

**NEW APPROACHES NEEDED
IN MANAGING PHMSA'S SPECIAL PERMITS
AND APPROVALS PROGRAM**

Pipeline and Hazardous Materials Safety Administration

Report Number: AV-2010-045

Date Issued: March 4, 2010



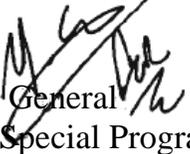
Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** New Approaches Needed in Managing
PHMSA's Special Permits and Approvals Program
Pipeline and Hazardous Materials Safety
Administration
Report Number AV-2010-045

Date: March 4, 2010

From: Lou E. Dixon 
Assistant Inspector General
for Aviation and Special Program Audits

Reply to
Attn. of: JA-10

To: Pipeline and Hazardous Materials Safety Administrator

This report presents the results of our review of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Special Permits and Approvals Program. PHMSA is the lead agency responsible for regulating the safe transport of hazardous materials, including explosive, poisonous, corrosive, flammable, and radioactive substances. PHMSA regulates up to 1 million daily movements of hazardous materials. Many hazardous materials are transported under the terms and conditions of special permits and approvals, which provide relief or exceptions to the Hazardous Materials Regulations.¹

On September 10, 2009, we testified before the House Committee on Transportation and Infrastructure regarding our review of PHMSA's Special Permits and Approvals Program.² Our review disclosed serious deficiencies in how PHMSA processes and oversees special permits and approvals. This report summarizes the results of our review and transmits our recommendations to strengthen the Special Permits and Approvals Program by addressing the issues we presented in our testimony. A copy of our hearing statement is attached for your information. Our audit objectives were to evaluate the effectiveness of PHMSA's (1) policies and processes for reviewing and authorizing special permits and approvals, (2) coordination with the affected

¹ Hazardous Materials Regulations, 49 C.F.R. § 171-180 (2009).

² OIG Testimony Number CC-2009-096, "PHMSA's Process for Granting Special Permits and Approvals for Transporting Hazardous Materials Raises Safety Concerns," September 10, 2009. OIG reports and testimonies are available on our website: www.oig.dot.gov.

Operating Administration³ before issuing any of these special authorizations, and (3) oversight and enforcement of approved parties' compliance with the terms and conditions of these authorizations. We conducted the audit from July 2008 through January 2010 in accordance with government auditing standards prescribed by the Comptroller General of the United States. Our objectives, scope, and methodology are detailed in the exhibit to this report.

IN SUMMARY

Our review identified safety issues that call into question the effectiveness of PHMSA's process for granting special permits and approvals for transporting hazardous materials. Specifically, PHMSA does not (1) adequately review applicants' safety histories, (2) ensure applicants will provide an acceptable level of safety, (3) coordinate with the affected Operating Administrations, and (4) conduct regular compliance reviews of individuals and companies that have been granted special permits and approvals. To alert PHMSA to our safety concerns with transport of specialized bulk explosives, we also reported these issues in a July 2009 management advisory. We note that PHMSA has developed action plans to address concerns we have raised about its Special Permits and Approvals Program. We will be monitoring the actions taken to ensure that each problem we raised is addressed. Our findings are summarized below:

- PHMSA does not look at applicants' safety history when assessing their fitness for a special permit or approval. For all of the 99 permits and 56 approvals we examined, PHMSA did not consider the applicants' incident and compliance records when granting, renewing,⁴ or allowing "party-to"⁵ permits. We found this to be the case even when applicants had multiple incidents and enforcement violations for years prior to receiving their permit. Of particular concern is PHMSA's practice of granting special permits to trade associations—effectively giving a "blanket authorization" to thousands of member companies without any assessment of their safety histories or need for the permit.
- PHMSA has granted special permits and approvals without sufficient data or analyses to confirm that applicants' proposed level of safety is at least equal to what is called for in the Hazardous Materials Regulations. PHMSA's reviews of 65 percent of the 99 permits and all 56 approvals we examined were either incomplete, lacked evidence of an equal level of safety, or simply nonexistent. PHMSA also lacks sufficient supporting documentation for renewal and party-to

³ The Federal Aviation Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration are responsible for inspection and enforcement of hazardous materials regulations for their respective industries involved in transporting hazardous materials in commerce.

⁴ A renewal is a request to extend the permit. Renewals can be valid for up to 4 years.

⁵ A "party-to" is a request to "piggy-back" on a new or existing permit.

permits, which are based on evaluations PHMSA may have performed several years earlier when assessing the original (new) special permit application.

- PHMSA did not coordinate with the Federal Aviation Administration, Federal Railroad Administration, or Federal Motor Carrier Safety Administration on 90 percent of the new and party-to permits or any of the renewals we reviewed, although these agencies may have critical safety data on applicants seeking a permit. Further, PHMSA did not coordinate most of the emergency permits we reviewed—even though the law specifically requires their coordination.
- PHMSA’s risk-based oversight program omits a key rating factor that should drive compliance reviews—that is, whether a company holds a special permit or approval. However, our visits to 27 companies found that more than half did not comply with the terms of their permits. Some officials did not know which permits applied to their location, and some were unaware that they even had a permit to abide by.

PHMSA’s planned actions address our concerns with the process and procedures used to manage the special permit program; the criteria used to assess an equivalent level of safety;⁶ the process for evaluating the fitness of applicants and their safety performance; increased compliance audits and oversight of special permit holders; enhanced accountability of those operating under the terms of special permits; and the need to modernize the information technology system that supports the program. PHMSA has already completed several of its action plan items, including:

- Developing and publishing written policy to clarify that special permits are issued to member companies only, not to the association or organization.
- Revising policy and procedures to ensure that an “equivalent level of safety” determination is met and fully supported with safety documentation evaluations.
- Revising policy and procedures to ensure that applicant fitness determinations are well-founded and fully supported.
- Developing formal standard operating policies and procedures for the special permits program.

While these actions and the remaining ones will require sustained management attention to fully analyze and resolve concerns with the special permit process, PHMSA must also focus attention on its approval process. Our work found that many of the weaknesses in the special permit process are also evident in PHMSA’s approval process. Specifically, PHMSA did not document applicants’ proposed level of safety for all 56 approvals we reviewed and had granted 5 approvals to applicants with prior

⁶ The proposed alternative will achieve a level of safety that is at least equal to what is called for in the regulation from which the special permit is sought.

safety incidents and regulatory violations—ranging from a company with 6 incidents and 1 violation to a company with 178 incidents and 23 violations. In October 2009, PHMSA developed and began implementing an action plan to enhance safety oversight of the approvals program. However, a number of longer term actions remain. These include developing a system to notify PHMSA and other relevant Operating Administrations of safety concerns and incidents and developing a pilot project for installing Electronic Stability Control systems on special use (bulk explosives) vehicles to prevent rollovers.

PHMSA should make it a top management priority to execute the action plans to improve both its special permit and approval processes. As PHMSA reexamines these processes, it must consider the age and number of special permits. We believe PHMSA would benefit from reviewing special permits that are more than 10 years old to determine if any can be included in the Hazardous Material Regulations. Based on our review of 39 renewal and 21 “party-to” special permits, we found that 60 percent were more than 10 years old and 33 percent were more than 20 years old. Also, the sheer number of active special permits—over 5,000—underscores the need to reexamine the strategy for adopting special permits into the Hazardous Materials Regulations to keep the current regulatory framework in sync with today’s operating environment.

