

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

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**Actions Taken and
Needed To Improve
Management and
Oversight of PHMSA's
Hazardous Materials
Special Permits and
Approvals Program**

**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 on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) management and oversight of the Special Permits and Approvals Program. PHMSA regulates up to 1 million daily movements of hazardous materials, many of which are transported under special permits and approvals that allow relief from the Hazardous Materials Regulations under certain conditions.¹ We have evaluated this program over the past 2 years and identified shortcomings in how PHMSA authorizes and oversees special permits and approvals. My testimony today is based on our body of work and will focus on three key areas: (1) the status of PHMSA's action plans to address our concerns, (2) PHMSA's execution of its new safety measures, and (3) emerging safety issues requiring management attention.

IN SUMMARY

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 risks before allowing applicants to transport hazardous materials under special permits and approvals. PHMSA has established action plans to address safety concerns we have identified, but success will be measured through effective execution. In addition, PHMSA must fully assess and address emerging issues that raise questions about fundamental operating procedures needed to promote safety. For example, our recent work shows that PHMSA personnel are not consistently following newly established procedures for granting special permits and approvals or adequately overseeing explosive classification approvals. As PHMSA continues to address these areas, it must refocus its approach to proactively identify safety risks, work with partner safety agencies to resolve safety and coordination matters, and set targeted oversight priorities.

BACKGROUND

PHMSA is the lead agency responsible for regulating the safe transport of hazardous materials, including explosive, poisonous, corrosive, flammable, and radioactive substances. The Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Railroad Administration (FRA) also oversee and enforce regulations for their respective industries.

Currently, there are about 5,500 special permit holders and 118,000 approvals.² Special permits and approvals allow a company or individual to transport, package, or

¹ *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.

² There are now about 1,250 active special permits. The 5,500 referenced above include these plus all party-to permits.

ship hazardous materials in a manner that varies from the regulations, provided the company or individual is (1) fit to conduct the activity authorized by the special permit or approval and (2) proposing a level of safety as safe as or safer than requirements from which the applicant seeks relief.

Our work has consistently shown that strong oversight of these authorizations is needed. Last month, we issued our report on PHMSA's management of the Special Permits and Approvals Program after testifying on our findings before this Committee in September 2009.³ Our review disclosed serious deficiencies in how PHMSA processes and oversees special permits and approvals. Most recently, on April 7, 2010, we issued a management advisory to PHMSA detailing concerns with how it authorizes explosive classification approvals and oversees labs authorized to test explosives.

WHILE PHMSA'S ACTION PLANS SHOW PROMISE, IT WILL TAKE TIME, RESOURCES, AND SUSTAINED COMMITMENT TO ADDRESS LONGSTANDING SAFETY ISSUES

We recently reported fundamental weaknesses with how PHMSA authorizes and oversees special permits and approvals. Specifically, PHMSA granted permits and approvals without full knowledge of applicants' safety histories and without coordinating with other Operating Administrations when needed. In response to our work, the Office of the Secretary and PHMSA took swift action to formulate two action plans to better manage the Special Permits and Approvals Program. PHMSA's plans show promise, but it will take sustained management commitment to fully address longstanding and emerging issues.

Weaknesses Identified in PHMSA's Special Permits and Approvals Process

In March 2010, we reported that PHMSA's reviews of all 99 permits and 56 approvals we examined did not consider applicants' incident or regulatory compliance histories.⁴ We found this to be the case even when applicants had multiple incidents and enforcement violations for years prior to receiving their permit. For example, PHMSA granted a special permit to a company to operate bulk

³ OIG Report Number AV-2010-045, "New Approaches Needed in Managing PHMSA's Special Permits and Approvals Program," March 4, 2010. 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.

⁴ The Hazardous Materials Regulations [49 C.F.R. § 107.113f (5) (2010)] provide PHMSA with the authority to examine applicant fitness and compliance histories.

explosives⁵ vehicles—even though the company had 53 prior incidents, 9 of which were serious vehicle rollovers.

