copies of certification records must be maintained by each importer, manufacturer, or a foreign manufacturer's U.S. agent, for five (5) years after the device is imported. The certification record must be made available to a representative of PHMSA upon request.

Issued in Washington, DC, on July 11, 2013, under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman

Administrator, Pipeline and Hazardous Materials Safety Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC737

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustment for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment; closure.

SUMMARY: This action decreases the landing limit for Southern New England/Mid-Atlantic (SNE/MA) winter flounder for Northeast multispecies common pool vessels for the remainder of the 2013 fishing year (FY). This action also closes the Gulf of Maine (GOM) haddock Trimester Total Allowable Catch Area (TAC) for the remainder of Trimester 1, through August 31, 2013, because the common pool fishery has caught 147 percent of its Trimester 1 TAC for GOM haddock. This action is intended to prevent the overharvest of the common pool's allocation of SNE/MA winter flounder and GOM haddock.

DATES: The trip limit decrease for SNE/MA winter flounder is effective July 16, 2013 through April 30, 2014. The closure of the GOM haddock Trimester TAC Area is effective July 16, 2013, through August 31, 2013.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, 978–675–2153, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Northeast (NE) multispecies fishery are found at 50 CFR part 648, subpart F. The regulations authorize the Regional Administrator (RA) to adjust the possession limits for common pool vessels in order to optimize the harvest of NE regulated multispecies by preventing the overharvest or underharvest of the pertinent common pool sub-annual catch limits (ACLs). Based on data reported through June 19, 2013, the common pool fishery has caught approximately 53 percent of its FY 2013 SNE/MA winter flounder allocation of 136 mt (299,829 lb). The current trip limit for SNE/MA winter flounder is 5,000 lb (2,268 kg) per day-at-sea (DAS), and up to 15,000 lb (6,804 kg) per trip for common pool vessels. However, recent analysis shows that the common pool would likely exceed its FY 2013 allocation for SNA/MA winter flounder if the trip limit is not reduced. As a result, the trip limit is reduced to 1,000 lb (453.6 kg) per trip for all common pool vessels. The trip limit adjustment is effective July 16, 2013, through April 30, 2014.

The regulations also require the RA to close the Trimester TAC Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The Trimester TAC Area for a stock will close to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester. Any overages of a trimester TAC will be deducted from Trimester 3, and any overages of the common pool's sub-ACL at the end of the FY will be deducted from the common pool's sub-ACL the following FY. Any uncaught portion of the Trimester 1 and Trimester 2 TAC will be carried over into the next trimester. Any uncaught portion of the common pool's sub-ACL may not be carried over into the following FY.

The FY 2013 common pool sub-ACL for GOM haddock is 2 mt (4,409 lb), and the Trimester 1 TAC is 0.5 mt (1,102 lb). Because there are relatively few common pool vessels, and the Trimester 1 TAC for GOM haddock is so small, it was difficult to project when 90 percent of the Trimester TAC would be reached. Based on the most recent data, which include vessel trip reports (VTRs), dealer reported landings, and vessel monitoring system (VMS) information, NMFS has projected that 147 percent of the Trimester 1 TAC for GOM haddock has been caught. Therefore, effective July 16, 2013, the GOM haddock Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2013, to all common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The GOM haddock Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, and longline/hook gear at the beginning of Trimester 2, on September 1, 2013. Any overage of the Trimester 1 TAC for GOM haddock