

Pipeline and Hazardous Materials Safety Administration Standard Operating Procedures for the Coordination of Approvals with Modal Administrations

I. Purpose

Establish specific interagency coordination and concurrence guidelines for applications for designated types of approvals submitted to the Pipeline and Hazardous Materials Safety Administration in accordance with 49 CFR Part 107. The approvals subject to interagency coordination are listed in Table 1.

Table 1: Approvals Subject to Interagency Coordination

Approval Type	CFR Citation
Chemical oxygen generators	49 CFR 173.168
Radioactive materials and packaging	49 CFR 173.400 – 49 CFR 173.499
International Maritime Dangerous Goods/ International Civil Aviation Organization (IMDG/ICAO) Competent Authority Approval (CAA)	NA
General CAA	NA
Lithium Batteries	49 CFR 173.185
Fuel Cells	49 CFR 173.230

The guidelines will help to ensure that decisions to grant or deny approvals applications are based on complete information and include measures to ensure an equivalent level of safety for each mode of transport.

II. Parties

Federal Aviation Administration (FAA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); United States Coast Guard (USCG); and Pipeline and Hazardous Materials Safety Administration (PHMSA).

III. Authority

An approval is a document that provides written authorization from PHMSA for a shipper or carrier to perform a function that requires prior authorization under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). The HMR are promulgated under the Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*). PHMSA's procedures for applying for an approval are set forth in 49 CFR, Part 107, Subpart H.

Enforcement and compliance authority vested in the Secretary by the Federal hazmat law is delegated to the Operating Administrations (OAs) as follows:

FAA - 49 CFR 1.47(k) – "...with particular emphasis on the transportation or shipment of hazardous materials by air."

FMCSA – 49 CFR 1.73(d)- “...with particular emphasis on the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, making, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.”

FRA – 49 CFR 1.49(s) – “... with particular emphasis on the transportation or shipment of hazardous materials by railroad, including manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of containers which are represented, marked, certified, or sold for use in the bulk transportation or hazardous materials by railroad.”

PHMSA – 49 CFR 1.53(b)- “...with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair, or test of multi-modal containers that are represented, marked, certified, or sold for the use in the transportation of hazardous materials.”

The United States Coast Guard (USCG) in the Department of Homeland Security is authorized to enforce the HMR in connection with certain transportation or shipment of hazardous materials by water. This authority originated with the Secretary of Transportation and was first delegated to USCG prior to 2003, when USCG was made part of the Department of Homeland Security. DHS Delegation No. 0170, Sec. 2(99) & 2(100); see also 6 U.S.C. 458(b), 551(d)(2).

For purposes of this document, the term “Operating Administration” and its corresponding acronym “OA” include the DOT operating administrations identified above and the USCG.

IV. PHMSA Responsibilities for Issuing Approvals

A. General Responsibilities:

PHMSA issues approvals that authorize a range of activities. For example, PHMSA issues approvals covering the classification and transportation of explosives and self-reactive and organic materials. PHMSA also issues approvals for the transportation of certain lithium batteries, fuel cells, chemical oxygen generators, and radioactive materials. In addition, PHMSA issues approvals to authorize companies to manufacture certain types of packagings, such as cylinders, and to perform the tests and inspections required to ensure that the packaging may continue to be used for transporting hazardous materials. PHMSA also issues competent authority approvals for the transportation of hazardous materials in accordance with international transportation standards and regulations. It is important to note that the agency only grants approvals for activities specifically outlined in the HMR.

- PHMSA’s Office of Hazardous Materials Special Permits and Approvals (PHH-30) receives all applications for new, modification to, and renewals of approvals related to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

- PHH-30 reviews each application to ascertain that it conforms to the requirements set forth for approval applications in 49 CFR Part 107 and meets the established criteria for each type of approval.

B. Fitness Determinations:

- PHH-30 will work with the OAs to make a fitness determination for each applicant in accordance with established procedures in the Standard Operating Procedures for the Approvals Program.

C. Approvals of General Applicability:

- Applications for the approval types listed in Table 1 will be evaluated and approved or denied by PHH-30 after coordination with the OAs.
- Applications for all other types of approvals will be evaluated and approved or denied by PHH-30. Examples include approvals applications related to M numbers for identification of domestic manufacturers, visual cylinder requalifiers, and classification of explosives, fireworks and other materials.
- PHH-30 will notify the OAs on a regular basis of approval applications that are under review to provide an opportunity for the OAs to (1) identify those that have mode-specific affects or impacts, or (2) to make comments and recommendations on individual applications.

D. Coordination of Mode-Specific Approvals:

- Mode-specific approvals will be coordinated with the OA(s) that may be affected by or have particular expertise relevant to the transportation of hazardous materials in the requested transport mode. For example, applications for approvals applicable to the transportation of hazardous materials by aircraft will be coordinated with FAA; applications for approvals applicable to the transportation of hazardous materials by motor carrier will be coordinated with FMCSA; applications for approvals applicable to the transportation of hazardous materials by rail will be coordinated with FRA; and applicants for approvals applicable to the transportation of hazardous materials by vessel will be coordinated with the USCG.
- After review by scientific, engineering, and other assigned technical personnel, PHH-30 will forward to each affected OA all application materials, including the initial application and supporting documentation provided with the application or in subsequent communications with PHMSA, PHH-30's evaluation as to whether the approval would achieve an equivalent level of safety as that provided by the HMR, and the draft approval document. Notification will be by electronic means and will include a PHH-30 point of contact for the approval application.