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 also did not conduct regular compliance reviews of individuals and companies who had been granted special permits and approvals. 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. Yet, PHMSA’s risk-based oversight program does not consider whether a company holds a special permit or approval as a factor to drive compliance reviews.

PHMSA’s lack of coordination with FAA, FMCSA, and FRA exacerbates these weaknesses. These agencies may have critical safety data on applicants seeking a permit. Yet, we found PHMSA did not coordinate 90 percent of the special permits we reviewed. PHMSA also did not coordinate most of the emergency permits we reviewed—even though the Hazardous Materials Regulations specifically require their coordination.

PHMSA Has Completed Several Action Plan Items, but Full Execution Remains To Be Seen

PHMSA has developed action plans for both the special permit and approval processes in response to our findings and has completed several items to date. As shown at right, a number of these were included in both action plans, as we found the two processes shared many of the same weaknesses (e.g., granting special permits and approvals without documenting applicants’ proposed level of safety or considering their prior safety incidents and regulatory violations). Exhibits A and B list all action plan items.

In addition, PHMSA has developed action items specific to each program.

PHMSA’s Completed Action Plan Items for Special Permits and Approvals

- ✓ Developing and publishing written policy to clarify that special permits and approvals 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.
- ✓ Establishing formal standard operating policies and procedures for the Special Permits and Approvals Program and providing training to program employees on the new procedures.

⁵ This permit holder is authorized to transport certain explosives, oxidizers, corrosive and combustible liquids, and blasting caps on the same truck. We first advised PHMSA of this company’s safety record in July 2009, and PHMSA has since taken action to address it. In February 2010, PHMSA issued a notice of intent to terminate the company’s special permits.

For special permits, these include more compliance audits of permit holders and a plan to modernize the information technology system that supports the program. For approvals, these include developing a policy for publishing them in the Federal Register to allow for greater transparency. Currently, only special permits are required to be published.

However, at least two action items remain outstanding for both special permits and approvals, and full implementation is not likely to occur for several years:

- PHMSA has an open timeframe for addressing special permits and approvals issued to trade associations. We recommended in March 2010 that PHMSA require companies to apply under its new policy, which would include an evaluation of fitness and level of safety. PHMSA states that this process depends on the number of companies that elect to apply and available resources.
- PHMSA estimates it will take 5 years and \$25 million to improve its hazardous materials safety data collection and analysis. This system is part of PHMSA's plan to modernize its information technology and is an important step to develop a risk-based, data-driven oversight strategy. At this time, it is uncertain whether funding will be available, and PHMSA has not developed a funding contingency plan.

We are encouraged by PHMSA's response to our concerns, and its action plans represent progress toward its mission of safety. However, more work remains to ensure they are executed as intended. We will continue to monitor PHMSA's progress and its means to measure effectiveness.

PHMSA'S NEWLY IMPROVED SAFETY PROCEDURES ARE NOT BEING CONSISTENTLY FOLLOWED

PHMSA has taken commendable action to establish formal standard operating policies and procedures for the Special Permits and Approvals Program. However, our ongoing work shows that personnel are not consistently complying with PHMSA's new safety measures for reviewing and authorizing special permits and approvals. We examined 20 new, renewed, and "party-to" special permits⁶ and 22 new and renewed approvals issued since January 1, 2010, and found problems with procedures for assessing applicants' fitness and level of safety—both for individuals and trade associations—and coordinating with other agencies.

⁶ A party-to application applies only to special permits and is a request to "piggy-back" on a new or existing permit.

