



U.S. Department of Transportation

**Pipeline and Hazardous Materials
Safety Administration**

Special Permits Program Desk Guide

Version 2.2

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Disclaimer

The materials contained in this document consist of guidance and other information for the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Office of Hazardous Materials Safety (OHMS) and its supporting program offices. This document is issued exclusively for the internal management of OHMS and the guidance of its officers and employees. This document is U.S. government property and is to be used in conjunction with official duties only. Nothing in this document is intended to modify or supersede the Standard Operating Procedures (SOPs) for Special Permits and Approvals set forth in Appendix A to Part 107 of the Hazardous Materials Regulations (HMR).

OHMS continues to develop, examine, and revise its approvals policies within this document. Any content presented at the date and time of dissemination may be subject to change without prior notice at OHMS's discretion. This document creates no rights, legal or equitable, in any other person.

Change Control and Documentation

<i>Special Permits Program Desk Guide</i>		
Version	Description of Change	Date
2.0	Add language req. documenting SEE by TO & PO	12/21
2.1	Add PHC Inputs	02/09
2.2	Add Legal review for Show Cause and some reconsiderations	03/16

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Section 1. Executive Summary

This Program Desk Guide (PDG) goes beyond the Standard Operating Procedures (SOP) to provide a more in depth description of the Special Permits process and the various roles and responsibilities. By documenting in greater detail how OHMS currently makes decisions and the roles and responsibilities of the various positions, we are establishing continuity as well as providing a training tool for new personnel. We are also establishing a clear foundation for further procedural improvements.

1.1 Content / Change Management

This is a living document that is expected to evolve with the organization and develop as we improve our procedures. The PDG will be evaluated at a least annually but it may be more often to incorporate lessons learned and account for upgrades to the data management systems that support the Special Permits Program.

The Operations Coordinators will have primary responsibility for maintaining the PDG while the Division staff and leadership will provide complete and specific input to ensure the PDG is up to date and accurate. The approved PDG will be stored in the PHH-30 PHMSANet Library 'Division Policies and Guidance'. PHH-30 will also publish the PDG on the PHMSA website and in a PHMSANet wiki which will require updates in parallel. Any changes to the PDG will use the following procedure;

- Any change (beyond editorial corrections) will be documented in a Word document and submitted to the Branch Chiefs for review with a copy provided to the Operations Coordinator.
- The Branch Chiefs, or their delegate(s), will document their recommendation within three work days and submit the change request to the Director and copy the Operations Coordinator.
- The Director, or delegate, will approve or deny the change within three work days and inform the Division.
- If the change is approved, the Operations Coordinator will update the approved version of the PDG and any other location where the PDG is actively presented and document the change in the Change Control and Documentation Table.

Section 2. Introduction and Overview

2.1 Purpose of the Document

This document acts as a desk guide for the administration of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Office of Hazardous Materials Safety (OHMS) Special Permits Program (i.e., special permits issued by PHH-30). This desk guide incorporates and strengthens PHMSA's current procedures (see 49 CFR Part 107, Appendix A).

The desk guide is an important contributor to building and maintaining a strong PHMSA safety culture. It provides the basis for PHMSA leadership and staff to understand and execute good safety and risk management practices, and to expect the same performance accountability from colleagues across the organization.

2.2 Structure of the Document

This document includes the following 12 sections and supporting appendices:

- **Introduction and Overview** - Provides an overview of the Special Permits Program.
- **Special Permits Program Roles and Responsibilities** – Describes the roles and responsibilities to execute processes associated with the Special Permits Program.
- **Application Review Process** – Describes the processes for receiving, evaluating, and issuing four types of special permits applications. The Application Review Process section is organized based on three key phases of the process: (1) Completeness Phase; (2) Evaluation Phase; and (3) Disposition Phase.
- **General Correspondence Process** - Describes the processes associated with responding to requests from Special Permit holders and applicants.
- **Reconsideration Process** – Describes the purpose and process overview for providing applicants and Special Permit holders the opportunity to request a reevaluation of their denied application, or modified, suspended or terminated Special Permit.
- **Appeal Process** - Describes the purpose and process overview for providing applicants or Special Permit holders the opportunity to appeal PHMSA's decision to deny their request for reconsideration.
- **Emergency Special Permit Process** – Describes the purpose and processes as they apply to emergency Special Permits within the Special Permits Program.
- **Special Permit Renewal Process** – Describes the purpose and process for receiving, evaluating, and issuing Special Permit renewal applications.
- **General Correspondence Process** - Describes the processes associated with responding to requests from Special Permit holders and applicants.
- **Modification, Suspension, or Termination of a Special Permit or Grant of Party Status** – Describes purpose and process of modification, suspension, or termination of a Special Permit or grant of party status as it pertains to Special Permits.

- **Evaluation** – Describes the purpose and process overview for conducting a Fitness Profile Evaluation of an applicant’s safety record and performance and a Technical Safety Evaluation of the Special Permit request.
- **Post-Issuance Responsibilities** – Describes the management and oversight responsibilities of PHMSA staff with respect to the Special Permits Program.
- **Forms and Documents** – Provides the names and descriptions of types of forms and documents used throughout the Special Permits Program.

2.3 Overview of the Special Permits Program

A Special Permit sets forth alternative requirements, or variances, to the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) authorizes the US Department of Transportation (DOT) to issue such variances in a way that achieves a safety level that is at least equal to the safety level required under Federal hazmat law or is consistent with the public interest if the required safety level does not exist. PHMSA’s procedures for applying for a Special Permit are set forth in 49 CFR, Part 107, Subpart B.

This desk guide documents the structured, uniform processes PHMSA has developed to administer the Special Permits Program as well as incorporate recommendations to improve the program over time.

This desk guide document will be revised and updated periodically to improve operations and ensure that policies and procedures remain aligned to the business needs of the OHMS.

Specific questions related to the Special Permits Program desk guide should be addressed to:

Director
Approvals and Permits Division
(202) 366-4511

Section 3. Special Permits Program Roles and Responsibilities

This section describes the roles required for PHMSA and the other Operating Administrations (OAs) to execute processes associated with the Special Permits Program. Table 3-1 illustrates where operational roles currently reside within PHMSA. The Coordinating Officials from the other OAs reside in different offices at their respective agencies. It is important to note that the staff and managers assigned operational roles may delegate their official responsibilities to others involved in the Special Permits Program.