CONCLUSION

Regulating and monitoring the movement of hazardous materials is a critical part of ensuring the safety of the Nation’s transportation system, and it is PHMSA’s role to properly assess all risks before allowing applicants to participate in commerce under special permits and approvals. While PHMSA’s action plans and senior management’s attention show promise, it will take time, resources, and sustained commitment to address longstanding and emerging issues. As PHMSA addresses these areas, it must refocus its approach to proactively identify safety risks, work with partner safety agencies to resolve safety and practicality matters, and set targeted oversight priorities.

RECOMMENDATIONS

Based on the results of our review, we are making a series of recommendations to the PHMSA Administrator that PHMSA should take now to strengthen its policies, procedures, and management oversight to ensure that the Special Permits and Approvals Program is operating efficiently. We recommend that PHMSA:

1. Finalize and fully implement the action plans to improve the effectiveness of processing special permits and approvals.
2. Finalize and fully implement formal standard operating procedures and policies for special permit and approval processes (i.e., application, evaluation, authorization; agency coordination; and oversight).
3. Establish priorities for implementing each of the initiatives in the action plans as well as a process to measure the effectiveness of each initiative and revise or update initiatives as necessary.
4. Resolve the issue of company fitness and level of safety for existing special permits issued to trade associations representing over 5,000 companies by requiring these companies to reapply under the new policy guidelines that require evaluating a company's fitness and level of safety.
5. Develop a precise definition of what constitutes an applicant's "fitness" to conduct the activity authorized by the special permit or approval. This definition should include reviewing an applicant's safety history—incidents and enforcement actions—prior to granting a special permit or approval.
6. Require the Office of Hazardous Materials Technology to conduct and prepare complete evaluations that document the level of safety the company or individual is proposing is as safe as or safer than requirements from which the company is seeking relief.
7. Establish a partner safety interagency working group to develop a uniform process for coordinating special permits, including new, renewal, "party-to," and emergency permits as well as new and renewed approvals.
8. Include "holders of special permits and approvals" as a priority factor in PHMSA's risk-based oversight approach in targeting companies for compliance reviews.
9. Establish timeframes for resolving and implementing long-standing safety concerns and periodically measure performance against the timeframes.
10. Establish a National Task Force to develop standard procedures for facilitating the adoption of special permits and approvals into the Hazardous Materials Regulations in order to keep the current regulatory framework in sync with advanced technologies and business practices.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided PHMSA with our draft report on February 2, 2010, and received its formal response on February 25, 2010. PHMSA concurred with our first 9 recommendations and partially concurred with our 10th recommendation. Specifically, PHMSA agreed with the necessity for a regulatory framework that accommodates advanced technologies and business practices and spelled out the steps it is taking to accomplish this internally through a special team assigned to review all currently active special permits and identify those that should be incorporated into the Hazardous Materials Regulations. PHMSA's response is included in its entirety in the appendix to this report.

PHMSA's target completion dates and actions taken or planned for all 10 recommendations are reasonable, and we consider them addressed and subject to follow up under Department of Transportation Order 8000.1C. We appreciate the courtesies and cooperation of PHMSA representatives 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) 744-0434.

Attachment

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cc: Deputy Secretary
John Hess, PHA-30
Martin Gertel, M-1

EXHIBIT. OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to assess the effectiveness of (1) PHMSA’s policies and processes for reviewing and authorizing Special Permits and Approvals; (2) PHMSA’s coordination with the affected Operating Administration before issuing any of these special authorizations; and (3) PHMSA, Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), and Federal Railroad Administration (FRA) oversight and enforcement of approved parties’ compliance with the terms and conditions of these authorizations.

We conducted this performance audit from July 2008 to January 2010 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 based on our audit objectives. We believe that evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit work began in July 2008 at PHMSA, FAA, FMCSA, and FRA headquarters offices. For the period January 2004 to August 2008, we statistically sampled 62 new special permit applications, 60 special permit “renewals” and “party to” applications, and 68 approval applications and assessed PHMSA’s policies and processes for reviewing, coordinating, and authorizing approvals. See the table below for a breakdown of samples.

Type of Application	Sample Size	Non-Emergency Reviewed	Emergency Granted/Reviewed	Denied
Special Permits				
New	62	40	16	6
Renewal/PTE	39/21	38/21	0	1/0
Permits Total	122	99	16	7
Approvals Total	68	56	0	12

We reviewed the various special permit and approval samples to determine if PHMSA adhered to its policies and procedures. Specifically, we examined applications to determine whether PHMSA required applicants to adhere to regulatory requirements.

We also assessed whether PHMSA coordinated with the modal administrations; showed evidence of completing evaluation forms; and considered applicants’ fitness

to conduct the authorized activity and proposed level of safety to ensure it met or exceeded the safety requirements from which the applicant was seeking relief.

During December 2008 and July 2009, we conducted 27 unannounced site visits to high-risk companies that included explosive manufacturers, chemical manufacturing plants, cylinder retesters, and other holders of special permits. The site visits were conducted to determine if PHMSA was carrying out its roles and responsibilities and if the companies were in compliance with the terms and conditions outlined in the special permits (i.e., special provisions, safety control measures, certificates of registration, security plan, shipping papers, and training requirements).

In June and July of 2009, we conducted 18 unannounced site visits to members of local trade associations in Washington, DC, Maryland, and California to determine if: (1) special permits applied to the respective sites and (2) the companies were in compliance with the terms and conditions outlined in the special permits.

We met with key PHMSA officials responsible for processing, reviewing, and evaluating the Special Permits and Approvals Program. We also reviewed Office of Hazardous Materials Safety special permits and approvals databases to review and analyze data in support of the review.

We met with industry associations such as International Air Transport Association, Air Transport Association, American Trucking Association, Association of American Railroads, and Air Line Pilots Association to obtain their views of PHMSA's Special Permit and Approvals Program.

On July 28, 2009, we issued a management advisory on bulk explosive trucks and other issues that arose during our review. On July 30, 2009, we briefed the Acting Deputy Administrator for PHMSA and her staff on the status of the review. In response, PHMSA briefed the Inspector General and the Deputy Secretary on the plan of action developed to address our management advisory.

We also interviewed FAA, FRA, and FMCSA officials regarding their coordination with PHMSA when special permits and approvals are issued.

APPENDIX. AGENCY COMMENTS



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

Administrator

1200 New Jersey Avenue, SE.
Washington, DC 20590

February 25, 2010

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

From: Cynthia L. Quarterman
x6-4433

A handwritten signature in blue ink, appearing to read "C. Quarterman", with a long horizontal stroke extending to the right.

Prepared by: Cindy Douglass
Assistant Administrator/Chief Safety Officer
x6-4461

Subject: Response to Draft Report on PHMSA's Special Permits
and Approvals Program

SUMMARY

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has taken swift and comprehensive action to ensure that the process for issuing special permits and approvals for the transportation of hazardous materials functions effectively to protect public safety. PHMSA has fully addressed all specific issues identified in the DOT Office of Inspector General (OIG) review of the Office of Hazardous Materials Safety (OHMS) Special Permits and Approvals Program. PHMSA conducted a top-to-bottom review of its policies, procedures, practices, and staffing, and implemented action plans with aggressive timeframes that have already significantly improved oversight and accountability. We are dedicated to ensuring that operations authorized by special permits and approvals meet the same high safety standard provided by the Hazardous Materials Regulations (HMR).

