
Office of Inspector General

Audit Report

PHMSA'S INADEQUATE MANAGEMENT AND OVERSIGHT OF HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANTS LIMITED THE PROGRAM'S EFFECTIVENESS

Pipeline and Hazardous Materials Safety Administration

Report Number: AV-2012-040

Date Issued: January 12, 2012





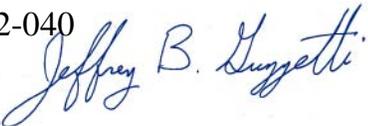
Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION: PHMSA's Inadequate Management and
Oversight of Hazardous Materials Emergency
Preparedness Grants Limited the Program's
Effectiveness
Pipeline and Hazardous Materials Safety
Administration
Report No. AV-2012-040**

Date: January 12, 2012

From: Jeffrey B. Guzzetti 
Assistant Inspector General
for Aviation and Special Program Audits

Reply to
Attn. of: JA-10

To: Pipeline and Hazardous Materials Safety Administrator

From 2001 through 2010, nearly 165,000 hazardous materials incidents¹ occurred in the United States, resulting in more than 2,800 injuries, including several fatal injuries, and about \$640 million in damages. The Pipeline and Hazardous Materials Safety Administration (PHMSA) administers the Hazardous Materials Emergency Preparedness (HMEP) Grant Program as a part of its national strategy for reducing death and injuries from hazardous materials incidents. PHMSA estimates that almost 2.3 million emergency responders have been provided training with HMEP grant funds.

The importance of adequately trained responders is highlighted when deficiencies in emergency response contribute to an endangerment of public safety. For example, in June 2004, a rail tank car carrying chlorine was punctured during a freight train collision in Macdona, TX, resulting in 3 fatalities and 30 injuries. As part of its investigation,² the National Transportation Safety Board (NTSB) noted that the emergency response was untimely and ineffective because the responding agencies failed to consider alternative response and rescue tactics to access

¹ An incident generally involves the unintentional release of a hazardous substance or discovery of an undeclared hazardous material.

² NTSB Railroad Accident Report No. NTSB/RAR-06/03, "Collision of Union Pacific Railroad Train MHOTU-23 with BNSF Railway Company Train MEAP-TUL-126-D With Subsequent Derailment and Hazardous Materials Release; Macdona, Texas; June 28, 2004."

threatened residences. As a result, the responding agencies increased their employee training to prevent similar situations in the future.³

On March 11, 2010, the former Chairman of the House Committee on Transportation and Infrastructure requested that we review PHMSA's management and oversight of the HMEP Grant Program (here within referred to as the Program). The Chairman cited concerns with potential program mismanagement and misuse of grant funds, which the Committee identified during its investigation of PHMSA's Hazardous Materials Safety Program.

Accordingly, our objectives were to evaluate the effectiveness of PHMSA's (1) policies, processes, and resources to execute the program; (2) outreach and coordination with States, local governments, and tribal organizations to enhance their approach to emergency planning and training; and (3) program oversight to ensure Federal funds are used for eligible activities in accordance with Federal law, regulations, and submitted grant applications.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology, and Exhibit B lists stakeholders visited or contacted.

RESULTS IN BRIEF

PHMSA does not have sufficient policies and processes—and until recently, resources—to effectively execute the Program. Although the Program was initiated in 1993, PHMSA did not develop written standard operating procedures (SOPs) to document the steps necessary to administer the Program until 2009. Moreover, these SOPs are incomplete, as PHMSA has not yet established procedures to cover critical aspects of the grant administration and oversight process, such as processing closeout reports to measure the Program's effectiveness in allocating grant funds. In addition, PHMSA's current methodology for allocating grant funds does not consider grantee needs and is based on outdated factors, such as the number of hazardous materials facilities in each State. This ineffective allocation method has resulted in grant funds that could have been used to better meet Program needs. Finally, PHMSA had not devoted enough staff to run the Program, relying on a maximum of three staff until 2010, when PHMSA began hiring additional staff for the Program. As a result of the lack of guidance, an outdated allocation formula, and limited staff resources, HMEP grant funds were not being fully used or optimized to ensure that

³ Although the emergency response was not determined to have contributed to the deaths or injuries sustained during the accident, NTSB cited a finding that “the overall execution of the incident command process during the response effort was not timely, effective, or appropriate.” NTSB also noted that “rescue efforts on behalf of the endangered residents did not commence for more than 3 hours after the collision.” The investigation did not reference HMEP grants.

emergency response teams throughout the nation are being prepared to respond to hazardous materials incidents.

PHMSA does not proactively or effectively reach out to or coordinate with grantees⁴ to enhance their approaches to emergency planning and training. For example, PHMSA uses the Internet to provide grantees information on the Program; however, the Program's Web site is difficult to use and does not provide needed or current information to grantees, such as eligible costs or application procedures. PHMSA's outreach to tribal organizations in particular is limited, with an average of only 10 of the hundreds of tribes participating in the Program from fiscal years (FY) 2007 through 2010. Until recently, PHMSA did not conduct any site visits to grantees⁵ since the Program's inception. PHMSA also has yet to follow up with grantees to determine why they did not use any or only a portion of their allocated funds. From FYs 2007 through 2010, an average of 76 percent of States, territories, and tribal organizations used none or only a portion of their allotted grant funds, with unused funds totaling almost \$13 million. As a result of such limited outreach and coordination, PHMSA cannot be assured that Program funds are being used effectively, or that the Agency is meeting its mission requirement to provide communities with trained responders to deal with hazardous materials incidents.

PHMSA's oversight is lacking and has resulted in misused grant funds due to improper payments and erroneously advanced funds. PHMSA allowed grantees to receive funds without adequate supporting documentation and advanced funds to grantees against regulations. We identified more than \$1 million in improperly distributed funds that were not used or needed. In addition, PHMSA paid another Government agency more than \$300,000 in 2007 for services that it has not yet received in full because it did not monitor its interagency agreements. Further, because PHMSA does not require grantees to submit supporting documentation as part of the reimbursement process, the Agency cannot ensure that it is reimbursing grantees for only eligible expenditures. PHMSA also relies on grantees to oversee sub-recipients, but has not effectively communicated eligibility criteria about the proper use of funds. This resulted in the reimbursement of Federal funds for unallowable expenses, such as staff salaries for attending meetings.

We made 10 recommendations to PHMSA to improve its management and oversight of the Program. In its response, PHMSA concurred with eight recommendations, partially concurred with one recommendation, and did not concur with one recommendation. We are requesting that PHMSA reconsider its position regarding grant reallocation.

⁴ Grantees are used throughout this report when referring to States, territories, and tribal organizations.

⁵ Beginning in February 2011, PHMSA conducted site visits to four States.

BACKGROUND

The HMEP Grant Program was established in 1990 by the Hazardous Materials Transportation Uniform Safety Act. In 1993, PHMSA began issuing grants to help public sector employees (e.g., firefighters, law enforcement personnel, and emergency personnel) fund emergency response planning and training activities.

The 2005 Hazardous Materials Transportation Safety and Security Reauthorization Act doubled the Program funding, from an average of \$13 million per year for 8 years (2000 to 2007) to over \$26 million in 2008. The Program is funded by annual registration fees PHMSA collects from certain transporters of hazardous materials.

The HMEP fund consists of:

- **HMEP Planning and Training Grants (\$21.8 million):** Planning grants are awarded to develop and implement emergency plans, conduct commodity flow studies,⁶ and determine the need for regional hazardous materials response. Training grants are awarded to train local public-sector employees to respond to accidents and incidents that involve the transportation of hazardous materials.
- **Hazardous Materials Instructor Training (HMIT) Grants (\$4 million):** HMIT grants are awarded to train employees of non-profit organizations, who then train other hazardous materials employees.
- **Supplemental Public Sector Training (SPST) Grants (\$1 million):** SPST grants are awarded to the International Association of Firefighters to fund “train the trainer” instruction for hazardous materials response educators.
- **Miscellaneous Program Expenses (\$975,000):** These expenses are used to pay for the efforts of monitoring, providing technical assistance, and developing a training curriculum for the public sector.

