WRITTEN STATEMENT

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BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Chairman Oberstar, Ranking Member Mica and distinguished Members of the Committee, on behalf of the Secretary of Transportation Ray LaHood, I appreciate the opportunity to discuss the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Special Permits and Approvals Program.

I have been briefed by your staff on a number of serious deficiencies in and concerns with the PHMSA's hazardous materials program, including its special permits program. I have also been briefed by the Department's Office of the Inspector General (OIG) regarding the hazmat special permits program and an Advisory the OIG issued on special permits for explosives mixing trucks. And, I have been briefed on a 2008 internal review of PHMSA's safety culture—regarding perceptions of the PHMSA employees as to the agency's safety commitment. Mr. Chairman, Members of the Committee, I share your concern that the agency is off track on its primary mission—safety.

Let me be clear—the Secretary and I regard transportation safety as the Department's primary mission and we are taking action to get PHMSA back on mission. I would like to report on actions we have taken to begin this process and to address immediate concerns.

Special Permits Program for Hazardous Materials Transportation

First, the Department has a detailed Action Plan to address the safety concerns raised by the Inspector General about PHMSA's Special Permits and Approvals Program. A copy of this Action Plan is attached to the testimony. Before I discuss that I would like to briefly describe the importance of the special permits program to our overall regulatory program.

DOT issues special permits under authority provided in the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Special permits allow the industry to quickly adopt and utilize new technologies and new ways of doing business that may not be accommodated in the regulations. DOT also issues special permits on an emergency basis to facilitate emergency transportation, such as to authorize the transportation of supplies to areas affected by natural or man-made disasters. By law, special permits must provide "a level of safety equivalent to" that required by the regulations, or a finding that it is consistent with the public interest and federal hazardous materials law if a required safety level does not exist. Every year, DOT issues approximately 120 new special permit applications, authorizes approximately 100 modifications to existing special permits, and issues approximately 1,100 renewals. New special permits may be authorized for up to two years, at which time they may be renewed for a period of up to four years.

Obviously, this is an important part of the program. We recognize there are deficiencies and we are addressing these deficiencies with a detailed Action Plan that I

have submitted for the Committee's consideration. Briefly, we are requiring PHMSA to take the following actions:

- Conduct a comprehensive, top-to-bottom review of current written special permit policies, procedures, and practices to ensure safety goals are met;

- Review the criteria, policy and procedures used to make the legally required "equivalent level of safety" determinations and revise those procedures where necessary;

- Develop enhanced written procedures to provide for better coordination for the issuance of special permits with FMCSA, FAA, FRA, and the Coast Guard;

- Clarify PHMSA policy to assure that trade associations are not holders of special permits;

- By February, the Pipeline and Hazardous Materials Safety Administration will have a business plan in place to create a centralized data analysis office to improve the data quality and the IT systems currently in place. This new technology will greatly enhance the productivity, accountability, and the overall safety performance responsibilities of the Hazardous Materials Office of Special Permits. The new system will include an online application that will not be processed until completed, a mechanism for alerting holders of special permits 90

days in advance of the expiration of the permit and a notification system to communicate safety concerns.

OIG Management Advisory on Special Permits for Explosives mixing trucks

An additional part of the Action Plan was developed to address the concerns raised in the OIG Advisory related to Explosives Mixing Trucks as follows:

- Issue a notice of a proposed modification of the special permits for explosives mixing trucks to provide for additional safety conditions including vehicle inspection and maintenance, enhanced driver training, incident reporting and investigation, fire prevention and emergency response plans. It also notifies special permit holders of the intent to evaluate each holder's fitness to operate these trucks. Stakeholder responses are due in mid September.
- Conduct fitness reviews of current special permit holders to assure compliance with the permit terms and a review of expired permits.
- Contract for an independent risk assessment of explosives mixing trucks in transportation;
- Review documentation, including safety assessments and analyses, to ensure that documentation supports the issuance of a special permit.
- Rescind any special permit authorized for a holder who is considered unfit to safely transport these materials.

Our Action Plans will evolve and change as we continue to solicit feedback and advice on how the Department can improve the safety of PHMSA programs.

House Committee on Transportation and Infrastructure Review

I was briefed late last week by your staff on the findings of your Committee's investigation of PHMSA programs. You identified concerns with the special permits programs including, among other concerns, (1) lack of written processes, (2) lack of fitness reviews and (3) lack of adequate coordination with FAA and with FMCSA. In addition, the staff was greatly concerned, as are the Secretary and I, that our data analysis capability is totally inadequate to assure that the hazmat program is data driven and able to focus resources on the greatest hazards. The concern extends to the safety culture of the organization. I want to assure the Committee that we will work with you to address the important issues you have so diligently raised.