PHMSA has committed to and is executing the following three action plans:

- Action Plan for Special Permits Program;¹
- Action Plan for IT Modernization and Data Collection/Analysis; and
- Action Plan for Approvals Program.²

The Agency has completed the tasks within each of these plans on schedule and is on target to fulfill each action plan. The action plans are “living” documents that will be continuously reviewed to improve processes and regulations relating to special permits and approvals and ensure they are up-to-date. PHMSA is committing significant new budget and staffing resources to this effort and will continue to do so as it works with its partners within DOT and the U.S Coast Guard to manage the program. Our commitment to ensure the effectiveness of these vital programs includes PHMSA’s leadership and management team, the leadership of our partner agencies in DOT, as well as the Secretary and the Deputy Secretary.

PHMSA’s actions, in total, systematically address each of the issues identified in the OIG report, and offer decisive actions with regard to strengthening the special permits and approvals programs. As conveyed in the following responses to OIG’s specific recommendations, PHMSA has already completed action pursuant to several of the recommendations, with remaining actions well underway.

PHMSA ACTIONS TO ADDRESS RECOMMENDATIONS

- 1. Finalize and fully implement the action plans to improve the effectiveness of processing special permits and approvals.**

PHMSA Response

Concur. On August 6, 2009, PHMSA finalized and began implementation of an accelerated and comprehensive action plan to improve its management of the special permits program. One main focus of the action plan is to ensure that the program functions as intended to provide a level of safety for transportation of hazardous materials authorized under special permits that is equivalent to the HMR. The action plan takes into account existing personnel, budget and information technology. It addresses: (1) the process and procedures used to manage the program; (2) the criteria used to assess and document an equivalent level of safety; (3) the process for evaluating the fitness of applicants and their safety performance; (4) the need for increased compliance audits and oversight of special permit holders; (5) the requirement of enhanced accountability of those operating under the terms of special permits; and (6) the need to modernize the information technology (IT) system that supports the program. All of the initiatives with specific deadlines are complete. For

¹ [Link to Action Plan for Special Permits](#)

² [Link to Action Plan for Approvals Program](#)

example, PHMSA has completed the following action items to enhance its oversight of the special permits program:

- Published a written policy on special permits issued to members of industry trade associations or similar industry organizations to clarify that special permits are issued to member companies only, not to the association or organization.
- Reviewed and revised the criteria, policy, and procedures used to make the statutorily mandated “equivalent level of safety” determination that must be met for the issuance of a special permit to ensure that the standard is met and supported with appropriate documentation.
- Reviewed and revised the policy and procedures for determining the fitness of special permit applicants, including the criteria considered in determining “fitness” (such as past safety record, previous incidents and violations, staffing and resources, and carrier safety rating if applicable) and the process and criteria for initiating on-site fitness reviews to ensure that fitness determinations are well-founded and supported with appropriate documentation.
- Revised procedures for coordinating the issuance of special permits with FAA, FRA, FMCSA, and the USCG, including methods to evaluate the fitness of applicants to conduct the activities authorized by the special permit.
- Developed a plan to provide enhanced enforcement of the terms of special permits, taking advantage of the resources of all the operating administrations with responsibility for enforcing HMR.
- Developed a plan for enhancing the availability of data needed to provide the necessary oversight to ensure that holders of special permits are operating safely and within the conditions established in the special permits.
- Revised the standard operating procedures governing the entire special permits program, including procedures for evaluating applications, determining a level of safety equivalent to the regulations, and monitoring activities conducted under the special permits.

PHMSA completed a similar comprehensive review of its policies and processes for issuing approvals on November 6, 2009, and finalized an action plan to improve management and oversight of the approvals program on December 4, 2009. PHMSA has met all the deliverables to date and is on target to meet all planned deliverables in the approvals action plan. With the action plans finalized, and comprehensive actions underway to complete implementation, we consider the intent of this recommendation to be fulfilled.

2. **Finalize and fully implement formal standard operating procedures and policies for special permit and approval processes (i.e., application, evaluation, authorization, agency coordination, and oversight).**

PHMSA Response

Concur. PHMSA completed and implemented standard operating procedures (SOPs) for the special permits program on October 5, 2009. The SOPs incorporate a number of program enhancements, including standardized documentation and retention requirements for applications, safety assessments, fitness evaluations, internal and intermodal coordination records, and all relevant background, data and analysis. Further, the SOPs incorporate a rigorous process for determining if a special permit will achieve an equivalent level of safety as provided by the HMR and a comprehensive review and inspection procedure for making determinations as to the fitness of special permit applicants, including specific processes and metrics for defining and evaluating fitness.

Pursuant to its Approvals Action Plan, PHMSA is in the process of developing similar SOPs for the approvals program. PHMSA has already finalized and implemented a number of enhanced procedures for the approvals program, including procedures for safety assessment, fitness evaluations, and internal and intermodal coordination. The Agency is on target to complete and fully implement all SOPs for the approvals program by March 4, 2010.

3. **Establish priorities for implementing each of the initiatives in the action plans as well as a process to measure the effectiveness of each initiative and revise or update initiatives as necessary.**

PHMSA Response

Concur. The initiatives in the action plans are listed according to a combination of criteria based on due dates, timeframes for completion, logical order for progression and their anticipated safety impact, overall urgency, staffing and budget resources. Thus, for each program, the first priority initiative was to complete a broad-based, top-to-bottom review covering current operating procedures, staff responsibilities, documentation of procedures, criteria for equivalent level safety assessments, fitness review criteria and processes, and coordination with DOT operating administrations. PHMSA has completed these reviews and identified a means to enhance procedures, reduce redundancies, and increase oversight and accountability.

Data improvement and IT modernization is another high priority, offering the potential to use enhanced data analysis to strengthen program oversight. The

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information system that supports the special permits program is at the end of its useful life and no longer effectively supports the program's requirements. System modernization will enable the agency to process applications and synthesize safety and performance information about companies applying for special permits and approvals more efficiently. Due to the importance of this initiative, PHMSA temporarily assigned a senior staff member to serve as a technical advisor, responsible for planning and executing this action plan.

The effectiveness of the actions taken to address each initiative is being monitored by a specially designated management team. We consider the initiatives in each plan to be "living" documents that may be revised based on lessons learned. The team routinely evaluates whether action items are complete or whether additional revisions are needed. Senior management reports to the Administrator and to the Deputy Secretary upon the completion of each item. With the priorities established for the action plans, and a special team established to ensure that actions taken are effective, we consider this recommendation to be complete.

4. **Resolve the issue of company fitness and level of safety for existing special permits issued to trade associations representing over 5,000 companies by requiring those companies to reapply under the new policy guidelines that require evaluating a company's fitness and level of safety.**

PHMSA Response

Concur. On August 17, 2009, PHMSA issued a written policy to clarify that special permits are only granted to members of associations, not to associations. Authority to perform a transportation activity under the terms of a special permit must be exercised by the individual business entity that bears responsibility for compliance under the terms of the special permit. (The policy is at [Link to Special Permit and Approval Policy](#))

As an interim measure, on September 4, 2009, PHMSA re-issued all special permits granted to members of associations to specifically indicate that it is the members of the association who are responsible for compliance with the terms of the special permit.