Table 3-1: Current Organizational Alignment and Roles

Organizational Role	Organization	Current Organizational Position
Administrator	Office of the Administrator	Administrator of PHMSA
Associate Administrator	Office of Hazardous Materials Safety	Associate Administrator for Hazardous Materials Safety
Approving Official	Office of Hazardous Materials Safety	Associate Administrator for Hazardous Materials Safety (Note: The Associate Administrator may designate his/her authority to OHMS staff, as necessary)
Transportation Assistant	Approvals and Permits Division	Transportation Assistant
Project Officer	Approvals and Permits Division	Transportation Specialist, Senior Transportation Specialist
Senior Technical Officer	Engineering and Research Division	Director of the Division of Engineering and Research
Technical Officer	Engineering and Research Division	Chemists, Physical Scientists, and Engineers
Fitness Coordinator	Field Operations and/or FAA, FMCSA, FRA, USCG	Director of Field Operations (or designee) and Designated and authorized by the OAs for the purpose of Special Permits processing
Standards Liaison	Standards and Research Division	Director of the Division of Standards and Rulemaking
International Standards Liaison	Standards and Research Division	International Standards Coordinator
Enforcement Liaison	Field Operations	Director of Field Operations (or designee)
Legal Counsel	Office of Chief Counsel	Chief Counsel or Assistant Chief Counsel of the Hazardous Materials Safety Law Division
OA Coordinating Official	FAA, FMCSA, FRA, USCG	Designated and authorized by the OAs for the purpose of Special Permits processing
Safety Review Board	PHMSA	Designated by PHMSA
Independent Test Lab	Industry	Designated by PHMSA
Applicant	Industry	NA

3.1 Administrator

The Administrator is the Administrator of PHMSA. The responsibilities of the Administrator in the Special Permits process include:

- Reviewing and approving significant Special Permit applications, based on criteria as determined by the Administrator
- Granting or denying, in whole or in part, an appeal requested by a Special Permit holder or applicant. The Administrator may delegate this responsibility
- Participating in discussions to resolve issues among PHMSA staff and OA Coordinating Officials or others, as determined by the Administrator
- Reviewing and approving of significant General Correspondence based on critical safety issues or other criteria as determined by the Administrator

3.2 Associate Administrator

The Associate Administrator for Hazardous Materials Safety is the Approving Official. The responsibilities of the Associate Administrator in the Special Permits process include:

- Acting as the Approving Official, or delegating this responsibility to OHMS staff, and overseeing the conduct of this function
- Granting or denying, in whole or in part, a reconsideration request by a Special Permit Holder or Applicant. The Associate Administrator may delegate this responsibility.

3.3 Approving Official

Under 49 CFR 107.113(e) of the HMR, the Approving Official is responsible for signing Special Permit grants and denial documents. The Approving Official is also responsible for:

- Determining whether application evaluations are complete and thorough
- Reviewing and approving disposition recommendations
- Approving Special Permit dispositions, including rejection letters, denial letters, Special Permit documents, and authorizing letters
- Monitoring the volume and status of Special Permit applications, and quality of Special Permits management
- Resolving process and coordination issues among OAs and other federal agencies
- Approving desk guide and desk guide revisions for the Special Permits Program
- Making recommendations to the Administrator concerning the disposition of significant Special Permit applications based on public interest or other criteria determined by the Administrator
- Delegating Approving Official responsibility for specific Special Permits based on criteria related to the operations, transport modes, materials, or other criteria, as appropriate.
- Acting as the Approving Official, or delegating this responsibility to the Office of Hazardous Materials Safety (OHMS) staff, and overseeing the conduct of this function
- Granting or denying, in whole or in part, a reconsideration requested by a Special Permit Holder or Applicant. The Associate Administrator may delegate this responsibility

3.4 Transportation Assistant

Depending on the type of Special Permit, the Transportation Assistant is responsible for receiving the Special Permit applications that are submitted via regular mail, online, or fax. The Transportation Assistant is also responsible for forwarding the application to a PHMSA designee for data entry.

Note: Once the application is entered into the Special Permits IT System, the system generates a tracking number and forwards the file for action to the assigned Project Officer.

3.5 Project Officer

The Project Officer is responsible for planning and managing the Application Review Process for a specific Special Permit application. A Project Officer will be designated for each Special Permit application. The Project Officer is responsible for:

- Responsible for receiving Special Permit applications that are submitted via e-mail and forwarding the application to the Transportation Assistant for data entry.
- Providing oversight of the entire application evaluation and disposition processes across PHMSA and the OAs
- Coordinating the Application Completeness Phase of a Special Permit application, which may include:
 - Creating a folder for the Special Permit application and subsequent materials
 - Verifying that the Special Permit is required or authorized by the HMR including researching the HMR, ICAO TI, and the IMDG Code
 - Reviewing the application for completeness and accuracy
 - Drafting Federal Register summaries and/or rejection letters
 - Creating a draft evaluation plan, if applicable
- Coordinating the Evaluation Phase of a Special Permit application, which may include (but not necessarily be conducted by the Project Officer):
 - Conducting fitness profile evaluation
 - Conducting technical safety evaluation
 - Ensuring that the technical safety evaluation is documented on the current form and uploaded to the application folder.
 - Coordinating with other PHMSA officials such as the Standards Liaison and International Standards Liaison
 - Coordinating with appropriate OA(s)
 - Coordinating with PHMSA legal staff
 - Drafting and/or reviewing Special Permits
- Coordinating the evaluation of an emergency Special Permit application

3.6 Senior Technical Officer

The Senior Technical Officer is responsible for:

- Assigning and managing Special Permit applications among appropriate Technical Officers
- Overseeing the technical safety evaluation of Special Permit application evaluations, which may include:
 - Providing input to evaluation plans
 - Reviewing Technical Officer’s evaluation and recommendation
 - Conducting equivalent level-of-safety evaluations
 - Coordinating with the OAs, as needed
 - Providing input and/or reviewing input for Special Permits
 - Drafting rejection letter and denial letter justification language

3.7 Technical Officer

The Technical Officer has subject matter expertise in certain aspects of hazardous materials transportation safety. The Technical Officer may be assigned to participate in the review and evaluation of a Special Permit application, if needed. The Technical Officer is responsible for:

- Assisting in the Completeness Review Phase of Special Permit application evaluations.
- Completing technical safety evaluations of Special Permit applications, which may include:
 - Conducting equivalent level-of-safety evaluations
 - Participating in on-site inspections of Applicants, as needed
 - Coordinating with OAs and others, as needed
 - Drafting Special Permit documents and denial letter justification language
 - Completing the current safety evaluation form and uploading it to the application folder

3.8 Fitness Coordinator

The Fitness Coordinator is a PHMSA Field Operations Division officer or an authorized representative or special agent of DOT, such as an OA coordinating official, and is responsible for conducting reviews regarding an organization’s hazardous materials operations to determine whether a Special Permit holder or applicant is fit to conduct an authorized activity. The Fitness Coordinator is responsible for:

- Reviewing a Special Permit Holder or Applicant ‘s incident history or compliance data
- Conducting On-Site Inspection of the Special Permit Holder or Applicant
- Reviewing other available safety and transportation records

3.9 Standards Liaison

The designated Standards Liaison is responsible for:

- Making recommendations as to whether the operations proposed for the Special Permit should be addressed through rulemaking

- Reviewing evaluation plans as requested by the Project Officer
- Evaluating whether updates to the HMR are needed to accommodate the Special Permits Program
- Reviewing Special Permits and other dispositions as requested by the Project Officer based on the agreed-upon criteria for the Standards and Rulemaking Division involvement, which could include:
 - Newly issued regulations
 - Requests with far-reaching effects that may be most appropriately handled under rulemaking
 - Relief from hazards communication

3.10 International Standards Liaison

The designated International Standards Liaison is responsible for:

- Reviewing evaluation plans as requested by the Project Officer
- Reviewing Special Permits and other dispositions as requested by the Project Officer based on agreed-upon criteria for the Standards and Rulemaking Division involvement

3.11 PHMSA Field Operations Division Officer

The designated PHMSA Field Operations Division officer is responsible for:

- Performing responsibilities of the Fitness Coordinator as specified in Section 3.8
- Making recommendations for enhancements, denials, and determinations
- Providing denial letter justification language
- Managing and conducting investigations of Applicants and holders of existing Special Permits
- Coordination of modal on-site inspections.