In March 2009, PHMSA conducted a self-initiated internal review of the Program and developed an action plan to address deficiencies. A subsequent review by its consulting firm⁷ in December 2010 prompted PHMSA to develop a comprehensive action plan, included as Exhibit C.

⁶ A commodity flow study identifies the chemicals transported, either specifically or by hazard class, as well as the routes on which they are transported.

⁷ PHMSA hired a consulting firm to do a top to bottom review of the HMEP Grant Program.

PHMSA LACKS EFFECTIVE PROGRAM POLICIES, PROCESSES, AND RESOURCES

PHMSA does not have adequate policies, processes, or resources in place to effectively execute the Program. PHMSA lacks complete SOPs, uses an ineffective allocation method for distributing grant funds, and, until recently, had not dedicated sufficient resources, as only three staff were assigned to administer the program. While PHMSA has taken some steps to address these deficiencies, the Agency has not yet ensured that the Program is executed efficiently and that grant funds are put to their best use so that States, territories, and tribal organizations can plan for effectively responding to hazardous materials incidents.

PHMSA's HMEP Policies Are Incomplete

PHMSA does not have sufficient policies in place to ensure the Program is effectively implemented. PHMSA did not issue its first written SOPs to document its processes and procedures until 16 years after the Program was enacted. However, the documented procedures were incomplete, as they did not incorporate the entire grant process. This is a particular shortcoming because four of the seven HMEP grant staff were recently hired in 2010 and did not have sufficient written guidance on hand to effectively perform their duties.

In March 2011, PHMSA issued another set of SOPs; however, the documents still lack procedures on the preparation, processing, and review of quarterly reports and closeout reports, which are essential elements of the grant administration and oversight process. It is important for PHMSA's grant specialists to know how to properly use these reports to ensure grantees receive reimbursements in a timely manner, and to properly close out grant accounts in a timely fashion to measure the Program's effectiveness in allocating grant funds.

PHMSA's Process for Allocating Program Funds Is Outdated, Inflexible, and Ineffective

Currently, PHMSA allocates grant funds based on a formula developed in the early 1990s. The formula contains several factors,⁸ such as a State's total number of chemical facilities and the total population. However, according to PHMSA, only one factor—population—has ever been updated with current data since the formula's creation. PHMSA continues to allocate grant funds based solely on this outdated formula, and does not consider other risk factors, such as the actual needs of the grantees which, by law,⁹ PHMSA is required to consider.

⁸ PHMSA considered the following factors when the original formula was developed: total population, highway miles, hazardous material miles driven, and total chemical facilities.

⁹ 49 USC 5116(b)(4) requires PHMSA to consider the grantee needs, including the types and amount of hazardous materials transported through a State or tribal land.

By relying only on its current formula, PHMSA is missing an opportunity to use other more effective options, such as using commodity flow studies as a tool to allocate future grant funds. These studies are an eligible activity under the planning grants and provide important information about hazardous materials transported in an area. The data collected from these studies could be used by PHMSA to better match funds to existing needs within communities.

In addition, because PHMSA is allocating its funds with a flawed formula, it cannot ensure that grant funds are being put to their best use. During FY 2007 through 2010, an average of 76 percent of States, territories, and tribes used none or only a portion of their allotted grant funds, with unused funds totaling almost \$13 million (see exhibit D for further details on our unused HMEP Program funds analysis). Unused program funds are de-obligated, returned to a HMEP grant Treasury account, and distributed the following year using the same flawed formula. PHMSA does not reallocate unused funds to grantees who demonstrate a need for additional funding. For example, the Director of the State of California's Specialized Training Institute said he could have used more funding to meet annual training demands. The availability of unused funds to meet annual training needs is of particular importance because this State had the highest number of recorded hazardous materials incidents in the past 10 years.

PHMSA Did Not Dedicate Sufficient Staff to the Program

Until recently, PHMSA did not provide the resources necessary for adequately administering the Program. From 1993 through 2009, PHMSA had only three staff administering the Program. Among other tasks, the staff were responsible for oversight and administration of grants for more than 70 grantees, which included ensuring grant applications were accurate and complete, and processing reimbursements.

Grantees we spoke with raised serious concerns about PHMSA's management of the Program. For example, grantees expressed concern with PHMSA's lack of responsiveness. In one instance, the grantee began requesting personnel costs in advance so it could receive funding in a timely manner to cover its payroll. Furthermore, that same grantee tried to return unused funds, but PHMSA did not respond for weeks to its email requests about where to send the funds. Another grantee stated that PHMSA was very slow to respond to queries about the Program, and that PHMSA took nearly 2 months to process reimbursement requests.

In 2010, PHMSA began hiring additional staff for the program. Since then, grantees have stated that the Program's responsiveness has improved. However, to further enhance administration of the Program, staff still need additional training

on Federal grants management, such as how to review grantees' application budgets and financial reports.

PHMSA'S OUTREACH AND COORDINATION EFFORTS WITH GRANTEES ARE NOT SUFFICIENT

PHMSA's outreach and coordination with grantees is limited, which hinders its ability to inform grantees of the funding available to enhance their emergency preparedness planning and training. In particular, PHMSA has not effectively encouraged tribal organizations to participate in the Program, or provided an effective medium through its Web site for grantees to obtain current and essential information about the Program and use of HMEP grant funds. This has resulted in grantees receiving incomplete or outdated information about the Program and, in some cases, precluded them from participating altogether. In addition, PHMSA's lack of outreach hinders the Agency from ensuring that Program grant funds are being put to their best use because PHMSA was not aware of the grantees' actual needs.

PHMSA's Outreach to Grantees Is Limited

PHMSA did not proactively or regularly reach out to grantees to inform them about grant funding available for emergency preparedness planning and training. For example, although there are more than 500 federally recognized tribal organizations, our analysis found that on average, from FYs 2007 through 2010, only 10 participated in the Program. PHMSA stated that it was not sure how many tribes needed HMEP grant funding and that outreach to tribes has historically been difficult because of the voluminous number of tribes and limited staff. In addition, PHMSA stated that not all tribes have their own sovereign land, nor do the tribes have significant hazardous materials transportation risk on or adjacent to the reservation. Also, some tribes rely on neighboring counties to provide emergency response services. PHMSA plans to target a few tribes each year in an attempt to increase their participation.

One important outreach tool PHMSA has not taken full advantage of is the Internet. Web sites are especially effective outreach resources for programs with limited staff resources, such as the HMEP program. However, PHMSA has not effectively used its Web site to provide current and relevant Program information to grantees. For instance, the Web site does not contain basic program guidance such as the list of the Program's eligible and ineligible expenses or a copy of the HMEP application kit, which provides grantees guidance in the grant application process.

PHMSA's outreach through industry conferences has also been limited. PHMSA has never attended or hosted HMEP or HMIT-specific conferences or training.

While PHMSA officials did participate in the biannual National Association of SARA Title III Program Officials Conference,¹⁰ the conference did not focus on emergency planning and training. Moreover, PHMSA was only allotted 2 hours to present, which was not enough time to cover pertinent issues associated with the HMEP program. Since January 2011, however, PHMSA has increased its representation and attended other forums such as the Emery Associates Midwest Hazardous Materials Planning and Response Conference and the International Association of Fire Chiefs Hazardous Materials Response Teams Conference in an attempt to increase outreach.

