

January 31, 2011

The Honorable Jacob Lew  
Director  
Office of Management and Budget  
Washington, DC 20503

Re: Identifying Regulatory Impediments to Business Innovation and Competitiveness

Dear Director Lew:

On behalf of the undersigned organizations, we welcome President Obama's initiative to identify regulations that are negatively impacting jobs, the economy and our competitiveness. We are taking this opportunity to bring to your attention and request your oversight of the US Department of Transportation's (DOT) special permits and approvals program which is administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA). This program, critical to the economy, has been transformed in the last two years in to one that wastes federal resources, has no commensurate safety benefit, and frustrates commerce threatening jobs, innovation, and our economy.

Virtually every company handles hazardous materials, and every company that handles these materials depends on reliable transportation to meet consumer demands. Federal law requires that DOT manage the transportation of hazardous materials in a safe and efficient manner. DOT has delegated this authority to PHMSA. In turn, PHMSA regulates hazmat transportation so closely that it may not be moved any distance, via any mode of transportation unless a DOT regulation, permit or approval authorizes the movement of a material. This blanket prohibition against transportation unless there is a specific DOT authorization for that transportation makes efficient consideration of such authorizations critical to the industries involved and the millions of workers they employ, as well as to the national defense, the security of our homeland, and the economy at large.

Special permits and approvals are regulatory tools. They are not authorizations that allow someone to do something unsafe that otherwise would be prohibited under the rules. In both instances, the authorizations are issued to specifically identified individuals, in response to detailed applications (that are incorporated by reference in the authorizations), under criteria that are at least as stringent as the applicable regulations. These conditions can be changed by PHMSA at will, with limited rights for affected parties to petition for redress.

The process of applying for and maintaining such authorizations involves more paperwork and accountability than is required to petition for rule changes. Moreover, holders of these special authorizations face the constant risk of having them revoked, suspended, or modified. All special permits and many approvals also have expiration dates, requiring timely filing of applications for renewal. All require reporting of the holder's experience with the authorization so that PHMSA can properly evaluate the appropriateness of the authorization. The biggest difference between a special permit and an approval is that a special permit is an alternative means to comply with the regulations in domestic commerce, while an approval may apply to domestic or international transportation and can only be issued if there is a specific reference to the activity authorized by the approval in PHMSA's regulations.

All parties involved in hazardous materials transportation would prefer the certainty of a regulation, but the rulemaking process typically takes a minimum of four years and, in many cases, far longer. Special permits and approvals are necessary because many unusual shipping situations as well as innovative ideas and technological advances arise that require more expeditious permission from PHMSA to keep commerce moving and the United States competitive in the global marketplace.

Currently, there are thousands and special permits and approvals within the PHMSA program; many have been renewed without change for decades. Entire industries now find themselves regulated through special permits and approvals. Yet, Congress never intended special permits to be a long-term solution for the transportation innovations they authorize. The expectation is that proven special permits and approvals that have future, long-term use would be incorporated into the hazardous materials regulations. According to DOT, no deaths and fewer than two serious injuries per year have been attributed to packages shipped under special permits or approvals for over ten years. PHMSA's failure to incorporate proven special permits into its regulations now exposes many industries to the current whims of agency action.

In 2009, DOT's Inspector General released a report critical of PHMSA's internal management of the special permit and approvals program. As a result, PHMSA developed standard operating procedures (SOP) for the special permits and approvals program without providing for public notice and comment. These new procedures have resulted in new burdensome paperwork requirements that deliver no commensurate safety benefit. They also rely on unknown fitness criteria that have the potential to shut businesses down. These requirements affect every applicant for a permit or approval, every applicant for renewal, and every applicant seeking "party to" status on such authorizations. By DOT's own admission, the review of the program and the SOPs now in effect included no consideration of the industry's transportation safety record. All that the new SOPs have achieved is added delay and frustration for companies endeavoring to expand into new areas of operation and hiring. PHMSA's new procedures and its dismissive attitude toward industry have created an atmosphere of business uncertainty and impediments to progress in this area, turning the agency's program from one that facilitates commerce to one that frustrates commerce.

Consistent with the President's regulatory reform initiative, OMB should address PHMSA's new punitive, spiraling paperwork and fitness requirements that are not based on incident data, add no value to safety, stifle innovation, and serve only as a drag on growth and jobs. The hazardous materials industry strongly supports a fresh review of the special permits and approvals program, this time with safety and efficiency in mind, as well as with the expectation that new procedures could be developed through a transparent, constructive process involving notice and comment rulemaking that would enhance transportation safety and business opportunities for all Americans.

Respectfully,

Alliance of Special Effects & Pyrotechnic  
Operators  
American Coatings Association  
Association of Hazmat Shippers, Inc.  
American Pyrotechnics Association  
Council on Safe Transportation of Hazardous  
Articles  
Institute of Makers of Explosives

International Society of Explosives Engineers  
Industrial Packaging Alliance of North America  
National Association of Chemical Distributors  
Radiopharmaceutical Shippers & Carriers  
Conference  
Reusable Industrial Packaging Association