PHMSA plans to re-issue all safety permits previously granted to members of associations through their associations as quickly as resources permit. The Agency estimates that at least 20,000-30,000 entities will be affected. After May 1, 2010, (the date by which PHMSA will implement a new on-line application process for special permits), PHMSA will require all association members granted special permits to reapply. PHMSA will evaluate each firm's safety fitness before it re-issues the

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special permits. The timeframe for completing this process will depend on the number of entities that elect to reapply and available resources.

Currently, PHMSA processes about 3,000 special permits applications per year. Utilizing additional resources and the on-line application process will enhance the Agency's ability to evaluate special permit applications, but it will likely require at least two years to evaluate the fitness of those association members that re-apply for special permits. PHMSA will develop a more specific plan as it receives the applications.

Concurrently, PHMSA is reviewing the 20 active special permits issued to members of associations to identify those that should be incorporated into the HMR. Where appropriate, conversion of such special permits to regulations of general applicability is a major priority. PHMSA has already initiated two rulemakings to address association membership special permits related to cargo tank and rail tank car operations. The cargo tank rulemaking applies to a significant number of special permit holders. PHMSA expects to issue notices of proposed rulemakings for these two projects this spring and final rules as quickly thereafter as possible. Additional rulemakings to incorporate the remaining special permits issued to members of associations into the HMR will be completed by January of 2012.

5. **Develop a precise definition of what constitutes an applicant's "fitness" to conduct the activity authorized by the special permit or approval. This definition should include reviewing an applicant's safety history – incidents and enforcement actions – prior to granting a special permit or approval.**

PHMSA Response

Concur. PHMSA is working to more clearly define the process and criteria used to determine the fitness of applicants for special permits or approvals. This action will be completed by June 1, 2010. The determination of fitness in a complex and variable transportation operating environment exemplified by the special permits program requires the expert application of specific criteria concerning a company's safety performance together with an overall assessment of the risks inherent in the operations under consideration, including such factors as hazardous material type, quantity, and form; the transport mode and routes of operation; and the frequency and location of the operation.

Together with its safety partners in FMCSA, FRA, FAA, and the USCG, PHMSA completed a comprehensive review of existing fitness determination processes and developed a refined process for evaluating fitness, based on identified metrics related

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to a company's safety history. Utilizing safety data from several existing sources, the agencies can now use performance-based measures to evaluate an applicant's past safety history and ability to operate under the terms of the special permit as indicated in its application. PHMSA is working to further fine-tune this process.

Currently, PHMSA conducts fitness reviews of all entities applying for a special permit or approval using historical data records of incidents and violations. Where the record appears to be questionable, the company will be required to explain its record and the actions it has taken to resolve any safety problems, such as additional training or revisions to operating practices, as a condition of receiving the special permit or approval. If PHMSA determines that the company is unable to meet safety fitness requirements, PHMSA will not issue the special permit or approval and may take action to modify or terminate other special permits or approvals held by the company. PHMSA will prioritize the monitoring of such a company to assure that it meets the safety requirements of the special permit. If PHMSA determines that a company's safety record represents the risk of significant harm, PHMSA will terminate a special permit or approval.

6. **Require the Office of Hazardous Materials Technology to conduct and prepare complete evaluations that document the level of safety the company or individual is proposing is as safe or safer than requirements from which the company is seeking relief.**

PHMSA Response

Concur. PHMSA developed a new safety evaluation form to document pertinent information regarding whether a special permit will provide a level of safety that is at least equivalent to that provided under the HMR. The safety evaluation considers the risks of the materials to be transported, the type of packaging to be utilized, the mode of transport to be utilized, the conditions likely to be encountered during transportation, and pertinent special handling measures or operational requirements. These factors are all documented on the form. Further, on February 2, 2010, PHMSA implemented a similar process for consistent and uniform documentation of activities authorized under an approval. To ensure that the Agency has complete information, PHMSA is amending its procedural regulations to require applicants to provide additional data and information concerning the risks of the proposed operations and the measures to be utilized to address the risks. The Office of Management and Budget (OMB) must approve the new application requirements under the Paperwork Reduction Act. OMB approval is expected by December 2010.

7. **Establish a partner safety interagency working group to develop a uniform process for coordinating special permits, including new, renewal, “party-to,” and emergency permits as well as new and renewed approvals.**

PHMSA Response

Concur. PHMSA established a working group with its partner safety agencies in DOT and the U.S. Coast Guard on September 4, 2009. The working group established specific interagency coordination and concurrence guidelines for special permit applications. The guidelines ([Link to Guidelines](#)) specify that PHMSA will approve or deny applications only after coordination with the operating administrations and provide for the operating administrations to notify PHMSA of any violations of a special permit by the grantee that would call its fitness into question. The special permits SOPs, implemented October 5, 2009, incorporate detailed procedures for coordinating special permit applications with the operating administrations. On February 2, 2010, PHMSA finalized and implemented a similar process for interagency coordination of approval applications. Therefore, the necessary actions envisioned by this recommendation are complete.

8. **Include “holders of special permit and approvals” as a priority factor in PHMSA’s risk-based oversight approach in targeting companies for compliance reviews.**

PHMSA Response

Concur. PHMSA’s Office of Hazardous Materials Enforcement has implemented a national business strategy to prioritize its activities. Activities authorized under Special Permits and Approvals are targeted as inspection and oversight priorities of the Office. This national business strategy is available online at ([Link to National Business Strategy](#)). In addition, on September 4, 2009, PHMSA in concert with its partner operating administrations issued a plan for enhanced enforcement of the terms of special permits and approvals, utilizing the resources of all the operating administrations with enforcement responsibility and available data to identify potential safety problems and target resources. The plan includes inspection procedures specific to special permit and approval grantees and inspection target goals. While the compliance reviews will be conducted on a continuous basis, with the priorities established, action on this recommendation is complete.

9. **Establish timeframes for resolving and implementing long-standing safety concerns and periodically measure performance against timeframes.**

PHMSA Response

Concur. The OIG identified two long-standing safety issues involving special use bulk explosive vehicles and lithium batteries. PHMSA included a plan for addressing safety issues associated with special use bulk explosive vehicles as part of the special permits action plan it implemented August 6, 2009. Adhering to very aggressive timelines for completion, PHMSA completed safety performance and fitness reviews of the current special permit holders; performed a risk analysis to ensure the special permits address all possible safety issues, including the potential for a high-consequence (catastrophic) accident; and developed additional safety measures to address identified risks. PHMSA completed its review of these special permits on September 4, 2009, and issued revised special permits incorporating a number of enhanced safety requirements on October 5, 2009, resolving this issue.

PHMSA is also taking action to address lithium battery safety. On January 11, 2010, PHMSA published an NPRM to address comprehensively the safe transport of lithium cells and batteries. The NPRM represents another step in PHMSA's continuing process to ensure the safe transport of lithium batteries and builds on regulations published in 2004, 2007, and 2009. The rulemaking will strengthen the current regulatory framework by imposing more effective safeguards, including design testing, packaging, and hazard communication measures for various types and sizes of lithium batteries in specific transportation contexts. Several of the proposals are based on recommendations issued by the National Transportation Safety Board. PHMSA plans to publish a final rule by December 2010.

