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or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (*e.g.*, Federal Motor Carrier Safety routing requirements).

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

Transports or *transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

[Amdt. 107–3, 41 FR 38170, Sept. 9, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §107.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

Subpart B—Special Permits

SOURCE: Amdt. 107–38, 61 FR 21095, May 9, 1996, unless otherwise noted.

§107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of special permits from requirements of this subchapter, subchapter C of this chapter, or regulations issued under chapter 51 of 49 U.S.C.

§107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested effective date and conform to the following requirements:

(1) The application, including a table of contents, must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308;

(iii) Be submitted electronically by e-mail to: *specialpermits@dot.gov*; or

(iv) Be submitted using PHMSA's online system (table of contents omitted) at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, or ranking officer; and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with §105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer (''M'' number), if applicable.

(5) For persons required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the

name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant must comply with § 105.30(a).

(c) *Description of special permit proposal.* The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required;

(3) A detailed description of the proposed special permit (*e.g.,* alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons;

(7) Identification and description, including an estimated quantity of each shipment of the hazardous materials planned for transportation under the special permit or;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action; and

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

(14) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

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

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

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (*e.g.*, failure mode and effect analysis), that the proposed alternative will achieve a

level of safety that is at least equal to that required by the regulation from which the special permit is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

[76 FR 460, Jan. 5, 2011, as amended at 76 FR 44500, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011]

§ 107.107 Application for party status.

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

(b) Each application filed under this section must conform to the following requirements:—

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronically by e-mail to: *specialpermits@dot.gov*, or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent that is a permanent resident of the United States for service in accordance with § 105.40 of part.

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

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

(7) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit renewal procedures set forth in § 107.109 apply.

[76 FR 461, Jan. 5, 2011, as amended at 76 FR 44500, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011]

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: General Approvals and Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted electronically by e-mail to: *specialpermits@dot.gov;* or online at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit would be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO), president, or ranking executive officer, and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (*e.g.*, all section references, shipping descriptions, *etc.*) and complete; or include an amendment to the previously submitted application as is necessary to update and ensure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

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

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:

(i) The reason the special permit authorization was allowed to expire;

(ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(8) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(9) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

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

[76 FR 462, Jan. 5, 2011, as amended at 76 FR 44501, July 26, 2011; 76 FR 43524, July 20, 2011; 76 FR 56310, Sept. 13, 2011]

§ 107.111 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the PHMSA dockets or files. Applications that are eligible for confidential treatment under §105.30 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

§ 107.113 Application processing and evaluation.

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

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

(c) No public hearing or other formal proceeding is required under this subpart before the disposition of an application. Unless emergency processing under §107.117 is requested and granted, applications are usually processed in the order in which they are filed.

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(e) The Associate Administrator may grant or deny an application, in whole or in part. In the Associate Administrator's discretion, an application may be granted subject to provisions that are appropriate to protect health, safety or property. The Associate Administrator may impose additional provisions not specified in the application or remove conditions in the application that are unnecessary.

(f) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed alternative will achieve a level of safety that:

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

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(g) An applicant is notified in writing or by electronic means whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) The initial special permit terminates according to its terms or, if not otherwise specified, 24 months from the date of issuance. A subsequent renewal of a special permit terminates according to its terms or, if not otherwise specified, 48 months after the date of issuance. A grant of party status to a special permit, unless otherwise stated, terminates on the date that the special permit expires.

(i) The Associate Administrator, on determining that an application concerns a matter of general applicability and future effect and should be the subject of rulemaking, may initiate rulemaking under part 106 of this chapter in addition to or instead of acting on the application.

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

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 67 FR 61011, Sept. 27, 2002; 70 FR 73161, Dec. 9, 2005; 76 FR 463, Jan. 5, 2011]

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that—

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis; or

(2) Emergency processing is necessary for immediate national security purposes or to prevent significant economic loss that could not be prevented if the application were processed on a routine basis.

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

(c) A request for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application submitted under this section must conform to § 107.105 to the extent that the receiving Department official deems necessary to process the application. An application on an emergency basis must be submitted to the Department modal contact official for the initial mode of transportation to be utilized, as follows:

(1) *Certificate-Holding Aircraft:* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate or that is responsible for the aircraft operator's overall aviation security program. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(2) *Noncertificate-Holding Aircraft (Those Which Operate Under 14 CFR Part 91):* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(3) *Motor Vehicle Transportation:* Chief, Hazardous Materials Division,

Federal Motor Carrier Safety Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–385–2400 (day); 1–800–424–8802 (night).

(4) *Rail Transportation:* Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–493–6248 or 202–493–6244 (day); 1–800–424–8802 (night).

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593–0001; 202–372–1420 (day); 1–800–424–8802 (night).

(e) On receipt of all information necessary to process the application, the receiving Department official transmits to the Associate Administrator, by the most rapid available means of communication, an evaluation as to whether an emergency exists under §107.117(a) and, if appropriate, recommendations as to the conditions to be included in the special permit. If the Associate Administrator determines that an emergency exists under §107.117(a) and that, with reference to the criteria of §107.113(f), granting of the application is in the public interest, the Associate Administrator grants the application subject to such terms as necessary and immediately notifies the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant immediately is so notified.

(f) A determination that an emergency does not exist is not subject to reconsideration under §107.123 of this part.

(g) Within 90 days following issuance of an emergency special permit, the Associate Administrator will publish, in the FEDERAL REGISTER, a notice of issuance with a statement of the basis for the finding of emergency and the scope and duration of the special permit.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 62 FR 51556, Oct. 1, 1997; 64 FR 51914, Sept. 27, 1999; 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 56090, Sept. 23, 2005; 75 FR 53596, Sept. 1, 2010; 76 FR 463, Jan. 5, 2011]

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

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

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of §107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

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

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause

why the proposed action should not be taken.

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

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may, in the notification, declare the proposed action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing or by electronic means of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

[76 FR 463, Jan. 5, 2011]

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 and is denied the relief requested may appeal to the Administrator. The appeal must—

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration; (2) state in detail any alleged errors of fact and law;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator's decision is the final administrative action.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 76 FR 463, Jan. 5, 2011]

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Approvals and Permits Division, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title. Documents numbered 11832 and above may also be viewed at the website address *http://www.regulations.gov*.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 105.30 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 65 FR 58618, Sept. 29, 2000; 66 FR 45377, Aug. 28, 2001; 67 FR 61011, Sept. 27, 2002; 70 FR 73162, Dec. 9, 2005; 72 FR 55683, Oct. 1, 2007; 76 FR 56310, Sept. 13, 2011]