3.12 Legal Counsel

The Legal Counsel is responsible for:

- Providing legal guidance for policy and processes that pertain to Special Permits and other dispositions as requested by the Project Officer;
- Reviewing and concurring with *Show Cause Letters* prior to issuance;
- Reviewing and providing input on recommendations for applicant denial, including denial letter justification language;
- Reviewing evaluation plan as applicable and as requested by the Project Officer; and
- Reviewing evaluation plan as applicable and as requested by the Project Officer

3.13 OA Coordinating Official

An Operating Administration (OA) Coordinating Official is designated by the Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), and the United States Coast Guard (USCG) as the point of contact for each agency's review of Special Permit applications. Coordination with the OA Coordinating Official is

determined and conducted in accordance with the *Operational Workflow Document: Special Permits & Approvals Governance Framework*. If the type of Special Permit being addressed requires coordination, the OA Coordinating Official is responsible for:

- Performing responsibilities of the Fitness Coordinator as specified in Section 3.8
- Reviewing Special Permit applications and technical safety evaluations
- Completing technical safety evaluations of Special Permit applications as applicable, which could include:
 - Conducting technical safety evaluations¹
 - Drafting Special Permits
- Providing concurrence, comments, information, and acknowledgments, as appropriate, to PHMSA in accordance with established coordination schedules and milestones
- Reviewing and providing input on recommendations for applicant denial, including denial letter justification language
- Providing input to draft evaluation plans as applicable

3.14 Safety Review Board

The Safety Review Board (SRB) is designated by PHMSA to resolve disputes of professional opinion when such disputes cannot be resolved internally among office and/or program staff and management. The SRB is comprised of the chair,² legal officer,³ board members,⁴ and senior policy advisor. The board conducts several functions including:

- Resolving issues stemming from differences in professional judgment between or among PHMSA staff members on safety matters, decisions, or actions
- Resolving issues referred to it by any PHMSA employee (but only after internal processes for achieving consensus have been exhausted)
- Referring an issue (at its discretion) to the Deputy Administrator and Administrator for resolution or to the Associate Administrator for consideration of an issue or implementation of an action

3.15 Independent Test Lab

The Independent Test Lab is designated by PHMSA to verify test data conducted by a certification agency Special Permit applicant during an on-site inspection. The independent test lab is responsible for:

- Receiving test data from PHMSA or from the Special Permit applicant
- Conducting requested tests
- Providing PHMSA with data findings

¹ This responsibility is only completed independently by FRA.

² The Chief Safety Officer or other senior executive designated in writing by the Chief Safety Officer.

³ The PHMSA Chief Counsel or other senior attorney designated in writing by the PHMSA Chief Counsel.

⁴ The Associate Administrator (or a designee) for Pipeline Safety. (The Associate Administrator for the program in which the concern has been raised shall not serve on the SRB). In their place, the Administrator will appoint an individual with subject matter expertise.

3.16 Special Permit Holder or Applicant

The Special Permit Holder or Applicant is a person, company or entity requesting a Special Permit or renewal to be issued by PHMSA. The Special Permit holder or applicant is responsible for:

- Submitting a complete application for a Special Permit as required under the HMR. Applications that do not meet these requirements may be rejected
- Providing PHMSA with additional information or data if necessary
- Allowing PHMSA to conduct on-site inspections if necessary
- Initiating a reconsideration or appeal if necessary
- Complying with the requirements of a Special Permit if issued
- Providing PHMSA any necessary updated information.

Section 4. Application Review Process

PHMSA evaluates all Special Permit applications using the three phases of the application review process. Every application received by PHMSA follows the same basic steps during the Completeness Phase, Disposition Phase, and Reconsideration/ Appeal Phase; however, the detailed processes followed during the Evaluation Phase vary based on the proposed Special Permit requested (see below). The following sections describe the three phases of the Application Review Process.

PHMSA processes four different types of Special Permit applications:

- Applications for new Special Permits in accordance with 49 CFR 107.105
- Applications for modifications of existing Special Permits in accordance with § 107.105
- Applications to renew existing Special Permits in accordance with § 107.109
- Applications for party status to existing Special Permits in accordance with § 107.107

4.1 Completeness Phase

4.1.1 Purpose

The purpose of the completeness phase is to determine whether:

- The applicant submitted the information required under the HMR for PHMSA to begin the evaluation of the proposed Special Permit, and
- The proposed Special Permit is required.

4.1.2 Process Overview

During the Completeness Phase, an applicant may use the online application system available on PHMSA's website, email, or provide a paper Special Permit application submittal by mail or fax. The Completeness Phase involves two basic processes: (1) conducting a completeness review; and (2) evaluating the necessity of an application.

4.1.2.1 Conduct Completeness Review

If an applicant emails, mails, uses the online application system or faxes an application to PHMSA, the application is in-processed and routed to a Project Officer based on the content of the application.

The Project Officer conducts an initial completeness review to ensure the information provided meets all of the application requirements in 49 CFR §§107.105, 107.107, or 107.109. If the application materials are incomplete, PHMSA notifies the applicant in writing that the application is incomplete. This notification may be in the form of a rejection letter.

If an Applicant requests emergency processing, then the Project Officer follows the Emergency Application Review Process outlined in Section 8 of this document.

4.1.2.2 Evaluate Necessity of Application

If an applicant submits a complete application, the Project Officer reviews the application to confirm that a Special Permit is necessary for the activity the applicant intends to perform. In the event a Special Permit is unnecessary, the Project Officer notifies the applicant in writing of this fact via a denial letter.

Once the Project Officer determines an application is complete and necessary, the applicable OAs, and applicable PHMSA offices are informed and the evaluation of the application begins.

4.2 Evaluation Phase

The Evaluation Phase varies according to the type of Special Permit application.

4.2.1 Purpose

The purpose of the Evaluation Phase is to determine whether an Applicant or registered user is qualified to hold and comply with the Special Permit and the application demonstrates that the Special Permit achieves a level of safety at least equal to that required by the HMR or if a required level of safety does not exist, is consistent with public interest.

4.2.2 Process Overview

After PHMSA determines that an application is complete, the agency evaluates the application to determine whether the Applicant is qualified to operate under the terms of the Special Permit for which they have applied. The evaluation process for Special Permits involves two basic processes: (1) the fitness profile evaluation; and (2) the technical safety evaluation. See Section 10 for a detailed description of the Evaluation Process.

