

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

August 14, 2009

This policy statement sets forth the procedures and requirements for issuing a special permit or approval to 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 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 clarifies that a special permit or approval is not issued to the association itself but, in limited circumstances, to the members of the association. The members are individually responsible for compliance with all the terms and conditions of the special permit or approval.

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, §§ 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, § 173.601(g)(7), (h)).

The vast majority of special permits and approvals are issued to individual companies. There are approximately 1,250 special permits currently in effect, and no more than 20 have been issued to the members of associations. PHMSA may issue a special permit to members of an association when many of its members are small businesses with a common interest in obtaining authority to perform a specific transportation activity and there is no large business entity to take the lead in seeking such authority; the association has the resources to gather the necessary information and perform any necessary research; and/or it is preferable to provide more control and oversight over the activities being allowed than PHMSA would have if such authority were provided in the HMR and generally available. Moreover, a special permit or an approval issued to the members of an association may be one of the most suitable types of special permit for later adoption into the HMR. A person who is not a member of the association may apply for “party status” to the special permit, or its own approval, to engage in the same activities authorized under the special permit or approval.

Any authority to perform a transportation activity under the terms of a special permit or an approval must be exercised by the individual business entity and not by the association. Accordingly, special permits and approvals are issued to members of the association, not to the association itself. The responsibility for compliance falls directly on the 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 suspended or terminated consistent with the requirements of 49 CFR Part 107, Subpart B.

To properly implement the statutory and regulatory authorities and achieve a greater level of safety and security in the transportation of hazardous materials, PHMSA has concluded that certain consistent procedures and requirements should apply to the issuance of both special permits and approvals to the members of associations. Accordingly, when the membership of an association applies for a special permit or approval, the following policies and procedures will apply:

1. Upon receipt of an application for a special permit or approval from the membership of an association, PHMSA will determine whether the request would more appropriately be handled as a petition for rulemaking rather than a special permit or approval. PHMSA will consider factors such as the nature of the request, the number of entities making the request, and the potential applicability of the special permit or approval to the broader regulated community.

2. The membership of the association must provide the following information in addition to the items specified in 49 C.F.R. §§ 107.105 and 107.705, respectively:

a. The name and street address of:

(i) Each of the members that requests authority to perform such activities and functions under the special permit or approval;

(ii) Each additional member that subsequently requests authority to perform such activities and functions under the special permit or approval; and

(iii) Any member holding authority to perform such activities and functions under the special permit or approval who indicates that it no longer intends to perform any activities or functions under the special permit or approval or ceases doing business for any reason.

3. The association may elect to assist its membership to communicate with PHMSA concerning required information for the special permit or approval application and to obtain complete information on the applicability, terms, and conditions of the special permit or approval, and any modifications thereto. Moreover, a special permit or approval grantee may ask the association to act as its agent in communications with PHMSA; in that event, communications on behalf of the grantee must clearly indicate the relationship.

4. PHMSA will include the following terms and conditions in the special permit or approval:

a. The special permit or approval will include a list of the persons (companies or individuals) who are authorized to conduct activities under the special permit or approval.

b. A member of the association may perform the activities and functions authorized by the special permit or approval only after PHMSA notifies the member that it has been granted authority under the special permit or approval. New members are not granted authority until PHMSA has specifically approved them based on a formal request.

c. If a member of the association terminates its membership in the association during the term of the special permit, it must notify PHMSA of such termination within 5 working days. Upon notification, PHMSA will issue a separate special permit to the company or individual.

5. Prior to issuing a special permit to the members of the association, 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) 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.

6. Each individual member of the association, or person granted party status to a special permit or to whom a separate approval has been issued, remains individually responsible for compliance with all the terms and conditions of the special permit or approval. DOT will monitor the safety performance of each individual grantee in conducting operations under the special permit or approval and will take enforcement action against that person, when appropriate, for failure to comply with the terms and conditions of the special permit or approval.

7. 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.