PHMSA has also recently increased the effectiveness of its outreach strategy by administering Webinars¹¹ designed to provide real-time information sharing and training to grantees. We received positive feedback from grantees on PHMSA's Webinars; however, one of four HMIT grantees reported that the Webinars focused more on processes for HMEP planning and training grants and very little on HMIT grants and so they were not as complete or as helpful as they could have been.

PHMSA Did Not Sufficiently Coordinate With Grantees

Until recently, PHMSA did not adequately coordinate with or conduct any site visits to grantees that received funds since the inception of the Program. PHMSA also did not contact or follow up with grantees to determine why they had not used any or only a portion of their total allocated funds for planning and training. For the period from FY 2007 through 2010, an average of 76 percent of States, territories, and tribes used none or only a portion of their allotted grant funds for a total of almost \$13 million in unused funds.

For example, a grantee stated they were not able to use their planning and training funds because of natural disasters that required response by State personnel for an extended period of time, resulting in the cancellation of HMEP-funded activities. Because PHMSA did not follow up with these grantees, it missed an opportunity to put those funds to better use by providing the funds to grantees that needed additional grant funding to conduct HMEP planning and training activities.

Periodic site visits to grantees are important to provide guidance and ensure grantees are using the grants as the Program intended. Beginning in February

¹⁰ The Superfund Amendments and Reauthorization Act of 1986 (SARA) addresses concerns about emergency preparedness for hazardous chemicals. It established requirements for Federal, Tribal/State, and local governments, and industry, regarding emergency planning and "community-right-to-know" reporting on hazardous and toxic chemicals. Also known as the Emergency Planning and Community Right to Know Act of 1986, 42, USC 11001, *et seq.*

¹¹ Webinars are live interactive forums that PHMSA periodically holds with the grantees and to discuss topics such as program requirements examples of eligible and ineligible activities requests for reimbursements, and funding allocation.

2011, PHMSA started conducting its first site visits to Nebraska, Oklahoma, Pennsylvania, and Texas. PHMSA also plans to continue site visits in FYs 2011 and 2012 to review record retention, discuss the Program, and provide assistance to grantees where needed. PHMSA plans to use information gathered from these site visits to improve the general management of the program, train program staff, and better understand grantee operations.

PHMSA'S OVERSIGHT OF PROGRAM EXPENDITURES IS INSUFFICIENT TO ENSURE PROPER USE OF FUNDS

Since the Program's inception, PHMSA has conducted little, if any, oversight of Program expenditures, resulting in misused funds. We identified more than \$1 million in improperly disseminated grant funds because PHMSA advanced funds to grantees in excess of what regulations allow. PHMSA also paid more than \$300,000 for services it did not receive in full because it did not effectively oversee its interagency agreements. Furthermore, PHMSA did not review grantee expenditures, which resulted in reimbursement for ineligible costs. As a result, grant funds have been misused and grantees have not received the Program's full benefits to assist in their emergency preparedness activities.

PHMSA Distributed Funds to Grantees Contrary to Regulations

PHMSA did not fully comply with two key Federal regulations in the distribution of Program funds to grantees, which resulted in misused Program funds. We identified and examined a total of \$1,015,974 that 17 grantees returned to PHMSA from FY 2008 to FY 2010. The returned funds consisted of 29 payments ranging from \$53 to \$473,000.

We found that 27 of these 29 payments, or \$1,000,903, were improper according to OMB Circular A-123 requirements regarding improper payments.¹² This was mainly due to PHMSA authorizing payments for goods or services before the services were actually received. (See exhibit E for further details of our improper payments analysis).

Many of the advanced payments also did not comply with PHMSA's own regulation. PHMSA's grant program is primarily designed to operate on a reimbursable basis. Despite this, we found 19 of the 29 payments were returned because PHMSA advanced funds to grantees who subsequently did not use all of the funds. (See exhibit F for further details of our advanced funds to grantees

¹² The Office of Management and Budget (OMB) Circular A-123 defines improper payments as any payment that was made to an ineligible recipient or for an ineligible service, insufficient or lack of documentation, duplicate payments, payments for services or goods not received, or payments that are for the incorrect amount.

analysis). Although PHMSA's regulation¹³ permits an advance in grant funds up to \$25,000 if certain criteria are met, PHMSA did not comply with the requirements for granting advances. At least 10 of the 19 advanced payments were above the \$25,000 allowable threshold, based on the amount of the returned funds. In total, we identified almost \$993,000 in unused grant funds that could have been put to better use by going to other grantees for emergency preparedness planning or training activities. We also obtained evidence that PHMSA has been advancing funds for longer than our period of review. For example, one grantee who returned approximately \$280,000 (55 percent of its allotted funds) in FYs 2008 and 2009 stated that PHMSA had been approving its advances since 2003.

We were able to identify these erroneously advanced funds and improper payments because grantees voluntarily returned their excess funds to PHMSA. PHMSA's oversight process did not catch these errors or any other related errors where funds may not have been returned. Consequently, the total amount of grant funds that could have been used to strengthen other emergency preparedness planning and training activities may never be fully known.

PHMSA Did Not Receive All Deliverables Paid for Under Its Interagency Agreements

PHMSA paid for services it did not receive because it did not effectively oversee its interagency agreements. In August 2007 PHMSA entered into two interagency agreements with the Federal Emergency Management Agency (FEMA) containing 10 deliverables for emergency preparedness curriculum development and technical assistance to grantees. PHMSA paid a total of \$308,817 in advance for the agreements, but as of July 2011, only 4 of the 10 deliverables were completed.

PHMSA's former Program manager, responsible for monitoring the interagency agreements, said that he did not receive training and therefore did not fully understand his oversight responsibilities. In addition, he said there was not enough staff to ensure the interagency agreements were properly monitored, no accountability for mismanagement, and frequent turnover of PHMSA management (three directors from 2006–2008).

¹³ 49 Code of Federal Regulations §110.70(c) "Financial Administration" requires compliance with the following to be considered for advanced funds: a letter describing the extenuating circumstances; maximum \$25,000 limit; obligation within 3 months of receipt; advances plus interest will be deducted from the initial reimbursement; and no further advances will be granted until the advance is covered by a request for reimbursement.

Furthermore, according to Title 31 USC Section 1535, payments for interagency agreements may be made either in advance of or after the goods or services ordered have been provided.¹⁴ However, under PHMSA's supplemental policy,¹⁵ advanced payment for all interagency agreements is mandatory. As demonstrated with the 2007 interagency agreements, requiring advanced payments for interagency agreements without sufficient management and oversight puts PHMSA at greater risk of not getting the goods and services it paid for.

In contrast, for PHMSA's next interagency agreement with FEMA, initiated in FY 2009, PHMSA appointed a contracting officer technical representative to monitor the deliverables and ensure all of the technical requirements of the agreement were met. As of May 2011, all the 2009 deliverables were provided. However, the FY 2007 deliverables remain unresolved.

PHMSA Reimbursed Grantees for Ineligible Activities

PHMSA did not conduct reviews of grantee expenditures to ensure that grant funds were used for eligible costs, and, as a result, reimbursed grantees for ineligible costs. PHMSA has never required grantees to submit supporting documentation as part of the reimbursement process. Consequently, PHMSA has no documentation to verify that grantees actually incurred the costs they claimed.

For example, PHMSA reimbursed one grantee for ineligible expenditures claimed by the grantees sub-recipient. This occurred because PHMSA relied on its grantees to oversee sub-recipient requests and use of Program funds. However, this is problematic because PHMSA had not provided most grantees with adequate guidance to determine whether expenditures were allowed for reimbursement, especially in regards to planning funds. As a result, PHMSA sub-recipients received program grant funds as reimbursement for unallowable expenses, such as refreshments, t-shirts, and staff salaries while at meetings.

