

August 6, 2009

ACTION PLAN ADDRESSING OIG CONCERNS RELATED TO PHMSA'S SAFETY PERMITS PROGRAM AND THE OIG MANAGEMENT ADVISORY ON SPECIALIZED BULK EXPLOSIVE TRUCK OPERATIONS

Background

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) authorizes the Department of Transportation to issue variances – termed special permits – from the Hazardous Materials Regulations (HMR) in a way that achieves a safety level at least equal to the safety level required under Federal hazmat law or consistent with the public interest and Federal hazmat law, if a required safety level does not exist. That authority is delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA).

PHMSA's procedures for applying for a special permit are set forth in 49 CFR, Part 107, Subpart B. An application must include the following information: (1) a citation of the specific regulation or regulations from which the applicant seeks relief; (2) the hazardous materials planned for transportation under the special permit; (3) the mode or modes of transportation that will be utilized; (4) a detailed description of the operation for which the special permit is requested (e.g., alternative ways to qualify packagings for hazardous materials transportation; alternative packagings; alternative hazard communication; alternative stowage or segregation plans; or other alternative procedures or activities) and written descriptions, drawings, flow charts, plans, and supporting documentation; (5) the time period for which the special permit is requested; (6) a statement outlining the reasons for requesting the special permit; and (7) a description of the packaging that will be used under the special permit.

In addition, the applicant must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation or, if the required safety level does not exist, that the special permit is consistent with the public interest. At a minimum, the application must include information on shipping and incident history and experience relating to the application; identification of increased risks to safety or property that may result if the special permit is granted and a description of measures that will be taken to mitigate that risk; and analyses, data, or test results demonstrating that the level of safety expected under the special permit is equal to the level of safety achieved by the regulation from which the applicant seeks relief.

PHMSA independently verifies and evaluates the information provided in the special permit application to determine that the special permit will achieve an equal level of safety as provided by the HMR or, if not, that the special permit is consistent with the public interest. This review includes a technical analysis of the alternative proposed in the application, an evaluation of the past compliance history of the applicant (including incident history, enforcement actions, and the like), and coordination with the Federal Motor Carrier Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), and/or the U.S. Coast Guard to gather additional information relevant to the application and ensure the agencies' concurrence with PHMSA's conclusions. Before making a decision on a special permit, PHMSA also publishes a notice of the application in the *Federal Register* and asks for comments from the public as to whether it should be granted or denied.

OIG Investigation

The Office of the Inspector General (OIG) recently briefed PHMSA on its review of the Special Permits Program. The OIG issued a “Management Advisory” regarding special permits for “special use bulk explosives vehicles” raising safety concerns about the process for issuance of the permits. These concerns included: (1) the adequacy of documenting the “equivalent level of safety;” (2) whether PHMSA is adequately checking the fitness of applicants to conduct the activities authorized by the special permit; (3) the extent and formality of coordination with FMCSA on enforcement and fitness; and (4) the number of incidents that resulted in the release of explosive materials.

More broadly, both the OIG and the House Transportation and Infrastructure (T&I) Committee have suggested that PHMSA needs to strengthen its oversight of the Special Permits Program to ensure that special permits provide an equivalent level of safety as that provided under the Hazardous Materials Regulations (HMR) and that permit holders comply with the terms of the special permits and, indeed, all applicable HMR requirements.

The OIG plans to issue a final report in September. PHMSA has the opportunity to respond to the OIG before the report is completed.

The OIG has highlighted several areas where there are opportunities to enhance PHMSA’s management and oversight of the safety permits program. Thus, in addition to evaluating company operations under the special permits applicable to special use bulk explosives vehicles, we want to review our current policies, procedures, and practices for the special permits program to ensure that our safety goals continue to be met. To this end, we have developed the following action plan:

Goals

- Enhance safety oversight of the Special Permits Program
- Improve operational efficiency within the Office of Special Permits and Approvals
- Improve coordination between Office of Special Permits and Approvals and its modal partners
- Improve data collection and analysis

Strategies

The action plan takes into account the resources available within the Office of Special Permits and Approvals, including both personnel and information technology; the process and procedures used to manage the program; the criteria used to make an assessment of an equivalent level of safety; 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 (IT) system that supports the program. Many of the initiatives will be initiated immediately and will be completed in 30 days or less while others (e.g. IT modernization) will take longer to complete.