Special Permit and Approval Applicants' Fitness and Level of Safety Are Still Overlooked

We continue to find instances where PHMSA's evaluations of applicants fall short in verifying that the applicant is fit to carry out the terms and conditions of the special permit or approval and will provide a level of safety that meets or exceeds what is specified in the Hazardous Materials Regulations. Specifically, with regard to applicant fitness, we found:

- For 4 of the 20 special permits, applicant fitness determinations were not well-founded or fully supported. For example, in one renewal application the PHMSA transportation specialist (project officer) determined that the applicant was not fit based on an evaluation of the applicant's safety history. However, the special permit was still renewed even though the fitness problems cited in the evaluation form were not addressed.
- For 9 of the 22 approvals, applicant fitness determinations were similarly overlooked. For example, in one explosive classification approval request the transportation specialist determined the company was not fit based on FMCSA inspection data. The data showed that drivers were put out of service 22 percent of the time based on roadside inspections, which was more than three times the national average.⁷ The company was still approved without explanation even though PHMSA's new procedures require further investigation when company inspection data exceeds the national average.

In addition, we question the reliability of safety history information PHMSA used to determine companies' fitness in all 20 permit and 22 approval applications. Special Permits and Approvals Program personnel rely on information from PHMSA's recently deployed Hazardous Intelligence Portal (HIP).⁸ However, we compared safety history information for companies we reviewed in 2008 to the HIP data and found that the HIP contained fewer incidents and serious incidents.⁹ For example, for 1 company in our 2008 review, safety history information disclosed 53 incidents, 12 of which were serious. Yet, the HIP only disclosed 15 incidents, 6 of which were serious. We brought this discrepancy to PHMSA's attention and suggested that it perform a data quality check of the HIP.

⁷ The out-of-service status reflects one or more out-of-service violations in a single inspection, such as the driver of the vehicle exceeded the hours of service rule.

⁸ The Hazardous Intelligence Portal provides access to incidents/accidents, inspection, registration, permits and approvals, and other hazardous materials information about companies that interact with the U.S. Department of Transportation.

⁹ We compared data in the HIP to data in PHMSA's Hazardous Materials Incident Reports Database. This database is a search tool that contains 10 years of incident information on shippers and carriers of hazardous materials. Information is submitted by any individual or company involved in a hazardous materials incident.

With regard to applicants' proposed level of safety, we found:

- For all 20 special permits, PHMSA's application evaluations did not fully support or document safety determinations. These were mostly renewal or party-to permits (one new), which were based on evaluations PHMSA did several years ago when assessing the original permit. We cited this concern before this Committee in September 2009. Yet, it does not appear that PHMSA has addressed this issue even though its action plan states that PHMSA "will review all special permits to identify those that should be reevaluated because of safety concerns and those for which the prior safety justification requires further analysis and review."
- For 4 of the 22 approvals, PHMSA's application evaluations similarly lacked safety documentation. For example, PHMSA processed an approval that allows transport of vehicles installed with prototype lithium ion battery assemblies. Normally (without an approval), transportation of these vehicles with such batteries would be prohibited because the batteries are still undergoing testing to determine their safety. Yet, PHMSA's evaluation of the approval application did not include an assessment of the risks involved during transport or the applicant's ability to provide an equal level of safety.

We also found that PHMSA continued to grant "blanket authorizations" for special permits and approvals to trade association member companies without verifying their fitness to carry out the terms and conditions. This is occurring despite PHMSA's policy statement of August 14, 2009, in which it stated, "Prior to issuing a special permit to the members of the association, PHMSA will assess the fitness of the individual members in accordance with established policies and procedures."

However, between January 1, 2010, and March 31, 2010, we found that PHMSA granted:

- Three special permits to trade associations without any fitness checks of their member companies. Instead, PHMSA performed fitness checks on an association, which does not transport hazardous materials as specified in the permit. Our review of several companies from two of the trade associations found they had poor safety histories. For example, 1 member company had 14 incidents (4 serious) and 11 violations, all within the last 4 years.¹⁰ This company is allowed to operate under a special permit that authorizes transportation of ammonia solution containers—a poisonous and flammable material—that does not meet certain requirements of the Hazardous Materials Regulations. Also, in the permit renewal application, the trade association representative stated there had

¹⁰ For the period November 2001 to April 2008, this member company had a total of 43 violations.

been more than 35,000 shipments with no incidents. Since this was not the case, the situation warrants closer scrutiny from PHMSA.