Data Analysis

The development of a data analysis program will require significant resources and professional staffing. It will not occur overnight but I can assure the Committee that we will make this a priority in our planning and in our budget. I have asked PHMSA to develop within 90 days an Action Plan, addressing both business and budgetary needs, for creating a new Information Management Office (IMO). The IMO will likely centralize and standardize the data and information technology services across PHMSA. Such an approach has the advantage of improving data quality and integrity,

strengthening the linkage of program objectives to performance measures, providing vital safety decision support, and improving the performance and delivery of its IT systems.

Lithium Battery Regulation

The Committee has also expressed interest in PHMSA and FAA's progress drafting a Notice of Proposed Rulemaking (NPRM) on lithium batteries transported via air cargo. We have made significant progress. PHMSA has drafted, in coordination with the FAA, an NPRM, and it is undergoing review.

Lithium batteries are found in products ranging from cell phones and laptop computers to hybrid automobiles and lifesaving medical equipment. Lithium batteries have evolved with advances in technology, so PHMSA has necessarily addressed its regulation of their transport three times in the last five years. As lithium batteries continue to evolve, further regulatory action is appropriate to address the dangers that more powerful lithium ion batteries pose in air transportation. Just this summer, there have been one international and two domestic incidents of lithium battery fires on airplanes. Thankfully, these fires did not lead to any catastrophic air accident.

Safety Culture

Finally, and perhaps most important, I have asked the leadership of PHMSA to submit a plan to reestablish a safety culture in PHMSA. This plan must include enhanced communication between field staff and senior leadership, enhanced training, enhanced written enforcement policies, leadership support for the communications of safety concerns and ideas, greater field and headquarters interaction and more transparency in decision-making. I expect that within ninety days the employees of PHMSA will once

again view the organization and its leadership as strongly committed to its safety mission-- promoting the safe transportation of hazardous materials.

Conclusion

Mr. Chairman, in conclusion, our goal is to rebuild the special permit program with revised written procedures, thorough reviews of the permit safety requirements and permit holder fitness, better coordination with the other modal Administrations, modernized technology and software programs, and aggressive enforcement.

While the Department recognizes the significant role hazardous materials play in this Nation's overall economy, our first priority is and must continue to be safety. The Department believes that the enforcement and incident histories of companies applying for special permits are extremely relevant to whether that company ultimately receives a permit. We will not tolerate agency actions that undermine our commitment to safety and will rescind and deny renewal of permits for unsafe actors.

I look forward to working with the Committee as we continue to enhance our safety oversight of the hazardous materials special permits program. Again, thank you for the opportunity to testify before you today.

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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	Due Date	Completion
Special permits issued to associations. **Within 10 days,** 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.	**Aug 16th**	**Aug 17th** ✓
Program review. **Within 30 days,** 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.	**Sept 4th**	**Sept 4th** ✓
Safety documentation evaluations. **Within 30 days,** 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.	**Sept 4th**	**Sept 4th** ✓
Inter-agency coordination. **Within 30 days,** 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	**Sept 4th**	**Sept 4th** ✓

Action Item	Due Date	Completion
Enforcement. **Within 30 days,** 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.	**Sept 4th**	**Sept 4th** ✓
Applicant "fitness." **Within 30 days,** 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.	**Sept 4th**	**Sept 4th** ✓
Procedures for renewals. **Within 30 days,** review and revise current procedures for checking special permit renewals, expirations, and enforcement follow-up.	**Sept 4th**	**Sept 4th** ✓
Standard Operations Procedures. **Within 60 days,** 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.	**Oct 5th**	
Stakeholder brochure. **Within 90 days,** 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.	**Nov 4th**	

Action Item	Due Date	Completion
Data Collection and Analysis **Within 90 days,** 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.	**Nov 4th**	
IT modernization. **Within 180 days, award a** 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.	**Feb 5th**	
Special permits identified for further assessment. **Within 180 days**, 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.	**Feb 5th**	
Incorporation of special permits into HMR. **Within 180 days,** 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.	**Feb 5th**	
***Website Updates – Special Permits*:** perform continual updates of documents and policies consistent with the noted completion dates in this action plan.		

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

Action Item	Due Date	Completion
Notice of intent. **Within 10 working days,** 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.	**Aug 16th**	**Aug 14th** ✓
Fitness review schedule. **Within 15 days,** 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.	**Aug 21st**	**Aug 14th** ✓
Documentation review. **Within 15 days,** review documentation, including safety assessments and analyses, to ensure documentation supports issuance of the special permits.	**Aug 21st**	**Aug 14th** ✓
Risk assessment. **Within 30 days,** 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.	**Sept 4th**	**Sept 4th** ✓

Action Item	Due Date	Completion
Rescind/modify special permits. **Within 60 days,** determine whether the special permits should be rescinded or modified and issue letters to effect such rescissions or modifications.	**Oct 5th**	
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.		
Long-term action – emergency response. Work with the International Association of Fire Chiefs to 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.		