With respect to special use bulk explosives vehicles, the initiatives in this plan are primarily aimed at enhancing transportation safety. PHMSA will also coordinate with DHS to address security concerns related to the operation of these vehicles.

ACTION PLAN TO ENHANCE SAFETY OVERSIGHT OF THE SPECIAL PERMITS PROGRAM

Action Item	Action	Due Date	Completion
<p><i>Special permits issued to associations.</i> <u>Within 10 days,</u> develop and publish written policy statement 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.</p>	<ul style="list-style-type: none"> - PHMSA developed and issued a written policy on August 14th that special permits are only granted to members of associations, not to associations. - On Sept 4th PHMSA issued a letter to the identified 19 associations holding special permits, stating the policy and position of the agency. 	Aug 16th	Aug 17th Sept 4th 
<p><i>Program review.</i> <u>Within 30 days,</u> complete a broad-based, top-to-bottom review of the special permits program. This review will cover current operational procedures, staff responsibilities, documentation of procedures, criteria for equivalent level safety assessments, fitness review criteria, and coordination with DOT operating administrations. The review will identify any deficiencies in current processes and consider possible ways to enhance procedures, reduce redundancies, and increase oversight and accountability. Recommendations in these areas may be based on information collected from OHMS staff, modal administration staff, other government officials (e.g. OIG, House T&I staff) and stakeholder interviews.</p>	<ul style="list-style-type: none"> - The program review identified several operational areas needing attention/enhancement, including: <ul style="list-style-type: none"> • Documentation of existing standard operating procedures to ensure process and program coordination consistency, • A revised SP evaluation form and process that enhances the safety equivalency review justification, and • A resource focus and development of a fitness determination and review process for every application. 	Sept 4th	Sept 4th 
<p><i>Safety documentation evaluations.</i> <u>Within 30 days,</u> review 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. As necessary, revise the criteria, policy, and procedures to ensure that the statutory standard for equivalent level of safety is met and supported with appropriate documentation. Develop process to ensure ongoing review and revision as necessary of safety criteria.</p>	<ul style="list-style-type: none"> - Reassessment of the evaluation process resulted in: <ul style="list-style-type: none"> • Development and execution of an enhanced safety evaluation form • The new form enhances and emphasizes the determination of an equivalent level of safety and better documents the justification for decisions 	Sept 4th	Sept 4th 
<p><i>Inter-agency coordination.</i> <u>Within 30 days,</u> review and enhance 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.</p>	<ul style="list-style-type: none"> - Developed with modes, establishes specific interagency coordination and concurrence guidelines for SP applications. - Specifies that PHMSA will approve or deny Special Permits applications only after coordination with the operating administrations - Operating administrations will notify PHMSA any serious violations of a special permit by the grantee that would call into question the fitness of a grantee 	Sept 4th	Sept 4th 