In December 2010, PHMSA developed a list of eligible and ineligible activities, but the Agency did not effectively disseminate the list. Grantees we spoke with were not aware of the list, even though PHMSA claimed the Agency distributed it to all grantees. As previously mentioned, in 2011, PHMSA and its consulting firm started conducting site visits and reviewing grantee expenditures to gain a better understanding of issues with the grant process. In its August 2011 report,

¹⁴ Section 1535 also specifies that proper adjustments of amounts paid in advance shall be made as agreed to by the heads of agencies on the basis of the actual cost of goods or services provided.

¹⁵ Order No. 4200.1 "Interagency and Intra-Agency Agreements; Acquisition from Other Government Agencies, or Other DOT Operating Administrations," dated October 29, 2007, states advance payment is mandatory for all interagency agreements.

PHMSA's consulting firm also found grantees were reimbursed for similar ineligible activities.¹⁶ PHMSA plans to continue the site visits in 2011 and 2012.

CONCLUSION

PHMSA's HMEP Grant Program is a vital component in the Department's national strategy for reducing death and injuries from hazardous material incidents. However, PHMSA's lack of program management and oversight of program expenditures calls into question the effectiveness of the Program. While PHMSA's recent action plan and senior management's attention show promise, it will take time, resources, and sustained commitment to address these longstanding issues. To ensure the long-term success of its current efforts, PHMSA must continue to refine its policies, processes, and resources to effectively execute the program, work with grantees to enhance their emergency preparedness capabilities, and set targeted oversight priorities to ensure program expenditures are not wasted or misused.

RECOMMENDATIONS

We recommend that PHMSA:

1. Complete the implementation of all HMEP action plan items to improve the management and oversight of the HMEP Grant Program.
2. Finalize and fully implement formal SOPs and policies for grant application, evaluation, authorization, reporting, Agency coordination, and oversight.
3. Provide the necessary training to Program staff to enhance their Federal grant management capabilities.
4. Develop and implement an updated and flexible process to allocate grant funds, taking into account applicable risk factors, commodity flow studies, and grantee needs.
5. Augment outreach and coordination efforts to inform grantees about available emergency preparedness planning and training grants, through its Web site, Webinars, and site visits.
6. Adhere to the grant advancement requirements in 49 CFR 110.70.
7. Rescind the provision in PHMSA's Order No. 4200.1 "Interagency and Intra-Agency Agreements; Acquisition from Other Government Agencies, or Other

¹⁶ LMI, "The Hazardous Material Emergency Preparedness Program: Recipient Review and Assessment," August 2011.

DOT Operating Administrations” that requires advanced payment for all interagency agreements.

8. For the FY 2007 interagency agreements, request a reconciliation of amounts paid by PHMSA and actual goods and services provided by FEMA. Seek a refund as appropriate.
9. Develop and implement a process to monitor interagency agreements to ensure the receipt of all supplies and services as agreed upon.
10. Develop and implement a process to regularly review grantee expenditures before approving reimbursement requests and distribute the most current eligible and ineligible list to grantees.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We discussed the results of our review with officials from PHMSA’s Office of Hazardous Materials Safety on July 28, 2011, and provided the Agency our draft report on November 3, 2011. We received PHMSA’s formal response on December 20, 2011, and have included it as an appendix to this report. In its response, PHMSA concurred with eight recommendations but partially concurred with recommendation 4 and did not concur with recommendation 7.

For recommendation 4, PHMSA’s response and planned actions only partially meet the intent of our recommendation. Specifically, PHMSA stated that the Agency would evaluate the potential to develop and implement an updated grant fund allocation model but that it would be impractical to reallocate unused grant funds during the grant year. We disagree. While some additional efforts would be required, improved monitoring of grantee spending could prevent large sums of unused funds from being returned at year end and make funds available to other high-performing grantees during the grant year. For example, we found that PHMSA allocates funds annually to grantees who have not participated in the Program for years and to grantees who consistently return significant amounts of unused funds, which are then de-obligated and returned to the HMEP grant Treasury account for use in subsequent years. Therefore, we request that the Agency reconsider its position in response to recommendation 4.

For recommendation 7, PHMSA stated that its Order is aligned with the Department’s policy that advanced payment is mandatory for all interagency agreements unless the enabling legislation does not authorize it. The law PHMSA cited in its response, Title 31 USC Section 1535, provides agencies with an option to make payments for interagency agreements *either* in advance of, *or* after the goods or services ordered have been provided. We consider the flexibility of

Section 1535 a better business practice than mandatory advanced payments; however, in implementing this law, the Department elected to make advanced payments mandatory. Therefore, we consider this recommendation resolved and closed.

Finally, PHMSA requested that we remove the discussion regarding the Macdona, TX, rail accident from this report because it seemed to implicate the HMEP Grants Program. Our intent was not to imply a direct link between the Program and the emergency response to the accident but rather to highlight the importance of training to ensure an effective emergency response following a hazardous materials spill. We revised our report to clarify this point. However, while PHMSA correctly stated that the NTSB did not cite the Program as a contributing factor in the accident, we note that the accident report cited a finding that “the overall execution of the incident command process during the response effort was not timely, effective, or appropriate.”

ACTIONS REQUIRED

PHMSA’s planned actions for recommendations 1, 2, 3, 5, 6, 8, and 10 are responsive, and we consider these recommendations addressed but open pending completion of the planned actions. We are closing recommendations 7 and 9 since reasonable actions have been taken to address them. For recommendation 4, we are asking the Agency to reconsider its position. In accordance with Department of Transportation Order 8000.1C, we request that PHMSA provide us this additional information within 30 days.

We appreciate the courtesies and cooperation of PHMSA during this audit. If you have any questions concerning this report, please contact me at (202) 366-0500 or Scott Macey, Program Director, at (415) 744-3090.

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CC: Gordon Delcambre PHG-4
Martin Gertel M-1

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit from October 2010 through October 2011 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Based on a request from the Chairman of the House Committee on Transportation and Infrastructure, our objectives for this audit were to evaluate the effectiveness of PHMSA's (1) policies, processes, and resources to execute the HMEP program; (2) outreach and coordination to enhance States, local governments, and tribal organizations approach to emergency training and planning; and (3) program oversight to ensure Federal funds are used for eligible activities in accordance with Federal law, regulations and submitted grant applications.

To achieve our audit objective, we reviewed the requirements of pertinent laws such as the Hazardous Materials Transportation Uniform Safety Act of 1990 that established the HMEP grant program; 49 CFR 110 regarding "Hazardous Materials Public Sector Training and Planning Grants," which sets forth procedures for reimbursable grants dealing with hazardous materials emergencies; and OMB Circular A-123 guidance on improper payments. We reviewed PHMSA's guidance regarding the grant program such as its standard operating procedures and job aids for the HMEP grant specialists dated September 2009, and revised in August 2010; and its original eligible and ineligible grant expense list, which was not dated, but revised in December 2010.

We interviewed PHMSA HMEP Headquarters officials, including the Executive Director; Grant Manager; contractors such as PHMSA's consultant, LMI; and grantees. We received the universe of payments to grantees from the Department's Delphi Accounting System. A full list of grantees visited or contacted during this audit—which were based on their geographic location, grantee type (State, territory, and tribe), and history of returning funds to PHMSA—can be found in Exhibit B. Specifically, we visited and contacted 26 of 69 grantees to review their supporting documentation for grant draw downs and discuss PHMSA's outreach and coordination for their emergency preparedness planning and training efforts. Furthermore, we selected and contacted 10 of 18 grantees based on grantee type and their history of not drawing down on grant funds allocated to them.

For the above grantees, we reviewed the program's grant activity and related documentation at PHMSA Headquarters and from grantees. Specifically, we analyzed budgetary data from FYs 2006 through 2009; expenditure reports from FYs 2007 through 2010; applicable Standard Form 270 "Request for Advance or

Exhibit A. Scope and Methodology

Reimbursement;” and the 2007 and 2009 interagency agreements PHMSA had with FEMA for emergency preparedness curriculum development and technical assistance to grantees.