4.2.2.1 *Fitness Profile Evaluation*

The purpose of the safety profile evaluation is to determine whether an applicant is fit to conduct the activity authorized by the proposed Special Permit, renewal, party status, or modification being requested. PHMSA conducts fitness profile evaluation for all Special Permit applications.

4.2.2.2 *Technical Safety Evaluation*

The application is assessed to see whether it provides an equivalent level-of-safety to that required by the regulations. The assessor – which may be the Project Officer or Technical Officer, depending on the nature of the application – reviews the application and any supporting documentation to make a determination. The assessor then documents the safety evaluation on the current form and uploads it to the application folder. If the assessor determines that the proposed Special Permit has met an equivalent level-of-safety as required by the HMR, PHMSA may grant the Special Permit. If the assessor determines that the proposed Special Permit has not met an equivalent level-of-safety as required by the HMR, PHMSA may deny the Special Permit. Once drafted, the Special Permit document or denial letter, and remaining application materials are sent to the Approving Official for review. At this point, the Disposition Phase begins.

If at any point in the Technical Safety Evaluation it is determined that additional information is required to complete the evaluation, an information request letter may be drafted and sent to the applicant. The letter documents the information needed and provides a date by which the additional information must be submitted. If the information is not submitted by the required date or if the applicant has not required an extension, the application may be denied.

If a technical safety evaluation for a Special Permit is on file and the Special Permit is determined to be equivalent to the regulations and documented with a safety evaluation form completed and signed, then an additional technical safety evaluation is not required for subsequent applications for renewal and party status to the Special Permit.

4.3 Disposition Phase

4.3.1 Purpose

The purpose of this phase, which is uniform across all Special Permit types, is to review the recommendation to deny or issue a Special Permit and inform the applicant of the decision reached by PHMSA.

4.3.2 Process Overview

After a recommendation is made by the Project Officer a Special Permit document and/or denial letter is sent to the Approving Official to review. The Approving Official makes a final determination regarding whether to grant, deny, or partially deny the Special Permit. This process is standard for all Special Permit types. The disposition phase for proposed Special Permits involves two basic processes: (1) review the Special Permit document and/or denial letter and (2) issue a final determination to the applicant. Note that applicants may petition for reconsideration (if the application for Special Permit is denied). It is the Project Officer's responsibility to ensure the application and all supporting documentation is ready for disposition prior to sending to the Approving Official.

4.3.2.1 Review Special Permit Document or Denial Letter

The Approving Official reviews all supporting application materials as well as the Special Permit document and/or denial letter to make a final decision on whether to grant, deny, or partially deny the Special Permit. The Approving Official will sign off on either the Special Permit document and/or denial letter. The signed document is then sent to the applicant and relevant PHMSA offices.

If the Approving Official determines the supporting application materials, fitness recommendation, fitness evaluation, Special Permit Document or Denial Letter, or other information does not support a final determination or if they contain errors the application is returned to the Project Officer.

Note: If the Special Permit is denied, the Approving Official may elect to send the denial letter and supporting justification to Legal Counsel for additional review. Legal Counsel may recommend that a denial is unnecessary, and if so will provide legal justification. If the Approving Official and Legal Counsel do not concur, a meeting can be requested between the Associate Administrator and the Chief Counsel to make the final decision to issue a Special Permit document and/or denial letter.

4.3.2.2 Issue Determination to Applicant

If the applicant is granted a Special Permit, PHMSA sends a Special Permit document to the applicant. If the applicant is denied or partially denied a Special Permit, PHMSA sends a denial letter to the applicant and gives the applicant the opportunity to submit a request for reconsideration and, if necessary, follow that request with a request for an appeal (Section 5 and Section 6, respectively).

4.4 Dispute Resolution

PHMSA's OHMS developed processes to resolve differences of professional judgment on hazardous materials safety issues (PHMSA Order 3770.1 "Safety Review Board").⁵

Dispute resolution begins with the Director of the office or program having differences of professional opinion. It is the responsibility of the Director to provide all sides with an equal opportunity to present their views in an open and fair environment. If consensus cannot be reached, it becomes the

⁵ Cynthia Quarterman, PHMSA Order 3770.1, Subject: Safety Review Board, April 5, 2010.

responsibility of the Associate Administrator (AA) and Deputy Associate Administrator (DAA), responsible for the program or office, to reach a resolution. If consensus still cannot be reached, the issue is elevated to PHMSA's Safety Review Board (SRB) for a final decision.

Section 5. General Correspondence Process

The General Correspondence Process can be initiated by external requests from Special Permit Holders or internal actions originating from technical findings and recommendations. The types of external requests include:

- Interpretation and clarification
- Revision
 - Non-technical modification
 - Special Permit Holder Information Change
- Other

Enforcement and compliance reviews, incident data, or technical findings may impact existing Special Permits and may result in the need for PHMSA to take action to issue a show cause letter proposing modification, suspension, or termination of a special permit.

5.1 Purpose

The purpose of the General Correspondence Process is to allow PHMSA to respond to inquiries in a documented and an organized manner. Additionally, PHMSA can communicate internally initiated action(s) with Special Permit Holders through the General Correspondence Process.

5.2 Procedural Overview

5.2.1 External Requests

External Requests are initiated by Special Permit Holders and Applicants. When an external request is received, the Project Officer conducts an initial review and determines whether it is an interpretation, clarification, revision, reconsideration, appeal, or other request.

5.2.1.1 Review and Coordination Phase

After determining the type of external request, the Project Officer creates a folder in HMIS or other future application process technology and populates the appropriate information. The Project Officer then reviews the request and determines whether it needs to be reviewed by any of the OA Coordinating Officials or other offices within PHMSA. If a coordinated review is needed, the Project Officer is responsible for communicating with the relevant contacts and incorporating feedback provided in order to inform what actions should be initiated.

5.2.1.2 Action Determination Phase

Once the request has been reviewed, the Project Officer determines the most effective means to respond. In most cases, a *General Correspondence Letter* is drafted to the Applicant. This letter is intended to address the inquiries presented in the initial request. In the case of requests for revisions to a Special Permit, if a revision is determined necessary, a letter is sent to the original requester as well as all other entities that hold the same Special Permit.

5.2.1.3 Disposition Phase

The Approving Official is responsible for reviewing all general correspondence documentation intended for distribution. The Approving Official will coordinate with the Administrator on general

correspondence regarding significant issues, as determined by the Administrator. After reviewing the documents, the Approving Official or Administrator must sign the *General Correspondence Letters* before they are sent to the Applicant and other relevant entities.

5.2.2 Internal Requests

Internal actions are typically generated from findings that impact current special permits and require and communication with Special Permit Holders and possible follow-up actions. PHMSA monitors information such as enforcement inspections and investigations, technical advancements, and accident data that may result in findings that require action to ensure safety and compliance with special permits. These recommendations can initiate the need for a *Show Cause Letter* or *Termination Letter* proposing modification, suspension, or termination of a Special Permit (*Show Cause Letter*).