Action Item	Action	Due Date	Completion
Enforcement. <u>Within 30 days</u> , develop a plan to provide enhanced enforcement of the terms of special permits, taking advantage of the resources of all the modal administrations with responsibility for enforcing HMR and for enhancing the availability of data needed to appropriately and effectively provide the necessary oversight to ensure that holders of special permits are operating safely and within the conditions established in the special permits.	<ul style="list-style-type: none"> - Developed and implemented a comprehensive review and inspection procedure and process for determining fitness of special permit and approval grantees - Includes specific processes of defining, evaluating and program outputs on fitness determinations. 	Sept 4th	Sept 4 th ✓
Applicant “fitness.” <u>Within 30 days</u> , review 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. As necessary, revise the policy and procedures to ensure that fitness determinations are well-founded and supported with appropriate documentation.	<ul style="list-style-type: none"> - Developed and implemented a process and procedure for determining fitness of all applicants filing for special permits. - Defines fitness and sets general criteria that when intelligence or data show to meet criteria, process invokes further review for possible investigation/inspection - PHMSA and Modes play key role in further review when referred. PHMSA has conducted 2 fitness inspections with feedback outcomes in last 60 days 	Sept 4th	Sept 4 th ✓
Procedures for renewals. <u>Within 30 days</u> , review and revise current procedures for checking special permit renewals, expirations, and enforcement follow-up.	<ul style="list-style-type: none"> - Developed standardized procedures and methods for processing renewals that prescribe uniform methods and outputs for administrative processing. - Ensures all applications are processed and reviewed in a consistent manner - Process to be implemented in Sept/09 	Sept 4th	Sept 4 th ✓
Standard Operations Procedures. <u>Within 60 days</u> , review and update, as appropriate, written Standard Operating Procedures (SOPs) for the Special Permits Program, incorporating recommendations from the top-to-bottom review and the policies and procedures developed to address “equivalent level of safety,” applicant fitness, and inter-agency coordination. The SOPs will detail the procedures utilized to review special permit applications, including interaction with the other DOT operating administrations and permit holders, and enhanced safety oversight measures.	<ul style="list-style-type: none"> - The SOP's incorporate the recently developed and implemented program enhancements and elements for inter-agency coordination, fitness reviews, renewal procedures and process, and technical & safety evaluations. - This SOP product is a first phase document and is part of a 6 month effort to produce a more refined SOP that represents an evolving re-engineered, revised and more uniform / comprehensive program operation. The SOP's are evergreen and will be revised continuously as the program enhances, evolves and improves. 	Oct 5th	Oct 5 th ✓
Stakeholder brochure. <u>Within 90 days</u> , develop a brochure for stakeholders on “How to obtain a Special Permit from the Office of Hazardous Materials” to enhance the quality and completeness of special permit and approval applications and the data available to PHMSA and the modes to perform the necessary safety and fitness assessments.	<ul style="list-style-type: none"> - The brochure details specific special permit application requirements and PHMSA’s application review process and emphasizes that responsibility for compliance falls directly on the grantee. The brochure also highlights conditions under which a special permit may be modified, suspended, or terminated. 	Nov 4th	Nov 4 th ✓

Action Item	Action	Due Date	Completion
<p>Data Collection and Analysis <u>Within 90 days</u>, develop a plan of action and resource assessment for enhancing data collection and analysis including documentation of workflow and business processes to support the IT modernization task of this action plan.</p>	<ul style="list-style-type: none"> - Plan highlights data collection and analysis challenges across the agency, with particular focus on the special permits/approvals program. - Short-, mid-, long-range solutions for enhanced productivity, accountability, and overall management of the special permits and approvals program. 	Nov 4th	Nov 4 th ✓
<p>IT modernization. <u>Within 180 days, award a</u> contract to modernize the information technology system that supports the work flow and processing of special permits and approvals to enhance productivity, accountability, and overall management of the safety function responsibilities assigned to the Office of Special Permits and Approvals. As part of this project, establish a mechanism for alerting holders of special permits 90 days in advance of the expiration of a special permit or approval and develop a notification system to communicate safety concerns or other issues with permit holders and to expedite notification of PHMSA and the operating administrations when incidents occur. The system will also include a data warning system for monitoring the performance of holders of specific special permits and approvals.</p>		Feb 5th	
<p>Special permits identified for further assessment. <u>Within 180 days</u>, review all open special permits to identify those that should be reviewed because of safety concerns. Identify any special permits or approvals where the prior safety justification requires further analysis and review. Develop a plan for completing such review and modifying or rescinding special permits as necessary.</p>		Feb 5th	
<p>Incorporation of special permits into HMR. <u>Within 180 days</u>, develop a plan, including identification of team members and an implementation schedule, for an ongoing review of all open special permits with a view towards identifying those that should be made part of the HMR. The plan will include a schedule for incorporating identified special permits into the HMR and will be included as part of the business plans for each participating office.</p>		Feb 5th	
<p>Website Updates – Special Permits: perform continual updates of documents and policies consistent with the noted completion dates in this action plan.</p>			

