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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]