5.2.2.1 Review and Coordination Phase

The Project Officer creates a folder in HMIS and populates the appropriate information for the *Show Cause Letter*. The Project Officer then requests a justification for the restrictions from the person who initiated the recommended action (e.g., Technical Officer, Enforcement Liaison, OA Coordination Official). The Project Officer coordinates a review with the Legal Counsel as the process involves possible modification or termination of potential property rights. No *Show Cause Letter* may proceed without concurrence from Legal Counsel. After the justification is completed, the Project Officer drafts the *Show Cause Letter* or *Termination Letter* and sends it to the relevant Special Permit holders.

5.2.2.2 Action and Determination Phase

Special Permit Holders generally have 30 days from receipt of a *Show Cause Letter* or *Termination Letter* to respond. If the Special Permit Holder fails to respond during the specified timeframe, the action outlined in the *Show Cause* or *Termination Letter* is recommended by the Project Officer and sent for review by the Approving Official. If the Applicant responds within the specified timeframe, the Technical Officer determines whether the initial action outlined in the *Show Cause Letter* or *Termination Letter* should be executed or suspended upon the review and advice of the Legal Counsel. No *Show Cause Letter* or *Termination Letter* may proceed without concurrence from Legal Counsel. If a recommendation for action is made, the Approving Official is responsible for reviewing the recommendation prior to the execution of the action.

5.2.2.3 Disposition Phase

The Approving Official is responsible for conducting a review of the *Show Cause Letter*, and the Special Permit Holder response (if applicable). The Approving Official will coordinate with the Administrator on general correspondence on significant issues, as determined by the Administrator, and the final action recommended. After reviewing the relevant information, the Approving Official or the Administrator must sign the *General Correspondence Letters* before the final action is executed.

After a *Show Cause Letter* is issued and a decision is rendered, the affected entity may make a request for reconsideration. A legal review of the reconsideration is required, and the Approving Official is responsible for issuing a decision. That decision on reconsideration may be appealed. For appeals, the agency's total file is provided to the Adjudication Counsel in the Office of Chief Counsel. The Adjudication Counsel reviews the file and the decisions, and advises the Approving Official on the final agency order – including the drafting of the official Final Order on Appeal.

Section 6. Reconsideration Process

6.1 Purpose

The purpose of the Reconsideration Process is to allow a person the opportunity to provide new information and request that PHMSA reconsider its decision to modify, deny, suspend, or terminate an application or existing Special Permit.

6.2 Process Overview

A person may petition for reconsideration if an application is denied or a special permit is modified, suspended, or terminated. If a person chooses to submit a request for reconsideration, OHMS's Associate Administrator or delegate will reevaluate the application or special permit, taking into consideration the new information provided. Petitions for reconsideration are handled through the General Correspondence Process. As outlined in 49 CFR § 107.123, a request for reconsideration must:

- Be in writing or by electronic means and filed within 20 days of receipt of the decision;
- State in detail any alleged errors of fact and law;
- Enclose any additional information needed to support the request to reconsider; and
- State in detail the modification of the final decision sought.

The Reconsideration Process involves two basic procedures: (1) Completeness Review and (2) Evaluation. Once a reconsideration decision has been made, the Project Officer follows the procedures outlined in the Disposition Phase of the Application Review Process in Section 4.3.

6.2.1 Completeness Review

Upon receipt of the petition for reconsideration, the Project Officer reviews the petition to determine whether the reconsideration materials are complete. If the petition for reconsideration includes all information specified by 49 CFR § 107.123, then the Project Officer determines whether technical evaluation is needed.

6.2.2 Evaluation

If satisfactory, the petition is evaluated by a Project Officer or Senior Technical Officer, if the petition for reconsideration is technical. Requests for reconsideration must be reviewed by Legal Counsel. Once a decision is made, the responsible party drafts a justification that recommends issuing a *Special Permit Document* or *Denial Letter*. After PHMSA completes its evaluation, the Project Officer determines whether the petition for reconsideration needs to be reviewed by any of the OA Coordinating Officials. If a coordinated review is needed, the Project Officer communicates with the relevant contacts and handles receipt of concurrence documents. If PHMSA and the relevant OA do not agree, the Approving Official is responsible for resolving the dispute. Once concurrence is reached, the *Special Permit Document* or *Denial Letter* and associated petition materials are sent to the Legal Counsel for review. Following legal review, the materials are sent to the Approving Official for review. Refer to the Disposition Phase of the Application Review Process (Section 4.3) for the Approving Official's final decision.

Section 7. Special Permit Appeal Process

7.1 Purpose

The appeals process allows a person whose request for reconsideration was denied the opportunity for review of the Associate Administrator's decision before the PHMSA Administrator.

7.2 Process Overview

A person may submit an appeal in response to a denial of an application or the modification, suspension, or termination of a special permit following a request for reconsideration. If an appeal is made, PHMSA's Administrator, or delegate, will reevaluate the application or special permit taking into consideration the new information provided. As outlined in 49 CFR § 107.125, the appeal must:

- Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;
- State in detail any alleged errors of fact and law;
- Enclose any additional information needed to support the appeal; and
- State in detail the modification of the final decision sought.

The appeal process involves two basic processes: (1) Completeness Review; and (2) Evaluation. Once an appeal decision has been made, the Project Officer follows the process outlined in the Disposition Phase of the Application Review Process in Section 4.3.

7.2.1 Completeness Review

Upon receipt of the request for appeal, the Administrator, or delegate, reviews the request to determine whether the appeal materials are complete. This review assesses whether the appeal meets all of the criteria required by 49 CFR § 107.125.

7.2.2 Evaluation

If complete, the appeal is evaluated by the Administrator or delegate. In most cases, the Adjudication Counsel in the Office of Chief Counsel will act as the Administrator's delegate. The Adjudication Counsel reviews the file and the decisions, and advises the Approving Official on the final agency order – including the drafting of the official Final Order on Appeal. Upon review, the reviewer may require additional information. If such information is necessary, OHMS staff will review the request and provide all necessary information at the request of the Administrator or delegate. Once all documents are reviewed, the responsible party decides whether to approve or deny the request for appeal and drafts a justification for issuing a *Special Permit Document* or *Denial Letter*. Refer to the Disposition Phase of the Application Review Process in Section 4.3 for closing steps.

Section 8. Emergency Application Review Process

Emergency processing may be requested for new Special Permit applications and applications to modify an existing Special Permit. Applicants must clearly justify why emergency processing is necessary and demonstrate that an equivalent level of safety is met.

8.1 Purpose

The purpose of establishing a process for emergency processing of certain Special Permit applications is to provide an efficient and thorough approach for evaluating applications that have an immediate and justifiable need for expedited review. Due to the time sensitive nature of many emergency applications, information is communicated among relevant PHMSA and OA Coordinating Officials, as well as the Applicant, by the most rapid means available.