With the special use bulk explosive vehicles issue resolved, and a rulemaking in process for lithium batteries transport in process, timelines have been established for these issues, and this recommendation is considered closed. More broadly, PHMSA's enhanced oversight of the special permits and approvals programs, along with an enhanced working relationship with its partner agencies, will enable the agency to quickly identify potential safety issues to better ensure that future issues do not become long standing issues. In addition, for safety problems identified through PHMSA's enhanced monitoring and enforcement efforts, recommendations from the enforcement staff will be referred to a team of specialists to evaluate and act on the recommendations within specified timeframes.

10. **Establish a National Task Force to develop standard procedures for facilitating the adoption of special permits and approvals into the Hazardous Materials Regulations in order to keep the current regulatory framework in sync with advanced technologies and business practices.**

PHMSA Response

Concur in part. PHMSA agrees with the necessity for a regulatory framework that accommodates advanced technologies and business practices, but is accomplishing this through alternative means. On February 5, 2010, PHMSA finalized a plan to establish a systematic process for reviewing outstanding special permits and incorporating them, where appropriate, into the HMR. As part of this plan PHMSA has designated a special team to review all currently active special permits – about 1,250 – and identify those that should be incorporated into the HMR. Once the review of all currently active special permits is completed, expected by mid 2013, PHMSA will routinely review recently granted special permits each year and will initiate a rulemaking to propose incorporating them into the HMR as warranted. PHMSA's Office of Hazardous Materials Standards is planning to add a unit that will focus on special permit issues and particularly on incorporation of special permits into the HMR on a routine basis as appropriate. PHMSA is developing a similar plan for incorporating the terms of certain approvals into the HMR. In addition, PHMSA plans to publish periodically a *Federal Register* notice requesting candidates for special permits and approvals that should be considered for incorporation into the HMR.

* * *

In closing, we want to emphasize that PHMSA has taken aggressive, comprehensive and expedited action to address the issues identified by the OIG. Actions have been completed or are underway to address each and every issue raised in both the special permits program and the approvals program. We have worked closely with the Department's leadership to secure additional staff and budget to continue addressing these commitments over the long term and further improve an already strong safety record.

cc: Calvin L. Scovel, Inspector General

**Before the Committee on Transportation and Infrastructure
United States House of Representatives**

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**PHMSA's Process for
Granting Special Permits
and Approvals for
Transporting Hazardous
Materials Raises Safety
Concerns**

**Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation**



Mr. Chairman, Ranking Member Mica, and Members of the Committee:

We appreciate the opportunity to testify today on safety issues within the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Special Permits and Approvals Program. As you know, special permits and approvals exempt their holders from certain Federal regulations governing the transport of hazardous materials. Currently, there are about 5,500 special permit holders¹ and 118,000 approvals.

On July 28, 2009, we issued a management advisory to PHMSA that outlined a number of concerns. My testimony today will focus on those concerns as well as new ones identified through our ongoing work. Specifically, (1) shortcomings in the processes for reviewing and approving special permits and approvals, (2) concerns with PHMSA's oversight of permit holders' compliance with safety requirements, and (3) long-standing safety issues that remain unaddressed by PHMSA.

In summary, we found that PHMSA grants special permits and approvals without exercising its regulatory authority to review applicants' safety histories and without coordinating with partner safety agencies. Despite these weaknesses, PHMSA does not target individuals and companies that hold special permits and approvals for safety compliance reviews. These issues—along with safety concerns previously raised by our office, the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB)—call into question the effectiveness of PHMSA's process for granting special permits and approvals.

We want to recognize Secretary LaHood and Deputy Secretary Porcari for their leadership in directing PHMSA to formalize an action plan addressing these and other concerns regarding the Special Permits and Approvals Program.

¹ There are now about 1,250 active special permits. The 5,500 referenced above include these plus all party-to permits.

BACKGROUND

PHMSA is the lead agency responsible for regulating the safe transport of hazardous materials, including explosive, poisonous, corrosive, flammable, and radioactive substances.² PHMSA regulates up to 1 million daily movements of hazardous materials, totaling up to 20 percent of all freight tonnage shipped each year in the United States. The FAA, Federal Motor Carrier Safety Administration (FMCSA), and Federal Railroad Administration (FRA) also oversee and enforce regulations for their respective industries.

Many hazardous materials are transported under the terms and conditions of special permits and approvals.³ Special permits and approvals allow a company or individual to transport, package, or ship hazardous materials in a manner that varies from the regulations, provided they meet two key criteria for authorization:

- the company or individual is fit to conduct the activity authorized by the special permit or approval and
- the level of safety the company or individual is proposing is as safe as or safer than requirements from which the company is seeking relief.

Obtaining a special permit or approval allows a company to use technological innovations in transporting hazardous materials—improvements that have emerged since the regulations were first promulgated. Requests for special permits and approvals generally include “new,” “renewals,” and “party-to” applications (a party-to application applies only to special permits and is a request to “piggy-back” on a new or existing permit). New special permits may be authorized for up to 2 years, at which time they may be renewed for a period of up to 4 years.⁴ Emergency special permits must be submitted directly to the affected Operating Administration, which evaluates and confirms the emergency, recommends any conditions for inclusion in the permit, then forwards its review to PHMSA. The exhibit to this statement describes the process requirements for special permit and approval applications.

PHMSA DOES NOT PROVIDE ADEQUATE REVIEWS OF APPLICATIONS FOR SPECIAL PERMITS AND APPROVALS

PHMSA does not review applicants’ incident and enforcement histories—critical factors in assessing fitness—before authorizing special permits and approvals for individuals, businesses, and trade associations. We also found that PHMSA has granted special permits and approvals even though its reviews of requests do not

² Hazardous Materials Regulations, 49 C.F.R. § 171-180 (2009).

³ *Special permits* authorize a holder to vary from specific provisions of the Hazardous Materials Regulations; identify the section(s) from which relief is provided; and include provisions, conditions, and terms that must be followed in order for the special permit to be valid. An *approval* means written consent from PHMSA’s Associate Administrator to perform a function that requires prior consent under the Hazardous Materials Regulations.

⁴ The 4-year renewal period was authorized under SAFETEA-LU, Pub. L. No. 109-59 (2005).

always demonstrate that applicants will provide a level of safety equal to the regulations from which they seek relief. In addition, PHMSA does not sufficiently coordinate with other agencies that are involved in overseeing the transport of hazardous materials before issuing a special permit or approval.

PHMSA Does Not Consider Applicants' Safety Histories When Determining Fitness for Special Permits and Approvals

Hazardous Materials Regulations provide PHMSA the authority to review an applicant's safety history when assessing the applicant's fitness for a special permit or approval.⁵ PHMSA's reviews, however, solely examine the safety of the requested action, process, or package—not the applicant's prior incidents or enforcement violations. According to PHMSA officials, applicants' incident and compliance histories have no bearing on their ability to safely carry hazardous materials—a safety issue we highlighted in our July 2009 management advisory. Specifically, we found that PHMSA had granted 1 company a special permit to operate bulk explosives vehicles,⁶ despite the fact that over the last 10 years the company had 53 incidents—12 of which were serious with 9 of those involving vehicle rollovers—and 22 violations issued by PHMSA's or FMCSA's enforcement office.⁷

In addition, our ongoing review found no instances where PHMSA considered applicants' safety histories. However, our assessment of 99 non-emergency special permits found that 26 of those holders (26 percent) had at least 5 incidents or violations over the 10-year period preceding PHMSA's grant of the permit. For 8 (about 31 percent) of these 26 permits, each applicant had at least 100 incidents, some of which were serious. For example, 1 company was granted a special permit in September 2004 despite having 321 prior incidents and 5 prior enforcement violations. Further, the company's permit was renewed 2 years later despite having an additional 26 incidents and 5 enforcement violations.

