

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 must be written in English and must—

(1) Be submitted for timely consideration, at least 120 days before the requested effective date, in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special 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. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Specialpermits@dot.gov* ;

(2) State the name, street and mailing addresses, e-mail address optional, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address optional, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) If the applicant is not a resident of the United States, a designation of agent for service in accordance with §105.40 of this part; and

(4) For a manufacturing special permit, a statement of the name and street address of each facility where manufacturing under the special permit will occur.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant shall 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) Specification of the proposed mode or modes of transportation;

(3) A detailed description of the proposed special permit (e.g., alternative packaging, test, procedure or activity) 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;

- (6) If the applicant seeks emergency processing specified in §107.117, a statement of supporting facts and reasons;
- (7) Identification and description of the hazardous materials planned for transportation under the special permit;
- (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) 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 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 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.
- (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;
- (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, 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.
- [Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 62 FR 51556, Oct. 1, 1997; 65 FR 50457, Aug. 18, 2000; 65 FR 58618, Sept. 29, 2000; 67 FR 61010, 61011, Sept. 27, 2002; 68 FR 23841, May 5, 2003; 69 FR 6198, Feb. 10, 2004; 70 FR 56089, Sept. 23, 2005; 70 FR 73160, Dec. 9, 2005; 71 FR 54390, Sept. 14, 2006; 72 FR 55683, Oct. 1, 2007]

§ 107.107 Application for party status.

- (a) Any person eligible to apply for a special permit may apply to be made party to an application or an existing special permit, other than a manufacturing special permit.
- (b) Each application filed under this section must—
- (1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special 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. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Specialpermits@dot.gov* ;

- (2) Identify by number the special permit application or special permit to which the applicant seeks to become a party;
 - (3) State the name, street and mailing addresses, e-mail address (optional), and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address (optional), and telephone number of an individual designated as the applicant's agent for all purposes related to the application;
 - (4) If the applicant is not a resident of the United States, provide a designation of agent for service in accordance with §105.40 of this subchapter; and
 - (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), 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 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.
- (c) The Associate Administrator grants or denies 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.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 65 FR 50457, Aug. 18, 2000; 67 FR 61010, 61011, Sept. 27, 2002; 69 FR 6198, Feb. 10, 2004; 70 FR 56090, Sept. 23, 2005; 70 FR 73160, Dec. 9, 2005; 72 FR 55683, Oct. 1, 2007]

§ 107.109 Application for renewal.

- (a) Each application for renewal of an exemption or special permit or party status to an exemption or special permit must:
- (1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special 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. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Specialpermits@dot.gov* ;
 - (2) Identify by number the exemption or special permit for which renewal is requested;
 - (3) State the name, street and mailing addresses, e-mail address optional, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, e-mail address optional, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;
 - (4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and
 - (5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the exemption or special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant shall so certify. When known to the applicant, the statement should indicate the approximate number of shipments made or packages shipped, as the case may be, and 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 an exemption or special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew an exemption or 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.

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

[70 FR 73160, Dec. 9, 2005, as amended at 72 FR 55683, Oct. 1, 2007]

§ 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 special permit, modification of special permit, party to special permit, or renewal of an exemption or 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 special permit, modification of special permit, or party to special permit, and within 15 days of receipt of an application for renewal of an exemption or special permit. If an application is determined to be incomplete, the applicant is informed of the reasons.

(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 request additional information from the applicant. If the applicant does not respond to a written 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 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 exemption or 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 whether the application is granted or denied. A denial contains a brief statement of reasons.
- (h) The initial exemption or 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 an exemption or special permit, unless otherwise stated, terminates on the date that the exemption or 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]

§ 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, 202-366-6121 (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) 267-1217 (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]

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

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

(1) Modification is necessary so that the exemption or 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 an exemption or special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the exemption, 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 exemption, 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 exemption, 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 exemption or special permit.

(c) Except as provided in paragraph (d) of this section, before an exemption, special permit, or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing 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) The holder or party may file a written response that shows cause why the proposed action should not be taken within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing 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.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 70 FR 73161, Dec. 9, 2005]

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to an exemption or 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 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 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.

[Amdt. 107–38, 61 FR 21095, May 9, 1996, as amended at 70 FR 73161, Dec. 9, 2005]

§ 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 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;
- (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 of the decision. The Administrator's decision is the final administrative action.

§ 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, Office of Hazardous Materials Special Permits and Approvals, 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]