8.2 Procedural Overview

8.2.1 Emergency Processing Justification Review

After PHMSA receives an application requesting emergency processing, the Project Officer sends the application to the affected OAs for simultaneous review to determine whether emergency processing is warranted. This determination is made based on the information provided in the application and through communication with the Applicant. In accordance with § 107.117 of the HMR, emergency processing may be initiated if the following criteria are met:

- Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis; or
- Emergency processing is necessary for immediate national security purposes or to prevent significant economic loss that could not be prevented if the application were processed on a routine basis.⁶

If timely submission of an application could have been made, PHMSA may deny the request for emergency processing despite significant economic loss. Additionally, requests for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.⁷

If the Project Officer finds that emergency processing is not warranted for the application, then the Approving Official is responsible for reviewing the Project Officer's explanation and communicating this decision to the Applicant. The decision to deny a request for emergency processing is not subject to reconsideration. However, applications that are denied emergency processing will be evaluated following the standard process.

8.2.2 Concurrent Safety Profile and Technical Evaluations

The steps included in the Safety Profile Evaluation for emergency processing are consistent with the standard processes described in Section 11.2 of this document. However, when emergency processing is required, the Safety Profile Evaluation may proceed concurrently with the Technical Evaluation. Please

⁶ HMR: § 107.117

⁷ HMR: § 107.117

reference the Safety Profile Review process in Section 11, which provides a detailed description of the key steps involved in this effort.

8.2.3 Review Application for Equivalent Level of Safety

If the application is granted emergency processing, the Project Offer determines the evaluation needs of the application. Depending on the content of the application, the Project Officer may need to coordinate with the Technical Officer or the relevant OA Coordinating Officials to evaluate whether the application demonstrates an equivalent level of safety to what is outlined in the HMR. If necessary, recommendations are made for additional provisions to be included in the special permit as a result of the evaluation.

If, after evaluation, the assessor determines that the application fails to demonstrate an equivalent level of safety, the assessor recommends that the application be denied and drafts a justification for a Denial Letter. The Approving Official is responsible for reviewing the application and the recommendation to either grant or deny a special permit. The Approving Official will coordinate with the Administrator for review and approval of emergency special permit applications, as determined by the Administrator. After making a determination, the Approving Official or the Administrator communicates the decision to the Applicant. If a special permit is granted through an emergency application, PHMSA is responsible for publishing a notice of issuance in the Federal Register within 90 days of granting the special permit.

Section 9. Special Permit Renewal Process

9.1 Purpose

The purpose of the Special Permit renewal process is to renew existing Special Permits in accordance with the requirements of the HMR and the SOPs in Part 107, Appendix A. The following sections provide an overview of the Special Permit renewal process.

9.2 Process Overview

Special Permit holders may request a renewal of their Special Permit from the Approving Official. If the applicant submits an application for renewal at least 60 days before the Special Permit expires, the Special Permit will not expire until final administrative action on the application for renewal has been taken.

Once PHMSA receives a renewal application, the Project Officer follows the process outlined in the Completeness Phase of the Application Review Process in Section 4.1. The agency then conducts a brief evaluation of the renewal application that involves two basic processes: (1) an determination as to whether a complete evaluation of the application can be conducted prior to the special permit expiration date; and (2) a decision on whether to issue an extension of the special permit if there is insufficient time to conduct a full evaluation. Once a decision has been made, the Project Officer follows the process outlined in the Evaluation and Disposition Phase of the Application Review Process in Section 4.

9.2.1 Completeness Phase

Upon receipt of the renewal application, the Project Officer evaluates application completeness using the process outlined in the Completeness Phase in Section 4.1.

9.2.2 Evaluation Phase

Once the completeness phase is finished the application undergoes a fitness profile evaluation, and technical safety evaluation as outlined in the Evaluation Phase of the Application Review Process in Section 4.2. If there is an existing technical safety evaluation on file that is sufficient and complete in its evaluation of the Special Permit's safety equivalency to HMR, only a fitness profile evaluation is necessary for the completion of the Evaluation Phase of the Application Review Process in Section 4.2. It is the Project Officer's responsibility to ensure the application and all supporting documentation is ready for disposition prior to sending to the Approving Official.

If the Applicant indicates that operations under the Special Permit continued after the expiration date, then the Project Officer notifies the Enforcement Liaison, who initiates an investigation of the Applicant and communicates the results to the Project Officer. The Project Officer at this point may utilize the General Correspondence Process to issue a *Show Cause Letter* or *Termination Letter* following concurrence from legal counsel.

9.2.3 Disposition Phase

Once the evaluation is complete, the Project Officer recommends whether to grant a renewal or issue a denial and drafts either a *Special Permit Document* or *Denial Letter*. Once drafted, the *Special Permit Document* or *Denial Letter* and remaining application materials are sent to the Approving Official for review. At this point the Disposition Phase of the Application Review Process (Section 4.3) begins.

Section 10. Agency-Initiated Special Permit Modification, Suspension, or Termination Process

The purpose of the Agency Initiated Special Permit Modification, Suspension, or Termination Process is to provide a standard process for PHMSA to take action to modify, suspend, or terminate a Special Permit or a grant of party status.

10.1 Procedural Overview

It is the responsibility of the Approving Official to monitor Special Permit Holders' adherence to the reporting requirements associated with their special permits. Depending on the nature of the special permit, certain Special Permit Holders must report to PHMSA at regular intervals with data relating to activities conducted under the authority of their special permit. Reporting requirements vary across the different types of special permits PHMSA issues. The Approving Official may modify, suspend, or terminate a special permit or a grant of party status if the Special Permit Holder does not comply with its reporting requirements.

10.2 Process Overview

The Approving Official may modify, suspend, or terminate a special permit or a grant of party status under the authority of 49 CFR § 107.121 for an array of reasons, including:

- The special permit is no longer needed or no longer would be granted if applied for because of a change in circumstances;
- The original application contained inaccurate or incomplete information, and the special permit would not have been granted had the application been accurate and complete;
- The original application contained deliberately inaccurate or incomplete information; or
- The Special Permit Holder knowingly has violated the terms of the special permit or an applicable requirement of this HMR in a manner demonstrating lack of fitness to conduct the activity for which the special permit is required.

The Approving Official may also modify a special permit or grant of party status on finding that:

- Modification is necessary so that the special permit reflects current statutes and regulations; or
- Modification is required by changed circumstances to meet the standards of 49 CFR § 107.113(f).

The modification, suspension, or termination of a special permit or a grant of party status is initiated by the Approving Official through a review of the reasons for modifying, suspending, or terminating the special permit or a grant of party status. At the conclusion of this review, the Approving Official either: (1) modifies, suspends or terminates the special permit or the grant of party status immediately upon a finding that doing so is necessary to avoid a risk of significant harm to persons or property as contemplated by 49 CFR § 107.121(d); or (2) issues a *Show Cause Letter* to the applicant as contemplated in Section 5.