- Four approvals to trade associations without any fitness checks of their member companies. We checked the fitness of three member companies of one trade association and found that one company had four violations and the other two each had three violations, all within the last 4 years.

Coordination Still Lacking for Special Permits and Approvals

In its action plans, PHMSA committed to review and enhance procedures for coordinating the issuance of special permits and approvals with other Operating Administrations. PHMSA subsequently established mode-specific coordination requirements within its standard operating procedures. Interagency coordination is key to safety, as other agencies may have critical safety data on applicants seeking a permit or approval and share responsibility for hazardous materials transported within their respective modes (e.g., FAA for transport via aircraft and FMCSA for transport via highways). However, we found that coordination was still lacking in several instances. Specifically:

- For 18 of the 20 special permits we examined, PHMSA did not coordinate with Operating Administrations before authorization.¹¹ One of these was a renewed special permit authorizing the holder to transport hazardous materials on bulk explosives vehicles. In July 2009, we issued a management advisory to PHMSA citing concerns with its ineffective coordination and oversight of these approvals in light of the number of serious rollover incidents and violations.
- For 18 of the 22 approvals we examined, PHMSA did not coordinate with Operating Administrations before authorization. One such approval allows the holder to ship prototype lithium ion cells and batteries aboard cargo aircraft. Contrary to its standard operating procedures, we found no evidence that PHMSA coordinated with FAA. Both FAA and the National Transportation Safety Board have long-standing safety concerns with the shipment of lithium batteries. In addition, representatives from the Air Line Pilots Association state 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. However, this is not expected to occur until December 2010.

We recognize that many of the safety procedures are new and that it will take time to fully and effectively implement them. However, many of the procedures that are being overlooked—such as determination of applicants’ fitness—can significantly impact safety. PHMSA recently began enhancing its controls by establishing a

¹¹ One renewal application did not require coordination with the modal administration.

Quality Assurance Team to assess whether personnel are fully and consistently complying with each step in special permits and approvals process.

EMERGING ISSUES RAISE QUESTIONS ABOUT FUNDAMENTAL OPERATING PROCEDURES NEEDED TO PROMOTE SAFETY

We have identified a number of emerging issues with safety implications that reinforce the need for PHMSA to conduct a baseline assessment of its operations. Earlier this month, we issued a management advisory to PHMSA, identifying ineffective processes for reviewing and authorizing explosive classification approvals and overseeing explosives testing labs.¹² PHMSA has taken actions in response to our advisory but must be more proactive in continually identifying and addressing safety issues.

Shortcomings in the Process for Reviewing and Authorizing Explosive Classification Approvals

We identified three shortcomings in the explosive classification approvals process that raise questions as to whether explosive approvals are based on correct classifications or appropriately authorized.

First, PHMSA lacks uniform, formalized guidance for classifying and approving new explosives.¹³ PHMSA has not formalized its guidance manual for examining and classifying explosive hazardous materials, which has led to varying definitions within PHMSA and industry of what constitutes a “new explosive” and how the regulations apply. The Hazardous Materials Regulations define a new explosive as produced by a person who has never produced that explosive or is producing it with changes to the formulation, design, or process that could alter its properties. However, the regulations do not specify what would constitute such a change and when testing would be required, and this can lead to conflicting classification decisions.¹⁴

For example, one approval we reviewed involved a company that wanted to use an existing explosives approval to manufacture the same product at another location without having the relocated product retested. A specialist in PHMSA’s Office of Special Permits and Approvals (SPA) and a chemist in the Office of Hazardous Materials Technology (HMT) believed that the company would have to retest the product because the manufacturing process at the new location could be different and

¹² PHMSA has authorized four testing labs (examining agencies) that provide independent third-party analysis in recommending a hazard class (PHMSA has since revoked one lab’s authorization).

