

Special Permits & Approvals

Issue: Should the U.S. Department of Transportation (DOT) program which issues special permits and approvals for the transportation of hazardous materials be revised?

Background: Each person who offers hazardous materials for transportation in commerce must comply with all applicable requirements of the regulations, or a special permit or approval issued by DOT under the regulations. In other words, unless a DOT regulation, permit or approval authorizes the movement of a material, it may not be moved in commerce any distance by any mode of transportation. This blanket prohibition against transportation, unless there is a specific DOT authorization for that transportation, makes efficient consideration of such authorizations critical to the industry involved and to the national economy at large. While regulations issued after notice-and-comment are the principal authority governing hazmat transportation, less understood is the function of special permits or approvals. The most common misconception is that such authorizations allow someone to do something unsafe that otherwise would be prohibited under the rules. The opposite is true.

SPs are limited to domestic transportation, and approvals are issued by DOT under the provisions of international codes governing global commerce. 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 conditions that are documented to be at least as safe as, and often times far more stringent than, the applicable regulations. The process of applying for and maintaining such an authorization involves more than paperwork and accountability, it also involves a risk of having the special authorization revoked, suspended, or modified.

Discussion: No deaths have been attributed to shipments moving under special permit or approval according to DOT.¹ Yet, in 2009, DOT substantively expanded the paperwork and time to process applications, creating a 3-tier, multi-signoff maze of administrative checkpoints. These bureaucratic burdens and delay have harmed the global competitiveness of U.S. businesses. In 2012, Congress mandated DOT to issue rules establishing standard operating procedures and fitness standards for the special permits and approval program. While DOT finalized rules in September 2015, the rules simply codified existing practices. As part of the 2015 FAST Act, Congress again has required DOT to improve the transparency, accountability and efficiency with which it processes special permit and approval applications. While DOT has begun to implement these requirements, the Department can do more to speed approvals.

Recommendations: Congress should require DOT to:

- Accept the work done by DOT-approved classification labs, rather than use resources to second-guess lab classifications.
- Standardize application formats.
- Provide on-line training.
- Establish fitness criteria for its final review tier so that applicants have certainty about what level of performance is expected.
- Create a second track for applications with non-substantive, editorial changes or corrections.
- Set processing timelines that are in-line with other allied industrialized nations.

¹ PHMSA claims that a maritime incident in 2008, which resulted in three deaths, was caused by the violation of a special permit. However, the deaths were not the proximate result of a special permit violation. Testimony in the resultant litigation showed the deaths were due to negligence of a number of parties involved in the shipment.