

U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Special Permits and Approvals

POLICY STATEMENT

Special Permits and Approvals Issued to Members of an Industry Association

May 4, 2010

(SUPERSEDING AUGUST 14, 2009 POLICY STATEMENT)

This policy statement sets forth the procedures and requirements for issuing a special permit or approval to individual members of an industry association or other organization whose members perform activities or functions subject to the Federal hazardous material transportation law (Federal hazmat law, 49 U.S.C. § 5101 *et seq.*) and the Hazardous Materials Regulations (HMR, 49 C.F.R. parts 171-180). For simplicity, the term “association” is used hereafter. This statement supersedes the August 14, 2009 Policy Statement on Special Permits and Approvals Issued to Members of an Industry Association and supplements PHMSA’s procedures for issuing special permits and approvals set forth in subparts B and H, respectively, of 49 C.F.R. part 107, and further clarifies that a special permit or approval is not issued to the association itself or collectively to the members of the association.

Federal hazmat law authorizes DOT to issue variances – termed special permits – from the 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. In addition, the HMR include provisions that require regulated entities to obtain an approval authorizing the performance of a specific transportation activity (e.g., an explosive must be classed and approved by PHMSA based on testing by a person approved by PHMSA, 49 C.F.R. §§ 173.51, 173.56(b)). An approval may also be granted in specific situations to allow the use of new technology or to alleviate possible economic hardship (e.g., reduction of performance testing requirements for packagings, 49 C.F.R. § 178.601(g)(7) and (h)). The responsibility for compliance falls directly on the individual member who is authorized to perform specific functions under the terms of the special permit.

The authority to use a special permit or approval for an individual member or members may be modified, suspended or terminated consistent with the requirements of 49 C.F.R. Part 107, Subparts B and H, respectively. PHMSA is in the process of modifying (or terminating when appropriate) special permits and approvals granted to association members collectively. For any special permit issued to association members collectively, PHMSA intends to provide notice of modification or termination to the association and each individual member whose name and address is on file with PHMSA. This notice will provide information for the individual members to determine whether the activity authorized by the special permit or approval will eventually be incorporated into the regulations or will continue to need a special permit or approval. If applicable, the notice will also include the procedures for the individual members to timely apply for authority to continue operating in accordance with the terms and conditions of the prior special permit or approval and be granted such permit or approval upon completion of all application requirements and fitness determination by PHMSA.

PHMSA issues special permits and competent authority approvals only to individual companies or other business entities upon a determination of that entity's fitness to operate safely in accordance with the terms and conditions of the special permit or competent authority approval and the requirements of the HMR. Prior to issuing a special permit to the members of the association in their individual capacities, PHMSA will assess the fitness of the individual members in accordance with established policies and procedures. PHMSA will consult with the appropriate operating administration(s) in accordance with established modal agreements as part of the fitness assessment with a view towards ascertaining whether modal considerations or concerns would preclude issuance of the special permit or approval.

On May 1, 2010 PHMSA introduced an online application capability. All applicants are encouraged to utilize the new online application portal at <http://www.phmsa.dot.gov/hazmat/regs/sp-a>

Noncompliance with the terms and conditions of the special permit may be a basis for modification, suspension, or termination of the special permit or approval in accordance with 49 C.F.R. §§ 107.121 and 107.713, respectively, and/or enforcement action under the procedures set forth in subpart D of 49 C.F.R. part 107.