EXHIBIT B. STAKEHOLDERS VISITED OR CONTACTED

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Oklahoma City, OK

PHMSA

Office of Hazardous Materials Safety, Washington DC

STATES

Alabama Emergency Management Agency

Arkansas Department of Emergency Management Agency

California Emergency Management Agency

District of Columbia Emergency Management Agency

Florida Division of Emergency Management

Illinois Emergency Management Agency

Indiana Department of Homeland Security

Iowa Homeland Security and Emergency Management Agency

Kansas Division of Emergency Management

Kentucky Department of Emergency Management

Maryland Emergency Management Agency

Massachusetts Emergency Management Agency

Nebraska Emergency Management Agency

Nevada State Emergency Response Commission

New Mexico Department of Homeland Security

New York Emergency Management Office

Ohio Department of Public Safety, Emergency Management Agency

Texas Department of Public Safety, Division of Emergency Management

Utah Department of Public Safety, Office of the State Fire Marshall

Vermont Department of Public Safety

Virginia Department of Emergency Management

Washington Emergency Management Division

Wisconsin Department of Military Affairs

HMIT GRANTEES

International Association of Fire Fighters

International Association of Machinists Corporation for Re-Employment and Safety Training

International Brotherhood of Teamsters

National Labor College

TRIBAL ORGANIZATIONS

Ely Shoshone

Fallon Paiute – Shoshone

Lac Du Flambeau Band
Poarch Band of Creek Indians
Pyramid Lake Paiute
Saint Regis Mohawk

TERRITORIES

Guam
Northern Mariana
Puerto Rico

EXHIBIT C. PHMSA'S HMEP GRANT PROGRAM ACTION PLAN, FY 2011

#	Description of Finding	Action	Tasks (Action Items)	Challenge(s)	Status
1	Lack of clear internal and external guidance on allowable uses of grant funds (courses, equipment)	•Develop Clear and comprehensive guidance for expenditures	•Create a list of •Eligible/Ineligible Expenses for internal and external reference	• Must gain buy-in from Grant Program staff • Must gain concurrence from PHC leadership	•Complete
2	Grantee administrative requirements not clear/not well articulated	•Develop Clear Grantee (external) guidance documents and increase outreach efforts to better educate grantees	• Create Eligible/Ineligible Lists • Create Regulation Quick Reference Guide • Improve Guidance Document	•Changing grantee culture of little program oversight to well educated and highly compliant grantee	• Complete • Complete • Complete
3	Inconsistencies in completeness of grantee files	•Develop Clear and comprehensive SOPs for (internal) grant administration, to include file preparation and maintenance	• Compile existing SOPs and develop new SOPs, as needed to fully document the entire grant management life-cycle		• In Process
4	Lack of adequate oversight of grantee performance	• Develop clear program performance measures • Develop Clear and comprehensive SOPs for (internal) grant administration, to include measuring performance and site visit protocols	• Develop (external) performance measures that act as true indicators of risky grantees and inefficient uses of grant funds • Develop SOP for Site Visit protocols that ensure best use of grant staff time and other limited program resources • Perform Site Visits • Enforce Quarterly Reporting Requirement to stave off on-going grantee problems (will be reiterated in the Guidance Document)	• Getting staff adequately trained on all grant management processes • Changing grantee expectation of limited program oversight to active partnership between grantee and grantor	• In Process • In Process • Complete • Complete
5	Vague proposals included in application	•Enhance application to require more specific information in proposed planning and training activities	•Update/Improve Guidance Document to include: • Clear grant administrative requirements • Proposed Activity Template	• Requires time-consuming OMB Approval • Grants.gov and GrantSolutions may preclude the use of	•Complete*

Exhibit C. PHMSA's HMEP Program Action Plan

#	Description of Finding	Action	Tasks (Action Items)	Challenge(s)	Status
			<ul style="list-style-type: none"> Quarterly/Final Report Template 	PHMSA-specific forms	
6	Grantees utilize multiple funding sources (DHS/FEMA, EPA) without clear separation	<ul style="list-style-type: none"> Develop Clear Grantee (external) guidance documents and increase outreach efforts to better educate grantees on the proper use of HMEP Grant funds AND Enhance reporting requirements to gain only HMEP related data 	<ul style="list-style-type: none"> Develop outreach plan to include participation in webinars, industry events, and the development of promotional materials and other informational materials Improve Guidance Document Develop Quarterly/Final Report Template designed to exclude non-HMEP activity 	<ul style="list-style-type: none"> Changing grantee culture of little program oversight to well educated and highly compliant grantee population 	<ul style="list-style-type: none"> Complete Complete In Process
7	Numbers Trained (as noted on Report to Congress) are unclear	<ul style="list-style-type: none"> Enhance final report template require more specific information on actual planning and training activities performed with HMEP Grant funds 	<ul style="list-style-type: none"> Improve Guidance Document to prepare grantee for accurate reporting Develop Quarterly/Final Report Template to exclude non-HMEP activity 	<ul style="list-style-type: none"> Requires timely OMB Approval Grants.gov and GrantSolutions may preclude the use of PHMSA-specific reports 	<ul style="list-style-type: none"> In Process In Process
8	Failure to manage grants in accordance with “federal norms”: 1) App Review 2) Awarding 3) Admin/Oversight 4) Close-out 5) Compliance	<ul style="list-style-type: none"> Develop Clear and comprehensive SOPs for (internal) grant administration, to include the entire grant lifecycle 	<ul style="list-style-type: none"> Compile existing SOPs and develop new SOPs, as needed to fully document the entire grant management life-cycle Create Regulation Quick Reference Guide to afford easy access to all relevant regulatory documents Develop internal training plan to ensure all grant staff are prepared to oversee the administration of HMEP grants Perform Site Visits Develop performance measures that act a true indicators of risky grantees and inefficient uses of grant funds 		<ul style="list-style-type: none"> In Process Complete Complete Complete** In Process

Exhibit C. PHMSA’s HMEP Program Action Plan

#	Description of Finding	Action	Tasks (Action Items)	Challenge(s)	Status
			<ul style="list-style-type: none"> Establish Compliance Protocol, via the Terms & Conditions, that enables the program to impose consequences on noncompliant grantees 		<ul style="list-style-type: none"> Complete
9	Regulations do not align with assurance documents or grantee submissions/practices	<ul style="list-style-type: none"> Update regulations to ensure relevance and to accurately align with program intent, practices 	<ul style="list-style-type: none"> Update HMEP, HMIT and SPSTG regulations, as necessary 	<ul style="list-style-type: none"> Time consuming process involving internal OHMS interested parties and OMB 	<ul style="list-style-type: none"> To Begin Feb '12

DELIVERABLES***

Finding(s)	Item/Activity	Due Date	Status
1,2	Eligible/Ineligible List	December 31st	COMPLETE
2,8	Regulation Quick Reference Guide	March 15th	COMPLETE
8	Internal Training Plan	March 28th	COMPLETE
6	Outreach Plan	March 28th	COMPLETE
2,5,6,7	Guidance Document	April 15th	COMPLETE
7	Quarterly Reporting Requirement (in '11 Award T&Cs)	April 15th	COMPLETE
5	Proposed Activity Template	April 15th	COMPLETE
4,8	Perform Site Visits (with LMI)	April 15th	COMPLETE
3,4,8	Standard Operating Procedures (full grant cycle)	April 29th	COMPLETE
8	Compliance Protocol	June 3rd	COMPLETE
5,6,7,	Quarterly/Final Report Template	December 16th	IN-PROCESS
4, 8	Performance Measures	December 16th	IN-PROCESS
9	Regulations	May 2012	TO BEGIN FEB '12

* A sample application was provided to grantees to serve as a reference when developing their respective 2011-2012 HMEP Grant Applications. The revised Grant Application has an anticipated release date of April 2013.