¹³ In discussion over this issue, PHMSA stated it has published Standard Operating Procedures (SOP) for the Evaluation and Issuance of Explosive Classification Approvals. However, unlike the draft guidance manual, the SOP is strictly internal. The draft guidance manual was intended to assist manufacturers, shippers (clients), and examining laboratories in ensuring that uniform explosive hazard classification procedures, data gathering techniques, and reporting methods are employed.

¹⁴ 49 C.F.R. § 173.56 (2010).

may alter the product's explosive properties. However, according to the HMT chemist, his supervisor stated the explosive had been previously approved and that the company's request should be granted. Had it not been for our review, PHMSA would have approved the request without having the product retested or examining the company's safety record, which indicated a 6-year history of poor explosives safety compliance. PHMSA has a draft guidance manual published in 2002 (commissioned by the former Associate Administrator in 1998), which does address this and other issues for PHMSA employees, testing lab staff, and manufacturers. The draft guidance states that "An explosive substance developed, produced, and classed by a specific manufacturer and relocated or co-located to a different manufacturing plant or facility should be examined and reclassified." However, the guidance was not finalized because PHMSA's former Director for the Office of Hazardous Materials Technology deemed the Hazardous Materials Regulations to be sufficient guidance.

Second, PHMSA did not adhere to regulatory requirements for reclassifying an explosive. PHMSA did not follow Hazardous Material Regulations when it approved a company's request to reclassify an explosive device to a non-explosive class.¹⁵ Both HMT and SPA offices approved the reclassification without a report from an authorized testing lab, which is required by regulations, and despite conflicting chemist conclusions.¹⁶ Specifically, the company requested that its product (a fire suppression device) be reclassified as a non-explosive, which would allow the product to be shipped in the same quantity under less stringent packaging requirements on both passenger and cargo aircraft. The company included data and video on its own product tests and subsequent written justification in January 2008—but never submitted any external test reports from PHMSA-authorized testing labs. The HMT chemist who performed the technical review disapproved the reclassification request because the company's video showed that the effects of an explosion were not completely confined within the device as required by regulations for non-explosive classifications; this could also impact the safety of packaging and shipping.¹⁷

Despite the chemist's disapproval and the company's failure to meet regulatory requirements, the HMT supervisory chemist overturned the chemist's recommendation and forwarded the reclassification request to SPA. SPA did not question the lack of a required test report and authorized the reclassification and shipping method by air—without coordinating the approval with FAA.¹⁸ As a result,

¹⁵ PHMSA approved reclassification of the explosive device from explosive class 1.4S (articles, pyrotechnic) to a 4.1 flammable solid class (non-explosive).

¹⁶ Under 49 C.F.R. 173.56(i), PHMSA could reclassify an explosive based on "experience and other data," but this authority was not invoked when the reclassification was granted.

¹⁷ According to the Hazardous Materials Regulations, a substance is not in the explosive class if the effects of the explosion are completely confined within the article. This is consistent with UN Recommendations on the Transport of Dangerous Goods Model Regulation 15th Revised Edition, which states that explosive articles—except devices containing explosives substances—in such a quantity or of such a character that their inadvertent or accidental ignition or initiation during transport shall not cause any effect external to the device either by projection, fire, smoke, heat or loud noise.

¹⁸ Although not required, we have previously recommended better coordination with the appropriate Operating Administration, and this is an example of why coordination is important for safety reasons.

the chemist who initially disapproved the reclassification filed a complaint with our office.

Finally, PHMSA lacks a formal process for effectively resolving internally contested safety decisions. PHMSA's internal review of the complaint referenced above was not conducted independently, and its results were not supportable. Specifically, PHMSA assigned the Director of HMT (the complainant's manager) and the Director of SPA (the person who concurred with the reclassification) to investigate the complaint. There were no internal controls to prevent a conflict of interest during the investigation or ensure the complainant remained anonymous as requested. In response to our findings, PHMSA has stated that it will assign staff not involved in the complaint for future internal investigations and on April 5, 2010, issued an order establishing a Safety Review Board to resolve internally contested safety decisions.