We also found that PHMSA granted special permits to 12 trade associations—effectively a “blanket authorization” for about 5,000 member companies. PHMSA granted these permits without verifying member companies' fitness to carry out the terms and conditions of the permit. PHMSA also did not determine whether permits were needed or used, whether companies actually existed or provided accurate information about themselves, or whether they were even aware that they had a permit

⁵ 49 C.F.R. § 107.113f (5) (2009). The regulations state that the Associate Administrator may grant an application upon finding that, among other things, the applicant is fit to conduct the activity authorized by the exemption or special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

⁶ Permit holders are authorized to transport certain explosives, oxidizers, corrosive and combustible liquids, and blasting caps on the same truck.

⁷ An incident generally involves the unintentional release of a hazardous substance or discovery of an undeclared hazardous material. PHMSA defines serious incidents as those incidents involving fatalities, serious injuries, closure of a major transportation artery, evacuations of 25 or more people, and hazardous materials releases of greater than 119 gallons or 882 pounds.

to abide by. For example, we visited 18 companies that were members of 7 of the 12 associations and found that:

- 3 of the 4 companies using an association-granted permit had compliance issues, including deficiencies with shipping papers, training requirements, certificates of registration, and security plans. In fact, at two facilities, the companies were unaware that a special permit applied to the function they were performing and so they were not meeting the terms and conditions of that permit. One of the companies explained they were recently made aware of the applicable permit after the trade association warned them of a possible investigation into permit compliance by DOT Office of Inspector General auditors.
- 4 companies did not reside at the address provided by their association (currently, the terms of the permit do not require trade associations to notify PHMSA of any changes with its member companies); and
- 10 had no reason to use their industry association's permit because they did not perform the activity for which the permit was granted.

Finally, PHMSA also granted approvals to applicants without examining their safety histories. Of the 56 approvals that we reviewed,⁸ 5 were granted to applicants with prior safety incidents and violations, ranging from 6 incidents and 1 violation to 178 incidents and 23 violations.

PHMSA Has Granted Special Permits and Approvals Without Support for an Equal Level of Safety and Has Overlooked Incomplete Applications

PHMSA has granted special permits and approvals without sufficient data and analyses to confirm that the applicants' proposed level of safety is at least equal to what is called for in the Hazardous Materials Regulations. We reviewed 99 non-emergency special permits and found that for nearly 65 percent (8 new, 37 renewals, and 19 party-to status)⁹ PHMSA's evaluations¹⁰ were either incomplete, lacking evidence to support that the applicant demonstrated an equal level of safety, or simply nonexistent. Of particular concern is the lack of supporting documentation for renewal and party-to permits, which are based on evaluations PHMSA may have performed several years earlier when assessing the original (new) special permit application. According to PHMSA officials, some of this information was lost when the Office of Hazardous Materials Safety migrated to a new information system and decided to transfer the most current special permit but not the historical records.

⁸ We sampled a total of 68 approvals, 12 of which were denied, reducing our sample to 56.

⁹ We sampled 62 new special permits, of which 16 were granted emergency status and 6 were denied, reducing our sample to 40 new special permits. We also reviewed a sample of 39 renewals, 1 of which was denied, reducing our sample to 38 renewals. Our sample also included 21 party-to permits.

¹⁰ PHMSA's evaluations are generally performed by chemists, general and mechanical engineers, physicists, and physical science experts in PHMSA's Hazardous Materials Technology Office.

Despite this lack of original information, PHMSA opted to renew permits or grant party-to status without conducting a new evaluation. Further, there was still information missing for the eight new permits—information needed to support an equal level of safety.

Evidence of an equal level of safety to support emergency special permits and approvals was similarly lacking:

- PHMSA’s evaluations for 8 of the 16 (50 percent) emergency special permit applications we reviewed were either incomplete, not reviewed by PHMSA’s technical staff, lacked a conclusion that an equal level of safety was demonstrated, or were not performed.
- Each of the 56 approval applications we reviewed lacked evaluation documentation by PHMSA to indicate how an equal level of safety was reached.

In addition, PHMSA is not holding applicants accountable for providing required information, as it has granted new permits and renewals to applicants who did not:

- provide relevant shipping and incident experience,
- demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, and
- certify—for renewals—that the original application remains accurate and complete.

Within the 99 non-emergency permits we reviewed, we sampled 40 applications for new permits and 38 applications for renewals. The table below shows that for most of these, required information was either not provided by applicants or not validated by PHMSA.

<i>Table. Insufficient Information on Special Permit Applications</i>				
Permit Type	Shipping/Incident Experience Missing	Shipping/Incident Experience Not Validated by PHMSA	Equal Level of Safety Not Supported	Accuracy and Completion of Original Application Not Supported
<i>New</i>	18	19	5	N/A
<i>Renewal</i>	1	37	N/A	7
<i>Total Problems Found</i>	19	56	5	7

Note: We did not examine what applicants provided for the 21 party-to permits since they generally provide limited information, given that they receive their permit based on PHMSA’s evaluation of the original permit holder’s application.

We also looked at applications for emergency permits, which require applicants to provide specific support to justify emergency processing. However, 3 of the

16 applicants (or about 19 percent) we reviewed who were granted emergency permits did not provide such support.

PHMSA Grants Special Permits and Approvals With Little or No Input from Partner Safety Agencies

While PHMSA is not required to coordinate with Operating Administrations before authorizing a non-emergency special permit or approval, the exchange of information among safety stakeholders, especially those with oversight and enforcement responsibilities, is fundamental to safety. According to officials we spoke with, coordination between PHMSA and FAA, FRA, and FMCSA mainly consists of informal e-mails and phone conversations.

Based on our review of 99 non-emergency special permits, we found no evidence that PHMSA coordinated with the affected Operating Administration in granting 36 of 40 (90 percent) new permits, all 38 renewals, and 19 of 21 (about 90 percent) party-to permits we sampled. Coordination with partner safety agencies prior to granting renewal and party-to permits is especially critical so they can ensure these applicants are still fit to conduct the authorized activity and that their proposed level of safety meets or exceeds the safety level required by the Hazardous Materials Regulations. Authorizing special permits that have not been fully vetted could ultimately lead to unsafe transportation of hazardous materials. Twelve of the 36 new permits that were not coordinated allowed transport by air (passenger and/or cargo), a particularly vulnerable transportation method if an incident were to occur.

FAA has also expressed dissatisfaction that PHMSA does not provide sufficient and consistent documentation upon which FAA can base its evaluation of the special permit or approval terms and conditions. For example, in 2008, PHMSA coordinated an emergency special permit application to transport by cargo aircraft several hazardous materials contained in spacecraft parts and components. The items included lithium batteries in a package that exceeded size parameters and a poisonous gas contained in pipes, which is normally prohibited by the Hazardous Materials Regulations for shipment by air. According to FAA, the request did not provide any additional safety measures for the pilots, and PHMSA did not include an explanation of how an equal level of safety would be met.