ACTION PLAN TO ENHANCE THE SAFETY OF SPECIAL USE TRUCKS OPERATING UNDER SPECIAL PERMITS

Action Item	Action	Due Date	Completion
<p>Notice of intent. <u>Within 10 working days</u>, notify special permit holders of PHMSA's intent to evaluate their fitness and to modify the special permits to include additional safety conditions, if found to be necessary. The letter will suggest that the special permits may be modified to include additional vehicle inspection and maintenance (including tire replacement), driver training; enhanced incident reporting and accident investigation; fire prevention and mitigation measures; and a mandatory emergency response action plan. Holders will have 30 days to respond.</p>	<ul style="list-style-type: none"> - Developed and issued letter of intent, to all 83 grantees, to modify the 4 special permits authorizing use of bulk explosives trucks. - Letter Issued on August 14th that intends to enhance safety and reporting provisions of the special permits - Administrative process allows grantees 30 days to respond (Sept 13th) to show cause why PHMSA should not modify to impose new changes - PHMSA is reviewing responses, expects to make action prior to October 5th. 	<p>Aug 16th</p>	<p>Aug 14th</p> <p style="text-align: center;">✓</p>
<p>Fitness review schedule. <u>Within 15 days</u>, in coordination with FMCSA, establish a schedule for fitness reviews and implementation plan to conduct safety performance and fitness reviews of the current special permit holders including how holders are complying with the terms of the permits and whether any previous holders are operating under expired permits. The schedule of compliance audits will be based on safety performance data provided by the OIG and further review of safety performance data by PHMSA and FMCSA.</p>	<ul style="list-style-type: none"> - Identified entities and developed action plan to conduct fitness inspections of the highest prioritized grantees. - Prioritized a Tier 1 list of candidates based on past incidents, enf history, inspections, activity, exposure, locations, etc. Inspections underway - - PHMSA conducted 14 Fitness Inspections of SP activity to date - FMCSA conducted 18 fitness inspections of motor vehicle activity - 2 under further review for possible administrative action (lack of fitness). 	<p>Aug 21st</p>	<p>Aug 14th</p> <p style="text-align: center;">✓</p>
<p>Documentation review. <u>Within 15 days</u>, review documentation, including safety assessments and analyses, to ensure documentation supports issuance of the special permits.</p>	<ul style="list-style-type: none"> - Conducted and documented an internal comprehensive review of the historical safety evaluations and justifications for all 4 special permits. - Outcome in memo form stated historical decisions to grant and modify the SP's were satisfactory 	<p>Aug 21st</p>	<p>Aug 14th</p> <p style="text-align: center;">✓</p>
<p>Risk assessment. <u>Within 30 days</u>, complete a risk analysis to ensure that the special permits address all possible safety issues associated with the transportation of hazardous materials on specialized bulk explosives vehicles, including the potential for a high-consequence (catastrophic) accident. Based on the risk analysis, develop additional safety measures if necessary to address identified risks.</p>	<ul style="list-style-type: none"> - Conducted by an independent source (Volpe), risk assessment evaluated the posing risk of the bulk explosive truck system that include the vehicle, materials, exposure and users. - Assessments and recommendations for improvement address similar areas as suggested by PHMSA. - Enhanced Driver Training, lower the vehicle CG, etc. - PHMSA evaluating and considering recommendations 	<p>Sept 4th</p>	<p>Sept 4th</p> <p style="text-align: center;">✓</p>

Action Item	Action	Due Date	Completion
<p>Rescind/modifyspecial permits. Within 60 days, determine whether the special permits should be rescinded or modified and issue letters to affect such rescissions or modifications.</p>	<ul style="list-style-type: none"> - All four SP's were revised to incorporate the modifications proposed in the August 14th show cause letter. - Coordinated with and concurred by PHMSA programs and FMCSA, the revised SP's included improvements in vehicle and equipment safety, driver training and enhanced accident reporting. 	<p>Oct 5th</p>	<p>Oct 5th ✓</p>
<p>Long-term action – stability control. Work with NHTSA and FMCSA to develop a pilot project for installing Electronic Control Stability systems on special use vehicles to prevent rollovers. Consider mandating these systems once the pilot evaluation is completed as a condition for operating these vehicles under the terms of the special permits.</p>			
<p>Long-term action – emergency response. Work with the International Association of Fire Chiefs will develop “best practices” for emergency response to a rollover of a special use truck and spilling ammonia nitrate in one compartment and fuel oil in another onto the highway. These best practices will be available on the “Fusion Center’s website and PHMSA’s “train the trainer” program will teach these best practices to emergency responders.</p>			