10.2.1 Immediate Action to Avoid Risk to Persons or Property

If the Approving Official determines that modification, suspension, or termination is necessary to avoid a risk of significant harm to persons or property, the Approving Official may, in the notification, declare the proposed action immediately effective.

10.2.2 Issue Show Cause Letter

The Approving Official must notify the Special Permit Holder of their intent to modify, suspend, or terminate the special permit or the grant of party status and provide an opportunity for the Special Permit Holder to show cause why the special permit or party status should remain valid. No *Show Cause Letter* may proceed without concurrence from Legal Counsel. After considering the holder's or party's response, or after 30 days have passed without response since receipt of the notice, the Approving Official notifies the holder or party in writing or by electronic means of the final decision with a brief statement of reasons.

Section 11. Evaluation Process

11.1 Technical Safety Evaluation

Under 49 CFR § 107.105(d), each application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest.

Depending on the nature of the application, the Engineering and Research Division or the Approvals and Permits Division evaluates the application to determine whether the application complies with 49 CFR § 107.105(d).

11.2 Safety Profile Evaluation

In accordance with 49 CFR § 107.113(f), PHMSA may only grant a special permit on finding that an Applicant is fit to conduct the activity authorized by the special permit, renewal, party status, or modification of a special permit. See also the definitions of “applicant fitness” and “fit or fitness” in § 107.1. PHMSA may determine an Applicant’s fitness through the information provided in the application, the Applicant’s prior compliance history, or other information that is available to the Associate Administrator or an OA.

PHMSA currently evaluates an Applicant’s fitness through a three-tiered Safety Profile Evaluation. The following sections provide an overview of the three tiered review process.

11.2.1 Automated Review

11.2.1.1 Purpose

The purpose of the safety profile review process is to assess Applicants who were determined, during the automated review process, as meeting any of the criteria listed under the automated review in Appendix A to Part 107, paragraph 3(b)(i). All applicants whose safety profile evaluations are subject to coordination with an OA are also subject to assessment.

11.2.1.2 Process Overview

Once PHMSA completes the automated review process and determines that additional review of the Applicant is needed, the Project Officer sends a fitness referral to a fitness coordinator (see the Operational Workflow Document for applicability of an OA acting as a fitness coordinator during this review). In a safety profile evaluation, a fitness coordinator performs an in-depth evaluation of the applicant based upon the applicant’s four-year performance and compliance history prior to the submission of the application. Information considered during this review may include the applicant’s history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an existing special permit or the HMR. The fitness coordinator may request additional information from the Applicant in order to make the determination. If two or more modes of transportation are contemplated by the application, PHMSA performs the review or coordinates with the OA(s). If only one mode of transportation is contemplated by the application, the applicable OA performs the review. After reviewing all the requested information, a fitness coordinator recommends that the Applicant is either fit or requires an

on-site fitness inspection. The fitness coordinator will forward the request and supporting documentation to PHMSA's Field Operations Division, or a representative of the Department, such as an authorized OA Coordinating Official to perform an on-site inspection.

11.2.2 Fitness Profile Evaluation

11.2.2.1 Purpose

The purpose of the fitness profile review process is to assess Applicants who were determined, during the automated review process, as meeting any of the criteria listed under the automated review in Appendix A to Part 107, paragraph 3(b)(i), and all applicants whose fitness profile evaluations are subject to coordination with an OA.

11.2.2.2 Process Overview

Once PHMSA completes the automated review process and determines that additional review of the Applicant is needed, the Project Officer sends a fitness referral to a fitness coordinator (see the Operational Workflow Document for applicability of an OA acting as a fitness coordinator during this review). In a fitness profile evaluation, a fitness coordinator performs an in-depth evaluation of the applicant based upon items the automated review triggered concerning the applicant's four-year performance and compliance history prior to the submission of the application. Information considered during this review may include the applicant's history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an application for an existing Special Permit or the HMR. The fitness coordinator may request additional information from the Applicant in order to make the determination. PHMSA performs the review or coordinates with the OA(s), if necessary, if two or more modes of transportation are requested in the application, and coordinates this review with the OA(s) of the applicable modes. The applicable OA performs the review if one mode of transportation is requested in the application. After reviewing all the requested information, a fitness coordinator recommends that the Applicant is either fit or requires an on-site fitness inspection. The fitness coordinator will forward the request and supporting documentation to PHMSA's Field Operations Division, or a representative of the Department, such as an authorized OA representative to perform an on-site inspection.

11.2.3 On-site Inspection

11.2.3.1 Purpose

The purpose of the on-site inspection process is to conduct an on-site fitness inspection of Applicants who were determined, during the fitness profile evaluation, to be in need of further review. During the on-site inspection process, Applicants will either be determined fit or unfit to hold a Special Permit.

11.2.3.2 Process Overview

If a recommendation for fitness is not made during the safety profile review process, PHMSA's Field Operations Division or representative of the Department, such as an OA Coordinating Official conducts an on-site fitness inspection on the Applicant at the recommendation of the fitness coordinator if one of the criteria in the Appendix A to Part 107, paragraph 3(b)(iii)(A) applies or if review is required by the OA's procedures. If, during an inspection, the PHMSA investigator or a representative of the Department finds evidence in the four years prior to submitting its application that an applicant has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing

special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested in an application or authorized special permit or approval.

Section 12. Post-Issuance Responsibilities

PHMSA is responsible for managing and providing oversight of Special Permits that it has granted to persons, companies or entities operating in the hazardous materials transportation industry. Management and oversight responsibilities fall into two broad categories:

1. Reporting
2. Modification, Suspension, or Termination of a Special Permit or a Grant of Party Status.

12.1 Reporting

It is the responsibility of the Approving Official to ensure that Special Permit Holders adhere to the reporting requirements associated with their Special Permits. Depending on the nature of the Special Permits, certain Special Permit Holders must report to PHMSA at regular intervals with data relating to activities conducted under the authority of their Special Permit. Reporting requirements vary across the different types of Special Permits PHMSA issues. The Approving Official may modify, suspend, or terminate a Special Permit if the Special Permit Holder does not comply with its reporting requirements.

12.2 Modification, Suspension, and Termination of Special Permits

It is also the responsibility of the Approving Official to monitor approved persons, companies or entities to ensure that they adhere to the terms of their Special Permits.

The Approving Official may modify a Special Permit on finding that:

- Modification is necessary to conform an existing Special Permit to relevant statutes and regulations as they may be amended from time to time; or
- Modification is required by changed circumstances to enable the Special Permit to continue to meet the standards of 49 CFR 107.105(d).

The Approving Official may also modify, suspend or terminate a Special Permit, as appropriate, on finding that:

- Because of a change in circumstances, the Special Permit no longer is needed or no longer would be granted if applied for;
- The application contained inaccurate or incomplete information, and the Special Permit would not have been granted had the application been accurate and complete;
- The application contained deliberately inaccurate or incomplete information; or
- The holder knowingly has violated the terms of the Special Permit or an applicable requirement of this chapter in a manner demonstrating lack of fitness to conduct the activity for which the Special Permit is required.