This example also illustrates the importance of coordination for emergency special permits, which is required by regulations.¹¹ Unlike non-emergency special permits, emergency special permits must be submitted directly to the affected Operating Administration, which evaluates and confirms the emergency, recommends any conditions for inclusion in the permit, then forwards its review to PHMSA. However, in 13 of the 16 emergency applications we reviewed, the applications went directly to PHMSA and were not coordinated with the affected Operating Administration.

¹¹ 49 C.F.R. § 107.117(d) (2009).

PHMSA also failed to publish 11 emergency permits in the Federal Register within 90 days of issuance as required by law for public safety and stakeholder notification.

The lack of coordination between PHMSA and FMCSA is also disconcerting, given that special permits for use of “bulk explosive” vehicles continue to be approved despite their number of serious incidents and violations—a key issue highlighted in our July management advisory to PHMSA. For the period October 2005 to July 2008, bulk explosives vehicles have experienced 14 serious incidents, 11 of which involved vehicle rollovers.

We also reviewed 56 approvals and found that none were coordinated with the affected Operating Administration. According to PHMSA, most approvals (e.g., explosive classifications, fireworks classifications, and retesters of cylinders) are mode-neutral and do not require coordination. We agree that not every approval needs to be coordinated, but certain approvals should be, especially those that provide exceptions from regulatory requirements or prohibitions, such as authorizations to transport lithium batteries in quantities greater than 77 pounds (anything under this weight does not require PHMSA approval). Our work underscores the importance of PHMSA and the affected Operating Administration jointly developing and implementing a Memorandum of Agreement on the type of approval requests that will be coordinated. This would provide each agency with an opportunity to share their knowledge about the party seeking an alternative method of compliance to the requirements in the Hazardous Materials Regulations.

PHMSA DOES NOT CONDUCT REGULAR COMPLIANCE REVIEWS OF INDIVIDUALS AND COMPANIES THAT HAVE BEEN GRANTED SPECIAL PERMITS AND APPROVALS

PHMSA’s risk-based oversight approach considers three priority factors when selecting individuals and companies that transport hazardous materials for safety compliance reviews: accident investigations, third-party complaint investigations, and fitness inspections.¹² Conducting compliance reviews of special permit and approval holders is not considered a priority, even though PHMSA states it holds companies with special permits and approvals to a higher standard of compliance than non-permit holders. PHMSA contends that this does not need to be incorporated in its risk-based oversight criteria because special permit holders have demonstrated better compliance over the last 10 years than non-permit holders.

Our visits to 27 companies indicate otherwise. Sixteen of these companies (59 percent) held 91 special permits. We found that all 16 were not complying with various terms and conditions of 56 (62 percent) of the permits, such as training, shipping, and signage requirements. For example, one company failed to post a

¹² Fitness inspections are usually referred from PHMSA’s Office of Special Permits and Approvals to its Office of Hazardous Materials Enforcement (OHME).

required sign on a vehicle that read “Warning, trailer may contain chemical vapor. Do not enter until vapors have dissipated.” Officials from five companies were unaware of which special permits applied to their location, and two facility officials seemed confused as to what a special permit was and made several calls to their corporate office or manager to obtain clarification on their permit use.

We are particularly concerned about these weaknesses with regard to the many companies whose operations depend on special permits and approvals and those companies operating multiple permits, approvals, or both. For example, we identified 16 companies that each had 20 or more special permits, 7 companies that each had 30 or more special permits, and 1 company that had 65 special permits.¹³ Omission of the priority factor, “holder of special permit and approval” from PHMSA’s risk-based oversight criteria means it cannot increase oversight for those companies that may not be providing an equal or higher level of safety as specified by the terms of the permit and the Hazardous Materials Regulations.

LONG-STANDING SAFETY CONCERNS HAVE LARGELY GONE UNADDRESSED BY PHMSA

Safety concerns associated with bulk explosive trucks were raised to PHMSA more than 2 years ago but have only recently received attention. Although PHMSA formed an advisory group primarily comprised of industry representatives, the group did not produce actionable solutions to these vulnerabilities. Our recent management advisory to PHMSA brought this issue to the attention of the highest levels of the Department. In response to our advisory, PHMSA developed an action plan addressing our concerns related to specialized bulk explosive truck operations, as well as other issues found with the special permits program in general. We intend to monitor PHMSA’s progress on this issue as this is not the first time identified safety concerns have gone largely unaddressed.

Safety Concerns Associated With Certain Bulk Explosives Special Permits Have Only Recently Received Attention

In June 2007, PHMSA’s Chief of the Office of Hazardous Materials Enforcement (OHME), Central Region, sent a letter to the Director of the Special Permits and Approvals Office citing specific problems and risks associated with vehicles traveling under two special permits. The letter described the results of a PHMSA investigation of a rollover incident where the vehicle’s tanks had ruptured and the different hazardous materials had mixed, creating the potential for a catastrophic event. As a precaution, the local fire department evacuated all areas within a 1.5-mile radius of the incident—1 mile beyond the emergency response handbook requirement.

The two special permits in question—11579 and 12677—allow permit holders to transport certain explosives, oxidizers, corrosive and combustible liquids, and blasting

¹³ We excluded the Department of Defense as a holder of special permits in our analysis.

caps all on the same truck. While this practice is prohibited by the Hazardous Materials Regulations, permit holders are exempted from these requirements if they can show that their method of transport meets or exceeds the level of safety specified in the regulations and that they are fit to conduct the activity authorized by the permit.

OHME made a series of recommendations, one of which requires all operators of vehicles with multi-hazard special permit authorizations to receive additional safety training that specifically addresses vehicle susceptibility to rollovers.

In May 2008, nearly a year after receiving OHME's letter, PHMSA formed an advisory group, comprised of DOT and industry representatives, which met and discussed several issues. These included vehicle rollover prevention, training for drivers of these vehicles, improved battery protection or relocation, and ways to minimize circumstances that would cause a fire in a rollover spill. We first raised our concerns about the number of incidents and violations associated with these special permits in January 2009. At that time, PHMSA officials told us that the advisory group was looking into this matter. In March 2009, the group met again, and the Institute of Makers of Explosives representatives presented recommendations for the increased safety of the vehicles operated under the special permits. At both meetings, OHME's recommendations were not pursued and no clear course of action was determined except that another meeting in the near future would be beneficial.

Long-Standing Safety Concerns Regarding Special Permits To Ship Lithium Batteries Have Not Been Addressed

In 1999, a pallet of lithium batteries caught fire while being handled between flights at Los Angeles International Airport. Following this incident, FAA raised safety concerns involving life-threatening accidents with the air transport of bulk shipments of lithium batteries. Further, the NTSB's investigation of this incident revealed that these batteries presented an unacceptable safety risk to aircraft and passengers. The NTSB made a series of recommendations, including that packages containing lithium batteries be identified and shipped as hazardous materials when shipped on aircraft.