In addition, PHMSA's internal review of the complaint noted that the company had submitted a test report, recommending a non-explosive classification, from a PHMSA-authorized testing lab. However, we found the test report did not exist, and a lab official confirmed that testing for this product was not performed at their facility. Company officials who requested the reclassification also stated that rather than submitting a report from the lab to PHMSA, they had submitted a copy of another company's examination report for a different product tested by that lab. The company officials said they believed that product, which the lab had classified as a non-explosive, was similar to their fire suppressant device. However, any "similarity" in the product does not change the fact that a test report from a PHMSA-authorized testing lab on the actual product is required by the Hazardous Materials Regulations. In addition, after examining the test report for the product that had been reclassified, a PHMSA chemist noted it was not even similar to the disputed product.¹⁹ PHMSA did not acknowledge these issues in its internal review, which further underscores the need for impartial investigations and a revised approach for conducting them.

PHMSA has agreed to have the devices tested at its own expense by an authorized testing lab. However, in the interim, the company is still allowed to ship the device by air as a non-explosive. In light of the potential safety issues, we have advised that PHMSA should reinstate the device to its original classification of explosive until the testing lab's results are published and provide our office with a properly documented decision on the reclassified explosive.

¹⁹ The tested product was only the main propellant substance, and not the entire device itself (i.e., the main propellant substance, confined in a steel case with an electrical igniter and a booster propellant to get it burning hot).

Ineffective Oversight of Authorized Explosives Testing Labs

Our recent advisory to PHMSA also noted ineffective safety oversight of its four authorized explosives testing labs.²⁰ Over the last 10 years, PHMSA has not conducted fitness inspections or safety reviews at any of these labs. As a result, there is limited assurance that the labs are operating under safe conditions or meeting the terms and restrictions of their approval to test explosives (see example).

To maintain their approval to operate, testing labs must report annually to PHMSA on (1) how many explosives they tested and approved, (2) what companies requested testing, and (3) whether the lab complied with its approval criteria. If PHMSA determines—either through safety reviews or the annual reports—that a testing lab is not meeting its approval

Example of Testing Lab Approval Criteria

- ✓ Facilities where explosives testing is conducted must have a valid Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives license at time of testing.
- ✓ No single revenue source [companies submitting products for testing] may provide more than 20 percent of the lab's gross income during the reporting period.
- ✓ Testing labs must have at least 10 years of experience in the examination, testing, and evaluation of explosives *and must not be involved in manufacturing or marketing explosives.*

criteria, PHMSA has the authority to modify, suspend, or terminate any explosives approvals issued to companies. However, we found that PHMSA did not question labs that either violated their approval criteria or failed to submit the required annual activity reports. For example:

- Two testing labs are subcontracting their responsibilities to examine and test explosives to two companies that are not PHMSA-authorized testing labs, both of which manufacture explosives. This presents a conflict of interest that would prohibit those companies from directly obtaining a PHMSA approval to operate as a testing lab under the Hazardous Materials Regulations.
- At one testing lab, annual activity reports and certificates of compliance were at least 5 years overdue. For three other labs, PHMSA could not confirm whether the reports or certificates had actually been submitted. PHMSA is now working with the testing labs to collect the required information.

In response to our findings, PHMSA has developed new guidelines to strengthen oversight of explosives testing labs. These include new processes for how labs review applications and new renewal requirements for their approvals. PHMSA has also established a team to inspect testing labs. The team has inspected all four labs over the last month, and its reviews thus far indicate the need for enhanced oversight. For

²⁰ To become a PHMSA-authorized testing agency, any organization or person seeking designation must apply in writing to the Associate Administrator for Hazardous Materials Safety. The application must include, among other things, documentation that supports the applicant's qualifications, knowledge, and ability to conduct explosives examination and testing. Upon receiving PHMSA's approval, the testing agency must abide by a series of conditions, such as not manufacturing or marketing explosives.

example, the team found that one lab had been sold and was under new ownership; yet, the new ownership never filed for a new approval. This was the same lab that had failed to submit annual activity reports for 5 years, and PHMSA has since revoked the lab's authorization to examine and test explosives.