- As applicable, PHH-30 will provide its fitness determination documentation to the OA. For carrier applicants, the OA(s) will develop or provide current fitness determinations in accordance with its policies or procedures, as appropriate.

V. OA Coordination Responsibilities

An 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 approval applications. Depending on the type of approval under review, the OA Coordinating Official is responsible for:

- Providing input to draft evaluation plans
- Reviewing approval applications, applicant fitness reviews, and safety evaluations
- Completing technical evaluations of approval applications, which could include:
 - Conducting additional applicant fitness reviews
 - Conducting safety evaluations
 - Drafting approvals
- Providing concurrence, comments, information, and acknowledgments, as appropriate, to PHMSA in accordance with established coordination schedules and milestones.

A. General Responsibilities

- Each OA will designate a point of contact responsible for concurrence on mode specific approvals. The OA contact will be responsible for the coordination of and timely processing of the modal review.
- Each OA will provide written documentation of its review, including any recommendations for mode-specific conditions to be included in the approval. Each OA will respond to requests for review and concurrence in a timely fashion and provide specific and detailed safety justifications for matters involving non-concurrence.
- Consistent with existing agreements between PHMSA and the OA(s), each OA may conduct its own fitness inspection or investigation of applicants in its respective areas of responsibility and expertise.

B. Coordination with FAA

- PHMSA will coordinate and request concurrence from FAA on applications for new or modified approvals and for renewal applications affecting the transportation of hazardous materials by air.
 - FAA will review approval applications and grant or denial documents that address the transportation of forbidden materials or quantities of hazardous materials by aircraft.

- FAA will review approval applications and grant or denial documents that specifically identify an aircraft operator as a grantee or specifically identified as performing an air carriage function.
- FAA will review approval applications and grant or denial documents involving the transportation by air of high hazard materials or that involve precedent-setting or significant political or economic impacts.
- FAA's POC will coordinate review and evaluation of the approval by all appropriate FAA offices to ensure the aircraft operator is fit to carry out the terms of the approval.
- FAA will verify that an operator is properly certificated to carry out the terms of the approval.

C. Coordination with FMCSA

- PHMSA will coordinate and request concurrence from FMCSA on applications for new or modified approvals affecting the transportation of hazardous materials by highway.
 - FMCSA will review approval applications and grant or denial documents that address the transportation of bulk quantities of hazardous materials by highway.
 - FMCSA will review approval applications and grant or denial documents that specifically identify a motor carrier as a grantee or specifically identified as performing a motor carrier function.
 - FMCSA will review approval applications and grant or denial documents addressing the manufacture, testing, or use of cargo tank motor vehicles.
 - FMCSA will review approval applications and grant or denial documents involving the transportation by highway of high hazard materials or that involve precedent-setting or significant political or economic impacts.
- FMCSA will review routine party status or renewal approval applications for which a motor carrier is a grantee to ensure the motor carrier continues to maintain a satisfactory safety performance.

D. Coordination with FRA

- PHMSA will coordinate and request concurrence from FRA on approval applications affecting the transportation of hazardous materials by rail.

- FRA will review all approval applications and grant or denial documents that address the bulk (tank car or hopper car) transportation of hazardous materials by rail.
- FRA will review all approval applications and draft approvals documents for the construction of tank cars for use in the transportation of hazardous materials.
- FRA will review approval applications and grant or denial documents involving the transportation by rail of high hazard materials or that involve precedent-setting or significant political or economic impacts.
- FRA generally will not review routine party status or renewal approval applications.

E. Coordination with USCG

- PHMSA will coordinate and request concurrence from USCG on appropriate approval applications affecting the transportation of hazardous materials by vessel as a primary mode of transportation.
 - USCG will review all approval applications and draft approvals documents, as necessary, that involve exclusively vessel transportation or deal with the design and construction of vessels.
 - USCG will review approval applications and grant or denial documents with life and property implications, high hazard materials, or precedent-setting or national security issues applicable to vessel transportation.
- USCG generally will not review routine party status or renewal approval applications.

F. Accommodation and Incorporation of OA Recommendations on Approval Applications

- PHMSA will carefully consider all OA comments and recommendations prior to the issuance of approvals. Significant issues will be resolved through discussions with the OA to ensure that concerns raised by the OA are addressed and resolved.
- If the OA recommends operational restrictions or limitations that should govern operations under the approval to ensure the standard for an equivalent level of safety is met, such restrictions or limitations will be incorporated into the approval.
- If the OA recommends denial of the approval application and the issues giving rise to the recommendation cannot be resolved, PHMSA may deny the approval application.

- PHMSA will notify the OA of the final actions taken with respect to significant issues.
- PHMSA will notify the OA if the approval has been issued or denied.

G. Fitness Inspections

Each OA reserves the right to conduct fitness inspections or review current safety performance data of persons offering for transportation or transporting hazardous materials by the mode of transport for which it is responsible. In addition, each OA will cooperate in performing fitness inspections upon request by OHME, in accordance the Fitness Inspection SOP.

H. Data on Safety and Compliance

Each OA will notify PHH-30 by email of any serious violations of an approval by the grantee that would call into question the fitness of a grantee to continue to operate under the terms of the approval.

OA Points of Contact:

PHMSA

- Don Burger
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FAA

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FMCSA

- James O. Simmons
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FRA

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USCG

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