During our 2003 through 2004 review of FAA's Hazardous Materials Safety Program, two serious incidents involving the shipment of lithium batteries occurred. In one of these incidents, which occurred in August 2004, a shipment of lithium batteries caught fire on a ramp of a major all-cargo carrier at Memphis International Airport. According to the shipping documents, the battery package was shipped under a PHMSA approval; however the materials were not packaged according to the terms of the approval, and the approval was never coordinated with FAA. Our November 2004 report ultimately concluded that discussions between FAA and PHMSA (known as the Research and Special Programs Administration at the time) on the safe

transport of lithium batteries and other issues on rules governing air shipments of hazardous materials had been ongoing for 5 years without any effective resolution.¹⁴

We reported that serious efforts to resolve these issues were only undertaken after the August 2004 incident; high-level Departmental attention; and issuance of FAA's technical report, which concluded that lithium batteries pose a unique threat in the cargo compartment of an aircraft because lithium fires cannot be extinguished by FAA's certified fire suppressant system. We made a number of recommendations to address these unique safety requirements. The Assistant Secretary for Transportation Policy concurred, stating that the Department "anticipate[s] having a process formalized by February 2005" to resolve such disputes between Operating Administrations. However, the Department has yet to implement such a policy.

In December 2004, the Department issued an interim final rule on the safe handling and shipping of lithium batteries by air. This rule was finalized in August 2007 and subsequently amended in January 2009. Both amendments mandated additional safety requirements to address FAA's concerns and the NTSB's safety recommendations. However, not all of FAA's and NTSB's concerns have been resolved. Currently, PHMSA, in consultation with FAA, is proposing changes to the January 2009 rule to include that all lithium batteries be designed to withstand normal transportation conditions and packaged to both reduce potential damage that could lead to a catastrophic incident and minimize the consequences of an incident. At the core of the current debate is the Air Line Pilots Association's perspective that shipment of lithium batteries by air should be strictly prohibited until new regulations are in place to ensure the safe transport of hazardous materials. The Department must be vigilant in resolving this issue, as incidents involving shipments of lithium batteries continue to occur, with eight incidents in 2008—two of which were life-threatening—and six so far in 2009. The most recent of these include a burnt lithium battery package discovered on an aircraft at Honolulu International Airport on June 18, 2009, and another package that caught fire on a flight to St. Paul International Airport on August 14, 2009.

OIG Management Advisory Presses PHMSA To Immediately Address Safety Concerns

On July 28, 2009, we issued a management advisory to PHMSA outlining concerns with weaknesses we have identified thus far with the special permit process. In short, our work shows that immediate attention is needed to prevent unsafe packaging and transport of explosives and explosive components traveling under Department of Transportation Special Permit Numbers 8554, 11579, and 12677.

¹⁴ OIG Report Number SC-2005-015, "New Approaches Needed in Managing FAA's Hazardous Materials Program," November 19, 2004. OIG reports are available on our website: www.oig.dot.gov.

PHMSA's August 6, 2009, response to our advisory outlines its plans to address these identified issues:

- Special permits issued to trade associations – permits to be issued to member companies only, not to the associations.
- Safety documentation evaluations – revise policy and procedures to ensure that an “equivalent level of safety” determination is met and fully supported.
- Applicant fitness – revise policy and procedures to ensure that fitness determinations are well-founded and fully supported.
- Formally develop standard operating policies and procedures for the special permits program.

PHMSA's planned actions addressed some, but not all, of OHME's June 2007 recommendations. One such action is to develop a pilot project for installing electronic stability control systems on bulk explosive vehicles to prevent rollovers. However, PHMSA still needs to address OHME's remaining safety concerns. We will continue to monitor PHMSA's progress as it begins establishing implementation priorities in these areas and means to measure effectiveness.

CONCLUSION

Regulating and monitoring the movement of hazardous materials is a critical part of ensuring the safety of the Nation's transportation system, and it is PHMSA's role to properly assess all risks before allowing applicants to participate in commerce under special permits and approvals. However, a number of longstanding and new issues call into question the effectiveness of PHMSA's Special Permits and Approvals Program. The sheer number of active special permits and approvals alone—many dating back 10 years or more—underscores the need to reexamine the strategy for adopting special permits and approvals into the Hazardous Materials Regulations to keep the current regulatory framework in sync with today's operating environment. As PHMSA addresses these areas, it must re-focus its approach to proactively identify safety risks, work with partner safety agencies to resolve safety and practicality matters, and set targeted oversight priorities.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions that you or other Members of the Committee may have.

EXHIBIT. PROCESS REQUIREMENTS FOR SPECIAL PERMIT AND APPROVAL APPLICATIONS

Table A. Process Requirements for Special Permit Applicants and PHMSA	
What Applicants Must Provide	How PHMSA Processes the Request
<i>New Permits</i>	
<ul style="list-style-type: none"> • identification/agent information • citation of regulation relieved from • proposed mode of transport • all supporting documents (e.g., test results and drawings) • demonstration of equal level of safety • all relevant shipping and incident experience 	<ul style="list-style-type: none"> • enter application into HMIS^a • submit to Technical Office if needed^{lb} • 30-day period: determine conformity to requirements and accept or reject • evaluate equivalent level of safety • assess fitness of applicant to conduct the activity authorized • publish notice in Fed. Register • 15-day period: out for comments • draft permit with justification
<i>Renewal Permits</i>	
<ul style="list-style-type: none"> • identification/agent information • permit number for renewal • certification that original application remains accurate and complete • all relevant shipping and incident experience 	<ul style="list-style-type: none"> • 15-day period: determine completeness/conformity • verify timely receipt and enter into HMIS • draft authorization letter for signature
<i>Party-To Permits</i>	
<ul style="list-style-type: none"> • identification/agent information • permit number seeking to join • demonstration of equal level of safety 	<ul style="list-style-type: none"> • 30-day period: determine completeness/conformity • evaluate equivalent level of safety • assess fitness of applicant to conduct the activity authorized • verify “party-to” status not previously granted • draft authorization letter for signature
<i>Emergency Permits</i>	
<ul style="list-style-type: none"> • facts showing necessity to prevent injury, support national security, or prevent economic loss • the application to the DOT modal official for the initial mode of transportation to be utilized. 	<ul style="list-style-type: none"> • determine necessity to prevent injury, support national security, or prevent economic loss • publish in Fed. Register within 90 days

^a Hazardous Materials Information System (HMIS)

^b If non-technical, the application is assigned to a non-technical Special Permit Specialist.

Table B. Process Requirements for Approval Applicants and PHMSA	
What Applicants Must Provide	How PHMSA Processes the Request
<i>New Approvals</i>	
<ul style="list-style-type: none"> • identification/agent information • section of regulation under which application is made • description of the activity for which the approval is required • proposed mode of transit • all supporting documents (e.g., any additional information specified in the section containing the approval, test results, drawings, and any required reports) <p>Examples include classifications of explosives and fireworks, cylinder retesters, and manufacturers of cylinders</p> <p><i>For an approval that provides exceptions to the regulations, additional information is required:</i></p> <ul style="list-style-type: none"> • demonstration of equal level of safety • identification of any increased risk to safety or property 	<ul style="list-style-type: none"> • enter application into NetFYI Information Management System • submit to Technical Office if needed • evaluate equivalent level of safety • assess fitness of applicant to conduct the activity authorized • draft authorization letter
<i>Renewal Approvals</i>	
<ul style="list-style-type: none"> • identification/agent information • for approvals with expiration dates: renewals must be filed in same manner as original application • approval number for renewal 	<ul style="list-style-type: none"> • determine completeness • draft authorization letter for signature