CONCLUSION

While the transport of hazardous materials is a vital part of our Nation's economic and energy resources, it must be balanced with robust oversight to ensure safety. We are encouraged by PHMSA's commitment and prompt efforts to establish safety improvements in response to our work. However, given our past findings and emerging issues that appear fundamental to successfully achieving its mission, PHMSA would benefit from a baseline reassessment of its special permit and approval standard operating procedures and policies and oversight roles to ensure they are working as planned. We will continue to monitor PHMSA's progress as it continues these important efforts to strengthen the Special Permits and Approvals program and achieve its mission of safety.

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

EXHIBIT A. STATUS OF PHMSA'S ACTION PLAN ITEMS FOR SPECIAL PERMITS

Action Item	Completed	Open	Notes
1. Rescind or reissue special permits issued to trade associations		✓	OIG takes exception. PHMSA still needs to rescind and reissue to actual member companies.
2. Conduct a broad-based top-to-bottom special permit program review	✓		
3. Evaluations of Safety Documentation	✓		
4. Fitness determinations of Interagency Coordination	✓		OIG takes exception. "Party-to" special permits are not coordinated with FAA and FRA
5. Develop/Implement inspection procedures for determining fitness of applicant	✓		
6. Develop Fitness Determination Criteria	✓		
7. Develop Procedures for Renewals	✓		
8. Develop Standard Operating Procedures for Special Permits	✓		
9. Develop Stakeholder Brochure	✓		
10. Develop plan to enhance data collection to support IT modernization	✓		
11. Develop IT modernization strategy		✓	Open. This item involves a 5-year implementation plan
12. Review special permits identified for further assessment		✓	
13. Incorporation of select special permits into the Hazardous Materials Regulations		✓	
14. Update website	✓		Ongoing action item
15. Issue letter of intent to all 83 grantees modifying the 4 special permits authorizing bulk explosive trucks	✓		
16. Fitness review of bulk explosive trucks	✓		
17. Documentation review of SP 8554, 10751, 11579 & 12677	✓		
18. Risk assessment on bulk explosive trucks	✓		
19. Rescind/modify bulk explosive truck special permits	✓		
20. Stability control		✓	Long-term action item
21. Emergency response		✓	Long-term action item
Total	15	6	

EXHIBIT B. STATUS OF PHMSA'S ACTION PLAN ITEMS FOR APPROVALS

Action Item	Completed	Open	Notes
1. Conduct a broad-based top-to-bottom review of Approvals program	✓		
2. Rescind or reissue approvals issued to trade associations		✓	OIG takes exception. PHMSA still needs to rescind and reissue to actual member companies
3. Evaluations of Safety Documentation to ensure equivalent level of safety	✓		
4. Fitness determinations of Interagency Coordination	✓		OIG takes exception. Explosive classification approval should be coordinated with modes—especially FAA if explosive is shipped by air
5. Develop/Implement inspection procedures for determining fitness of applicant	✓		
6. Develop Fitness Determination Criteria	✓		
7. Develop Standard Operating Procedures for Approvals	✓		
8. Develop policy for publishing approvals in Federal Register	✓		
9. Eliminate backlog of approval processing		✓	To be completed by May 2010
10. Review approvals for expiration dates		✓	
11. Develop plan to enhance data collection to support IT modernization	✓		
12. Develop Standard Operating Procedures for Certification Agency Approvals (including explosive testing labs)	✓		
13. PHMSA Safety Review Board	✓		
14. Develop IT modernization strategy		✓	
15. Approvals identified for further assessment	✓		May be a part of Action Item 10, so not counted as “open.”
16. Incorporation of select approvals into the Hazardous Materials Regulations		✓	
17. Update website	✓		Ongoing action item
Total	12	5	