

Pipeline and Hazardous Materials Safety Administration Standard Operating Procedures for the Coordination of Special Permits with Modal Administrations

I. Purpose

Establish specific interagency coordination and concurrence guidelines for applications for special permits submitted to the Pipeline and Hazardous Materials Safety Administration in accordance with 49 CFR Part 107. The guidelines will help to ensure that decisions to grant or deny special permits applications are based on complete information and include measures to ensure an equivalent level of safety for each mode of transport.

II. Parties

Federal Aviation Administration (FAA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); United States Coast Guard (USCG); and Pipeline and Hazardous Materials Safety Administration (PHMSA).

III. Authority

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) authorizes the Department of Transportation to issue variances – termed special permits – from the Hazardous Materials Regulations (HMR) in a way that achieves a safety level at least equal to the safety level required under Federal hazmat law or consistent with the public interest and Federal hazmat law, if a required safety level does not exist. That authority is delegated to PHMSA.

Enforcement and compliance authority vested in the Secretary by the Federal hazmat law is delegated to the Operating Administrations (OAs) as follows:

FAA - 49 CFR 1.47(k) – “...with particular emphasis on the transportation or shipment of hazardous materials by air.”

FMCSA – 49 CFR 1.73(d)- “...with particular emphasis on the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, making, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.”

FRA – 49 CFR 1.49(s) – “... with particular emphasis on the transportation or shipment of hazardous materials by railroad, including manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of containers which are represented, marked, certified, or sold for use in the bulk transportation or hazardous materials by railroad.”

PHMSA – 49 CFR 1.53(b)- “...with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of multi-modal containers that are represented, marked, certified, or sold for the use in the transportation of hazardous materials.”

The United States Coast Guard (USCG) in the Department of Homeland Security is authorized to enforce the HMR in connection with certain transportation or shipment of hazardous materials by water. This authority originated with the Secretary of Transportation and was first delegated to USCG prior to 2003, when USCG was made part of the Department of Homeland Security. DHS Delegation No. 0170, Sec. 2(99) & 2(100); see also 6 U.S.C. 458(b), 551(d)(2).

For purposes of this document, the term “Operating Administration” and its corresponding acronym “OA” include the DOT operating administrations identified above and the USCG.

IV. PHMSA Responsibilities for Issuing Special Permits

A. General Responsibilities:

- PHMSA’s Office of Hazardous Materials Special Permits and Approvals (PHH-30) receives all applications for new, modification to, party to, and renewals of special permits related to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).
- PHH-30 reviews each application to ascertain that it conforms to the requirements set forth for special permit applications in 49 CFR Part 107 and meets the established criteria for each type of special permit.

B. Fitness Determinations:

- PHH-30 will work with the OAs to make a fitness determination for each applicant in accordance with established procedures in the Standard Operating Procedures for the Special Permits Program.

C. Special Permits of General Applicability:

- Special permits applications that relate to the manufacture, use, or testing of non-bulk or other intermodal packaging will be evaluated and approved or denied by PHH-30 after coordination with the OAs.
- Special permits applications that apply across all modes of transportation will be evaluated and approved or denied by PHH-30. Examples include special permits applications related to the classification of chemicals and other materials, and hazard communication.

- PHH-30 will notify the OAs on a regular basis of special permit applications that are under review to provide an opportunity for the OAs to (1) identify those that have mode-specific affects or impacts, or (2) to make comments and recommendations on individual applications.

D. Coordination of Mode-Specific Special Permits:

- Mode-specific special permits will be coordinated with the OA(s) that may be affected by or have particular expertise relevant to the transportation of hazardous materials in the requested transport mode. For example, applications for special permits applicable to the transportation of hazardous materials by aircraft will be coordinated with FAA; applications for special permits applicable to the transportation of hazardous materials by motor carrier will be coordinated with FMCSA; applications for special permits applicable to the transportation of hazardous materials by rail will be coordinated with FRA; and applicants for special permits applicable to the transportation of hazardous materials by vessel will be coordinated with the USCG.
- After review by scientific, engineering, and other assigned technical personnel, PHH-30 will forward to each affected OA all application materials, including the initial application and supporting documentation provided with the application or in subsequent communications with PHH-30, PHH-30's evaluation as to whether the special permit would achieve an equivalent level of safety as that provided by the HMR, and the draft special permit document. Notification will be by electronic means and will include a PHH-30 point of contact for the special permit application.
- As applicable, PHH-30 will provide its fitness determination documentation to the OA. For carrier applicants, the OA(s) will develop or provide current fitness determinations in accordance with its policies or procedures, as appropriate.

E. Coordination of Emergency Special Permits:

- PHH-30 will coordinate emergency special permit applications in the same manner as above. Mode-specific emergency special permit applications or applications that involve significant safety, security, or economic impacts will be coordinated with the OA(s) that may be affected by or have particular expertise relevant to the issue in question
- PHH-30 will notify and seek early recommendations from the OA(s) on safety considerations that should be addressed in the evaluation of the emergency special permit request. PHH-30 will perform an overall safety evaluation and develop a draft special permit, if appropriate. PHH-30 will then forward the request and other documentation to the OA(s) for review and concurrence.
- PHH-30 will evaluate and approve or deny emergency special permit applications necessary to resolve an imminent safety hazard affecting human life or health or threatening significant environmental damage with modal coordination unless such coordination cannot be accomplished within very strict time constraints.