Before a special permit is modified, suspended or terminated, the Approving Official must issue a Show Cause Letter, which notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken. No *Show Cause Letter* may proceed without concurrence from Legal Counsel. The Associate Administrator may, in the notification, declare the proposed action immediately effective if doing so is necessary to avoid a risk of significant harm to persons or property.

Section 13. Forms and Documents

All forms and documents utilized to review Special Permits should be standardized. Paper forms will be replaced with automated forms where possible and advantageous to PHMSA. The purpose of standardization is to provide clear and consistent information and instructions to Applicants and staff so that the agency will receive and maintain high-quality information in its records.

The following are the types of forms and documents used and issued by PHMSA during the Special Permit process.

13.1 Application Completeness Review Form

The Application Completeness Form is prepared and maintained by the Approvals and Permit Division. Approvals and Permits Division staff use the form to determine whether information provided by the Applicant is satisfactory to evaluate. Among other information, this form contains:

- Applicant name, address and other identifying information;
- Regulatory code for which Special Permit is being requested; and
- A checklist of items the Applicant must provide for a complete application.

13.2 Fitness Report

The Fitness Evaluation Form is prepared electronically by the HIP system and maintained by the Approvals and Permits Division. The form is used by Approvals and Permits Division staff in completing the Automated Review within the Fitness Profile Evaluation (refer to 4.2.2.1). Among other information, this form contains:

- Data that indicate whether, within the four years prior to submitting its application there were two or more triggers for a safety profile review or five or more triggers for an on-site inspection enforcement case referral. The trigger events are described in Appendix A to Part 107, paragraph 3(b)(i)(1)
- Data that indicate the SMS or SAFER rating and out-of-service percentage, if applicable.

13.3 Fitness Evaluation Form

The Fitness Evaluation form is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff uses the form to document the findings of the automated review portion of the fitness profile evaluation, and any shipping history and incident information that is provided by the Applicant.

13.4 Safety Evaluation Form

The Application Safety Evaluation Form is maintained by the Engineering and Research Division. Engineering and Research Division staff uses the form to evaluate the technical merits of an application received by PHMSA. Among other information, the form contains:

- Applicant name, address and other identifying information;
- Hazardous materials covered in the application;
- Packaging information;

- Safety assessment; and
- Recommendation to grant, deny, or partially deny the application.

This form will be completed, signed, and uploaded to the application folder for every new Special Permit and any renewal that does not already have a technical safety evaluation in a previous folder.

13.5 Field Operations Division Fitness Memo or OA Recommendation

The Fitness Memorandum or OA Recommendation is memorandum that is prepared and maintained by the Field Operations Division or the OA. The memorandum is used by Field Operations Division or OA staff to communicate the results of a fitness profile evaluation or an on-site review to the Approvals and Permits Division.

Among other data, the memorandum contains:

- Background information on the Special Permits or approvals held by the person, company or entity undergoing the fitness profile evaluation or on-site inspection;
- Profile of the person or company undergoing the fitness profile evaluation or on-site inspection;
- Information that resulted in the initiation of the fitness profile evaluation or on-site inspection;
- Field Operations Division or OA’s review of the information that resulted in the fitness profile evaluation or on-site inspection;
- Field Operations Division or OA’s assessment; and
- Field Operations Division or OA’s recommendation.

13.6 Special Permit Document

The Special Permit Document is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff use the document to respond positively to a request for Special Permit or renewal. Among other information, the document contains:

- Name of Special Permit Holder;
- Regulatory authority under which the Special Permit is issued;
- Conditions and special provisions attached to the Special Permit;
- Signature of the Approving Official; and
- Certain Special Permits will contain more specific information.

13.7 Untimely Filed Letter

The Untimely Filed Letter is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff use the letter to inform a Special Permit Holder that it has failed to apply for renewal within 60 days of expiration. The letter informs the Special Permit Holder that once expiration is reached, the special permit is no longer valid and operations can no longer be conducted under the special permit.

13.8 Timely Filed Letter

The Timely Filed Letter is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff use the letter to inform a Special Permit Holder who has applied for renewal

within 60 days of expiration. The letter informs the Special Permit Holder that once expiration is reached, the Special Permit is still valid and operations can be conducted under the Special Permit until PHMSA has made their decision to approve or deny the Special Permit Holder's renewal application.

13.9 Information Request Letter

The Information Request Letter is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff use the letter to request additional information from Special Permit Applicants.

Among other information, the letter contains:

- Date and brief description of the Special Permit request from the Applicant;
- Information requested by PHMSA
- How to provide the requested information
- The amount of time the Special Permit Applicant has to respond to the letter before their application may be denied; and
- Signature of the Approving Official.

13.10 Show Cause Letter

The *Show Cause Letter* is prepared by the Approvals and Permits Division, in coordination with the Office of Chief Counsel. Approvals and Permits Division staff use the letter to inform a Special Permit Holder that PHMSA is proposing modification, suspension, or termination of the holder's special permit. Among other information, the letter contains:

- Reasons why PHMSA proposes to terminate, suspend, or modify the Special Permit;
- How to provide a response to the letter;
- The amount of time the Special Permit Holder has to respond to the letter before PHMSA can take its proposed action; and
- Signature of the Approving Official.

13.11 Rejection Letter

The Rejection Letter is a standard letter prepared and maintained by the Approvals and Permits Division. A Rejection Letter is sent early in the application process when an application is incomplete. Approvals and Permits Division staff use the letter to inform Applicants and/or Special Permit Holders that their application has been rejected. Among other data, the standard letter contains:

- Date and brief description of the Special Permit request from the Applicant;
- Reasons why PHMSA rejected the application; and
- Signature of the Approving Official.

13.12 Denial Letter

The Denial Letter is prepared and maintained by the Approvals and Permits Division. Approvals and Permits Division staff use the letter to inform Applicants and/or Special Permit Holders that their

application for Special Permit, renewal, party status, modification, reconsideration request, or appeal has been denied. Among other information, the denial letter contains:

- Date and brief description of the Special Permit request;
- Reasons for denial of the request;
- If applicable, the process and amount of time to apply for reconsideration or appeal of PHMSA's decision to modify, terminate, or suspend the Special Permit; and
- Signature of the Approving Official.

13.13 Inspection Form

The Inspection Form is a form prepared and maintained by the Field Operations Division. It is used to conduct on-site inspections.

13.14 Inspection Notification Letter

The Inspection Notification Letter is a form prepared and maintained by the Field Operations Division. This form is used to provide international and certain domestic Applicants with the details surrounding an impending on-site facility inspection. Among other information, the standard letter contains:

- Date, time, and location(s) of the on-site facility inspection(s);
- Procedures, equipment and documents to be inspected during the on-site facility inspection;
- Methods for reimbursing PHMSA allowable expenses; and
- Signature.

13.15 Inspection Report

The Inspection Report is a standard form prepared and maintained by the Field Operations Division and developed in coordination with the Engineering and Research Division, and the Approvals and Permits Division to document the results of an inspection.