** Initial plan included four Grantee Site Visits (Oklahoma, Texas, Nebraska, and Pennsylvania). All were completed in 2011. Site Visits will be incorporated as a regular component of the program's outreach efforts.

*** Note: Deliverables will be prepared by Grant Program Personnel, by listed due date, in DRAFT form for additional review and concurrency by the Grants Advisory Panel.

SOURCE: PHMSA

Exhibit C. PHMSA's HMEP Program Action Plan

EXHIBIT D. ANALYSIS OF UNUSED HMEP PROGRAM FUNDS

We analyzed PHMSA HMEP Grant Program expenditure data for FYs 2007 through 2010 and found that an average of 76 percent (see Table D-1) of States, territories, and tribes returned *all* or a *portion* of their allotted grant funds. The percentage of grantees who did not use any of their allotted grant funds was 18 percent in FY 2007, 13 percent in FY 2008, 11 percent in FY 2009, and 3 percent in FY 2010.

Table D-1. Percentage of Grantee Returning All or a Portion of Funds

Grantee	2007	2008	2009	2010	Totals
States	63%	75%	80%	74%	73%
Territories	80%	80%	67%	100%	82%
Tribes	100%	85%	89%	86%	90%

Source: OIG analysis of HMEP grant program expenditure reports

For the same period, grantees did not use approximately \$13 million in program funds (see Table D-2), which represents program funds that could have been put to better use.

Table D-2. Unused HMEP Program Funds

Grantee	2007	2008	2009	2010	Totals
States	\$1,883,981	\$1,752,022	\$3,848,968	\$3,778,820	\$11,263,791
Territories	247,563	266,905	224,712	45,905	785,085
Tribes	336,320	116,840	113,233	85,601	651,995
Total	\$2,467,865	\$2,135,768	\$4,186,912	\$3,910,326	\$12,700,871

Source: OIG analysis of HMEP grant program expenditure reports

EXHIBIT E. ANALYSIS OF IMPROPER PAYMENTS TO GRANTEES

OMB categorizes improper payments in several ways, as illustrated by Table E-1.

Table E-1. Improper Payment Information Act Reporting

Category	Definition
1	Improper payment for under or over payment made to eligible recipient including:
1a	-Inappropriate denial of payments or service
1b	-Any payment that does not account for credit for applicable discounts
1c	-Payments that are for the incorrect amount
1d	-Duplicate Payments
2	Ineligible recipient for an ineligible good or service; or payments for goods or services not received
3	Agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation

Source: OMB Circular A-123

We reviewed a total of \$1,015,974 that 17 grantees returned to PHMSA from FY 2008 to FY 2010. The returns consisted of 29 payments ranging from \$53 to \$473,000, of which 27 payments in the amount of \$1,000,903 were considered improper based on criteria in OMB Circular A-123. Table E-2 identifies the 27 improper payments and the applicable OMB category for improper payment type.

Table E-2. Improper Payments to Grantees

Grantee	Improper Payment Type					Total Payment
	Incorrect Amount	Duplicate Payments	Ineligible Good or Service	Goods or Services Not Received	Insufficient Documentation	
<i>Budgeted in FY 2007 and Expended in FY 2008</i>						
Arkansas				X		\$4,497
Illinois			X			\$192
Iowa				X		\$13,347
Iowa	X			X		\$33,774
Kansas				X		\$51,860
Kansas				X		\$5,438
Kansas				X		\$158,026
Massachusetts				X		\$62,891
Massachusetts				X		\$3,541
Pyramid Lake Paiute Tribe	X					\$4,026

Grantee	Improper Payment Type					Total Payment
Saint Regis Mohawk Tribe				X		\$388
Total FY 2007						\$337,980
<i>Budgeted in FY 2008 and Expended in FY 2009</i>						
Arkansas				X		\$40,726
Arkansas				X		\$222
Arkansas				X		\$513
Arkansas				X		\$186
Illinois	X	X	X			\$1,584
Indiana				X		\$472,994
Iowa				X		\$9,935
Kansas				X		\$32,407
Kansas				X		\$31,832
Nebraska			X			\$172
Nevada	X					\$53
Texas				X		\$35,656
Virginia				X		\$34,371
Wisconsin			X			\$302
Total FY 2008						\$660,953
<i>Budgeted in FY 2009 and Expended in FY 2010</i>						
Vermont	X					\$1,311
Washington		X				\$659
Total FY 2009						\$1,970

Source: OIG analysis of HMEP grant program data

Exhibit E. Analysis of Improper Payments to Grantees

EXHIBIT F. ANALYSIS OF ADVANCED FUNDS TO GRANTEES

PHMSA's grant program is designed to operate on a reimbursable basis; however, PHMSA's regulations allow for advances of program funds to grantees if the following criteria are met:

- a letter describing the extenuating circumstances;
- maximum \$25,000 limit;
- obligation within 3 months of receipt;
- advances plus interest will be deducted from the initial reimbursement; and
- no further advances will be granted until the advance is covered by a request for reimbursement.

We found that PHMSA made advances in excess of the \$25,000 limit or did not require the grantees to submit documentation specifying the extenuating circumstances that warranted the advanced funding. Table F shows the 19 advanced payments in FYs 2008 and 2009 we identified that did not comply with 49 CFR 110.70. Based on the information available, at least 10 of these were in excess of the \$25,000 limit. PHMSA advanced \$992,604 to grantees who subsequently did not use any of the funds.

Table F. Advanced HMEP Program Funds Returned to PHMSA

FY 2008*		FY 2009**	
Grantee	Payment	Grantee	Payment
Arkansas	\$4,497	Arkansas	\$40,726
Iowa	\$9,935	Arkansas	\$222
Iowa	\$33,774	Arkansas	\$513
Kansas	\$51,860	Arkansas	\$186
Kansas	\$5,438	Indiana	\$472,994
Kansas	\$158,026	Iowa	\$13,347
Massachusetts	\$62,891	Kansas	\$32,407
Massachusetts	\$3,541	Kansas	\$31,832
Saint Regis Mohawk Tribe	\$388	Texas	\$35,656
		Virginia	\$34,371
Subtotal	\$330,350	Subtotal	\$662,254
Total FY 2008–2009: \$992,604 in HMEP program funds that could have been put to better use.			

* Funds budgeted in FY 2007, distributed in FY 2008.

** Funds budgeted in FY 2008, distributed in FY 2009.

Source: OIG, based on analysis of CFR 110.70 criteria and HMEP funds returned to PHMSA.

EXHIBIT G. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Scott Macey	Program Director
Terri Ahuruonye	Project Manager
Robert Falter	Project Manager
Adrienne Williams	Project Manager
Mackensie Ryan	Team Leader
Lisa Mackall	Auditor
Rita Fox	Auditor
Susan Crook	Analyst
Petra Swartzlander	Statistician
Audre Azuolas	Writer-Editor

APPENDIX. AGENCY COMMENTS



U.S. Department of Transportation
**Pipeline and Hazardous Material
 Safety Administration**

1200 New Jersey Avenue, SE
 Washington, DC 0590

December 20, 2011

INFORMATION MEMORANDUM TO THE ASSISTANT INSPECTOR GENERAL FOR AVIATION AND SPECIAL PROGRAM AUDITS

From: Magdy El-Sibaie, Ph. D. 
 Associate Administrator for Hazardous Materials Safety
 x6-4365

Prepared by: Vasco Espinoza
 Director, Outreach, Training, Grants, and Registration Division
 x6-3505

Subject: **INFORMATION**: Comments on OIG Draft Report Regarding PHMSA's
 Hazardous Materials Emergency Preparedness Grant Program

Hazmat Grants Program Provides Vital Services Efficiently

Though small in size and limited in resources, PHMSA's Hazardous Materials Emergency Preparedness (HMEP) Grants Program (the Program) has funded training for approximately 2.9 million emergency responders throughout the United States and its territories between 1993 and 2009. Thanks to the Program, state, territorial, Native American tribes, local, and hazardous materials (hazmat) employee organizations have improved their ability to safely and effectively handle hazmat transportation incidents through comprehensive localized planning and training. While the OIG report criticizes the Program's process and procedure, it does not adequately recognize the Program's accomplishments, or the many steps we have taken to improve its operations. This information is necessary to place the issues identified in the report in proper context.