V. OA Coordination Responsibilities

A. General Responsibilities

- Each OA will designate a point of contact responsible for concurrence on mode specific special permits. The OA contact will be responsible for the coordination of and timely processing of the modal review.
- Each OA will provide written documentation of its review, including any recommendations for mode-specific conditions to be included in the special permit. Each OA will respond to requests for review and concurrence in a timely fashion and provide specific and detailed safety justifications for matters involving non-concurrence.
- Consistent with existing agreements between PHMSA and the OA(s), each OA may conduct its own fitness inspection or investigation of applicants in its respective areas of responsibility and expertise.

B. Coordination with FAA

- PHMSA will coordinate and request concurrence from FAA on applications for new or modified special permits and for renewal applications affecting the transportation of hazardous materials by air.
 - FAA will review special permit applications and grant or denial documents that address the transportation of forbidden materials or quantities of hazardous materials by aircraft.
 - FAA will review special permit applications and grant or denial documents that specifically identify an aircraft operator as a grantee or specifically identified as performing an air carriage function.
 - FAA will review special permit applications and grant or denial documents involving the transportation by air of high hazard materials or that involve precedent-setting or significant political or economic impacts.
 - FAA's POC will coordinate review and evaluation of the special permit by all appropriate FAA offices to ensure the aircraft operator is fit to carry out the terms of the special permit.
 - FAA will verify that an operator is properly certificated to carry out the terms of the Special Permit.

C. Coordination with FMCSA

- PHMSA will coordinate and request concurrence from FMCSA on applications for new or modified special permits affecting the transportation of hazardous materials by highway.
 - FMCSA will review special permit applications and grant or denial documents that address the transportation of bulk quantities of hazardous materials by highway.
 - FMCSA will review special permit applications and grant or denial documents that specifically identify a motor carrier as a grantee or specifically identified as performing a motor carrier function.
 - FMCSA will review special permit applications and grant or denial documents addressing the manufacture, testing, or use of cargo tank motor vehicles.
 - FMCSA will review special permit applications and grant or denial documents involving the transportation by highway of high hazard materials or that involve precedent-setting or significant political or economic impacts.
- FMCSA will review routine party status or renewal special permit applications for which a motor carrier is a grantee to ensure the motor carrier continues to maintain a satisfactory safety performance.

D. Coordination with FRA

- PHMSA will coordinate and request concurrence from FRA on special permit applications affecting the transportation of hazardous materials by rail.
 - FRA will review all special permit applications and grant or denial documents that address the bulk (tank car or hopper car) transportation of hazardous materials by rail.
 - FRA will review all special permit applications and draft special permits documents for the construction of tank cars for use in the transportation of hazardous materials.
 - FRA will review special permit applications and grant or denial documents involving the transportation by rail of high hazard materials or that involve precedent-setting or significant political or economic impacts.
- FRA generally will not review routine party status or renewal special permit applications.

E. Coordination with USCG

- PHMSA will coordinate and request concurrence from USCG on appropriate special permit applications affecting the transportation of hazardous materials by vessel as a primary mode of transportation.
 - USCG will review all special permit applications and draft special permits documents, as necessary, that involve exclusively vessel transportation or deal with the design and construction of vessels.
 - USCG will review special permit applications and grant or denial documents with life and property implications, high hazard materials, or precedent-setting or national security issues applicable to vessel transportation.
- USCG generally will not review routine party status or renewal special permit applications.

F. Accommodation and Incorporation of OA Recommendations on Special Permit Applications

- PHMSA will carefully consider all OA comments and recommendations prior to the issuance of special permits. Significant issues will be resolved through discussions with the OA to ensure that concerns raised by the OA are addressed and resolved.
- If the OA recommends operational restrictions or limitations that should govern operations under the special permit to ensure the standard for an equivalent level of safety is met, such restrictions or limitations will be incorporated into the special permit.
- If the OA recommends denial of the special permit application and the issues giving rise to the recommendation cannot be resolved, PHMSA may deny the special permit application.
- PHMSA will notify the OA of the final actions taken with respect to significant issues.
- PHMSA will notify the OA if the special permit has been issued or denied.

G. Fitness Inspections

Each OA reserves the right to conduct fitness inspections or review current safety performance data of persons offering for transportation or transporting hazardous materials by the mode of transport for which it is responsible. In addition, each OA will cooperate in performing fitness inspections upon request by OHME, in accordance the Fitness Inspection SOP.

H. Data on Safety and Compliance

Each OA will notify PHH-30 by email of any serious violations of a special permit by the grantee that would call into question the fitness of a grantee to continue to operate under the terms of the special permit.

OA Points of Contact:

PHMSA

- Don Burger
OHMSPA
PHH-31
Donald.Burger@dot.gov
Desk: 202-366-4314
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- Del Billings, Director
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FAA

- Janet McLaughlin
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FMCSA

- James O. Simmons
Chief, Hazardous Materials Division
USDOT/ FMCSA/MC-ECH
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FRA

- William Schoonover
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USCG

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