The Program is one-tenth the size of similar Federal grant programs and did not use the typical teams of technical experts, grants management professionals, auditors, and accountants to administer grants, yet PHMSA's highly efficient team of three employees sustained the program from 1993 to 2010 and provided expertise for managing the program and all of its associated grants. Their responsibilities were extensive, including announcing grants, reviewing applications, making awards, processing more than 300 payments annually, monitoring grants,

providing technical assistance, collecting and reviewing reports, and managing grant close out. Because the team was small and seasoned, the need for extensive standard operating procedures (SOPs) was viewed as less significant than would be required for a larger team. When the size of the grant program was doubled, PHMSA recognized the need to make improvements to its oversight of the grant program and began a series of initiatives to do so. Those initiatives began in 2009 with an internal audit of the Program, which led to the development and implementation of an action plan to address issues involving internal controls, evaluation of grantee performance, and the application processes. As a result of that internal audit, PHMSA began using the GrantSolutions system. GrantSolutions is an Office of Management and Budget (OMB), Center of Excellence system that institutes OMB Circular A-123 internal control requirements. In August 2010, PHMSA hired an independent auditor to do a more thorough review of the program, which led to the development and implementation of a follow on action plan that PHMSA has already begun to implement by enhancing program outreach, improving guidance documents, enhancing the application process, and increasing oversight of grantee performance. While PHMSA recognizes the need for improving this program and is on course to doing so, the unyielding critical tone of this report does not adequately acknowledge the accomplishments made to date.

We are particularly concerned with a passage in the draft that suggests the implementation of the grants program may have been implicated in some tragedy. It is not possible to quantify lives saved and injuries avoided because of the invaluable training provided by this Program. Further, the National Transportation Safety Board's final report did not cite the program as a direct or indirect factor in causing that event.⁹ Therefore, we ask that the OIG remove the report's discussion on the first page about the fatalities and injuries that occurred in Macdona, Texas, and the HMEP training available to that locality's first responders.

PHMSA Implemented Considerable HMEP Grant Enhancements

PHMSA has demonstrated its commitment to improving the Program's effectiveness and processes. In March 2011, we launched a comprehensive action plan to enhance several key areas of policy, operations, and support. The action plan increases accountability for program operations, strengthens oversight of grantees, and creates operational efficiencies through:

- Developing and implementing SOPs,
- Adding staff and support resources,
- Leveraging on-line information technology management systems, and
- Standardizing grantee applications, reports, review processes, and oversight.

To date, PHMSA has implemented 75 percent of the action plan, thereby improving operations in many ways not addressed in the OIG audit. Complete implementation of the action plan is expected by June 29, 2012. The plan is being regularly reviewed to update completed tasks and ensure that it remains responsive to program needs.

⁹ "Collision of Union Pacific Railroad Train MHOTU-23 with BNSF Railway Company Train MEAP-TUL-126-D with Subsequent Derailment and Hazardous Materials Release Macdona," Texas, July 6, 2006.

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Through the ongoing action plan, PHMSA has:

- **Developed SOPs** – In March 2011, PHMSA issued revised SOPs to address the grant life cycle including grant administration and oversight based on current processes and IT systems.
- **Updated Terms and Conditions** – On September 30, 2010, PHMSA issued updated Terms and Conditions for grantees in the 2011-2012 grant cycle. The new Terms and Conditions increase grantee fund accountability and enable PHMSA to take action in cases of non-compliance. Grants management training was developed regarding the updated Terms and Conditions and was presented during a grantee conference in October 2011. PHMSA will continue to review the Terms and Conditions issued each year to ensure that they reflect current program policies and maximize grantee accountability.
- **Leveraged Technology** – PHMSA is leveraging technology to improve grant management and educate grantees by implementing the GrantSolutions software program. This program provides PHMSA with more internal controls in compliance with the Office of Management and Budget (OMB) Circular A-123 and automates application processing and awards. PHMSA also deployed the Grant Portal, which is a web-based tool that allows grantees the ability to submit payment requests and post-award activity changes via a centralized approval system. These systems enhance transparency and ensure expeditious processing.
- **Increased Staff** – In 2010, PHMSA increased program staff to seven FTEs including an acting chief, five grant specialists, and an administrative support employee. The staff increase enabled PHMSA to improve grant administration, monitoring and oversight, and customer service. In July 2011, PHMSA hired a permanent Director for the Outreach, Training, Grants, and Registration Division.
- **Developed and Implemented an Outreach Plan** – PHMSA is implementing a multi-faceted Outreach Plan that includes conducting webinars and attending stakeholder events to provide grantees with real-time information sharing and training. PHMSA performed six site visits, hosted four webinars, and four desk reviews. PHMSA continues to participate in the National Association of SARA Title III Program Officials (NASTTPO) Annual Conference and has begun to further leverage this opportunity to work with grantees. During the October 19-20, 2011, NASTTPO mid-year conference, PHMSA facilitated four presentations discussing PHMSA priorities, 2011-2012 HMEP Application Trends, HMEP Administrative Requirements, and HMEP Grant Management/Terms & Conditions. PHMSA also presented at various events including the October Hotzone conference attended by emergency responders, and several regional hazmat responder conferences including the Midwest Hazardous Materials Response

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Conference and the International Association of Fire Chiefs Hazardous Materials Conference.

Improved Development and Monitoring of Interagency Agreements – Since 2009, IAAs are negotiated and awarded by a Contracting Officer in PHMSA’s Office of Acquisition Services. The Contracting Officer is responsible for preparing, reviewing, approving, signing, and administering the agreement. Statements of Work (SOW) are developed jointly to ensure deliverables meet mission goals and are attainable. SOWs contain descriptions of specific projects and tasks to be completed that support PHMSA’s mission and identify clear and measurable deliverables, due dates, and costs associated with each element to ensure accountability. PHMSA also requires that individuals be appointed for each project/task responsible for monitoring the agreement. Program Office points of contact are required to attend the annual Procurement Ethics training.

- **Improved Monitoring and Request Processing** – PHMSA is focused on ensuring that approved grant activities are aligned and consistent with its program mission to ensure the safe transportation of hazmat. Since March 2011, applications and post-award change requests are reviewed and approved using a committee approach, including program leadership and counsel. This affords the team needed support of senior personnel and ensures consistency in administration practices.

RECOMMENDATIONS AND RESPONSE

Recommendation 1: Complete the implementation of all HMEP action plan items to improve the management and oversight of the HMEP Grant Program.

Response: Concur. In March 2011, PHMSA launched a comprehensive action plan to improve and enhance key areas of policy, operations, and support, where identified. To date, PHMSA has implemented 75 percent of the action plan and expects full completion by June 2012. Actions taken to date are summarized above.

Recommendation 2: Finalize and fully implement formal SOPs and policies for grant processes for grant application, evaluation, authorization, reporting, agency coordination, and oversight.

Response: Concur. In March 2011, PHMSA issued revised SOPs to address the grant life cycle including grant administration and oversight based on current processes and IT systems. PHMSA will continually update SOPs to reflect new program processes and IT solutions supporting the administration of the program. By March 2012, PHMSA intends to expand its SOPs to address the preparation, processing, and review of quarterly reports and closeout reports.

Recommendation 3: Provide the necessary training to Program staff to enhance their Federal grant management capabilities.

Response: Concur. To date, three of the five Grant Specialists have already obtained certificates of completion for grants management from Management Concepts and the USDA Graduate School. By June 2012, all Program staff will have obtained certificates of completion.

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By June 2012, a Training Needs Assessment will be completed to ensure that training is sufficient for staff responsibilities. This Needs Assessment will use job series and position descriptions to identify core competencies that will then be mapped against staff capability to identify, document, and address further training needs.

Recommendation 4: Develop and implement an updated and flexible process to allocate and reallocate grant funds, taking into account applicable risk factors, commodity flow studies, and grantee needs.

Response: Concur in Part. By March 2012, PHMSA will evaluate potential hazmat transportation risk indicators, including the use of commodity flow studies, for incorporation into an updated grant funds allocation model to ensure:

- Relevance within various states, territories, and tribes, including the potential use of commodity flow data,
- Allocation, on a proportionate basis, to those grantees with potential hazmat transportation risks, and
- Inactive or low-performing grantees do not receive funds that must later be reduced or cancelled; and optimal funds are available to high-performing grantees in need of grant funding.

Reallocation of unused program funds during the grant year is not practical. The Program is a one-year reimbursable grant program operating on a standard 12-month cycle. A grant period begins October 1 and ends on September 30 of the following year, providing there are timely appropriations. Grantees are then afforded a 90-day grace period, through December 31, to submit invoices and satisfy all PHMSA reporting requirements. The purpose of this structure is to provide grantees flexibility in program administration. Any deobligated funds are reallocated to grantees during the next grant cycle, which augments shortfalls in registration fee collections.

Recommendation 5: Augment outreach and coordination efforts to inform grantees about available emergency preparedness planning and training grants, website, webinars, and site visits.

Response: Concur. PHMSA is implementing an Outreach Plan that defines a multi-faceted approach to increasing outreach efforts, including leveraging PHMSA's website, conducting webinars and stakeholder events to provide grantees with real-time information sharing and training. The Outreach Plan also calls for the development and distribution of educational materials to improve grantee performance.

PHMSA will regularly update the Program website to include information on funding priorities, announcements, applicant status, and critical program dates, as applicable. The Program's Frequently Asked Questions will be reviewed and updated, as needed, quarterly, to reflect program changes.

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PHMSA also recognizes tribes as important stakeholders, and by March 30, 2012, will develop additional elements of the Outreach Plan specifically addressing this unique group of participants. Notwithstanding, tribal demographic trends indicate that as many as 200 of the 500 federally recognized tribes do not reside on reservations and have no independent thoroughfares on which hazmat would be transported. Further, statistics including population and square miles—current hazmat risk indicators—suggest many tribes with reservations may not have significant hazmat risks on, or adjacent to, their reservation. Consequently, there may not be a need for independent HMEP Grants. Many tribes may be better suited as recipients of HMEP sub-grants, as response needs can be met through the states in which they are located.

Recommendation 6: Adhere to the grant advancement requirements in 49 CFR § 110.70.

Response: Concur. By February 2012, the program will revise and implement processes to support HMEP advancement requirements.

Recommendation 7: Rescind the provision in PHMSA's Order No. 4200.1 "Interagency and IntraAgency Agreements; Acquisition from Other Government Agencies, or Other DOT Operating Administrations" that requires advanced payment for all interagency agreements.

Response: Non-concur: On October 24, 2006, the Department of Transportation (DOT) implemented Title 31 USC Section 1535 in Section 9 of the DOT Financial Management Policies Manual, at Para 9.5.2 f. The Administration's policy states:

“f. Advance Payments. An advance payment is mandatory for all agreements unless the enabling legislation does not authorize it. The Economy Act and many other revolving funds authorize advance payments. The initial advance payment should be collected when the agreement is first signed, and it is to be collected quarterly, thereafter. Advance payments provided for any transaction must be properly expended and returned to the Buyer by the end of the period of availability of the funds unless statutory authority provides otherwise.”

On October 29, 2007, PHMSA implemented PHMSA Order 4200.1 to align with the DOT Financial Management Policies Manual.

Recommendation 8: For the FY 2007 interagency agreements, request a reconciliation of amounts paid by PHMSA and actual goods and services provided by FEMA. Seek a refund as appropriate.

Response: Concur. In February 2009, PHMSA initiated an internal review of the 2006 and 2007 Interagency Agreements (IAA) with the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) National Fire Academy to address concerns regarding a lack of deliverables received. In an April 10, 2009, Memorandum for the Record (memo) based on the internal review, PHMSA's hazmat leadership team concluded that FEMA fully delivered on objectives and deliverables outlined in the 2007 IAA. Although the 2009

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memo states that FEMA fully delivered, physical documentation specifically identified in the memo remains ongoing due to the parties directly involved in the 2007 IAA having either retired or taken other positions. By February 2012, PHMSA agrees to re-visit the 2007 IAA and 2009 memo to assure the actual goods and services were provided to PHMSA's satisfaction. PHMSA will request from FEMA a reconciliation of amounts, and any refunds as necessary, based on the outcome of this further review.

Recommendation 9: Develop and implement a process to monitor interagency agreements to ensure the receipt of all supplies and services as agreed upon.

Response: Concur. This action is complete. PHMSA agreements are negotiated and awarded by a Contracting Officer in PHMSA's Office of Acquisition Services. The Contracting Officer is responsible for preparing, reviewing, approving, signing, and administering the agreement.

In October 26, 2009, PHMSA issued Procurement Flash 004-2010, titled, "*Program Office Point of Contact - Letter of Appointment*" requiring that an individual be appointed for each PHMSA IAA, and details the specific responsibilities of that individual in monitoring IAAs. Program Office points of contact attend the annual Procurement Ethics training.

SOWs are developed jointly to ensure deliverables meet mission goals and are attainable, and contain descriptions of specific projects and tasks to be completed supporting PHMSA's mission. SOWs contain clear and measurable deliverables, due dates, and costs associated with each element to ensure accountability.

In July 2011, a permanent Director of the Outreach, Training, Grants, and Registration Division was hired. The Director will ensure that a qualified Program Office point of contact oversees any future Program IAAs.

Recommendation 10: Develop and implement a process to regularly review grantee expenditures before approving reimbursement requests, and distribute the most current eligible and ineligible lists to grantees.

Response: Concur: Since March 2011, applications and post-award change requests are reviewed and approved using a committee approach, including program leadership and counsel. This affords the team needed support of senior personnel and ensures consistency in administration practices.

In January 2011, PHMSA deployed the Grant Portal—a web-based tool allowing grantees the ability to submit payment requests and post-award activity changes via a centralized approval system. This system enhances transparency and allows for expeditious request processing.

On December 16, 2010, a list of allowable and unallowable (eligible and ineligible) grant expenses was provided to grantees' primary point of contact via e-mail. PHMSA is working to enhance and update this list based on information learned during grant cycle 2010-2011

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monitoring. By December 2011, an updated list will be made available to grantees by e-mail and posted to PHMSA's website.

CONCLUSION

While PHMSA continues to make significant progress in reforming the HMEP Grant Program, it will take several grant cycles to see the effects of these improvements. Progress will continue on these and other efforts to improve the efficacy of PHMSA's Program including implementation of grantee training program evaluations, and the development of additional guidance on effective uses of planning funds.

If you have any questions, please contact Kyra Stewart, Acting Chief, Grants and Registration at Kyra.Stewart@dot.gov or (202) 366-8752.