



Committee on Transportation and Infrastructure
U.S. House of Representatives

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March 28, 2014

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SUMMARY OF SUBJECT MATTER

To: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
From: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
Subject: Subcommittee Hearing on “Examining Issues for Hazardous Materials Reauthorization”

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Wednesday, April 2, 2014, at 2:00 p.m. in 2167 Rayburn House Office Building to receive testimony related to the reauthorization of the hazardous materials safety program of the Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA’s hazardous materials safety program is currently authorized under Division C, Title III of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) (MAP-21), which will expire September 30, 2014. The Subcommittee will receive testimony from PHMSA, hazardous materials shippers and carriers, and fire fighters on the progress on implementing MAP-21.

BACKGROUND

MAP-21 includes the Hazardous Materials Transportation Safety Act of 2012, which made a number of reforms to how the transportation of hazardous materials (hazmat) is regulated by the Secretary of the Department of Transportation (DOT) under sections 5101 through 5128 of title 49, United States Code., “Transportation of Hazardous Material.” PHMSA is the agency within DOT primarily responsible for implementing the federal hazmat law to protect against the risks inherent in transporting hazardous materials.

Specifically, PHMSA administers nationwide safety programs designed to protect the public and the environment from the risks associated with the commercial transportation of hazardous materials by air, rail, vessel, highway, and pipeline. The agency’s two roles are pipeline safety and hazardous materials safety. Under its hazardous materials safety program, PHMSA oversees the safe and secure shipment of nearly 1.4 million daily movements of hazardous materials, such as explosive, flammable, corrosive, and radioactive materials. These materials include such common products as paints, fuels, fertilizers, alcohols, chlorine, fireworks, and batteries that are essential to the general public and local economies due to their

use in farming, medicine, manufacturing, mining, and other industrial processes. In total, about three billion tons of hazardous materials moves each year in the United States.

PHMSA promulgates and enforces, among others, the Hazardous Materials Regulations (HMR; 49 C.F.R. parts 171-180) to carry out its mission. By statute, a material or group or class of material is considered hazardous if the Secretary determines that transporting that material in commerce in a particular amount or form may pose an unreasonable risk to health and safety or property. (49 U.S.C. 5103(a).) Unlike other DOT agencies whose regulations apply to a specific transportation mode, such as rail, motor carrier, and aviation, the HMR applies to the product itself. The HMR categorizes hazardous materials into nine classes and sets forth container design standards; transportation requirements for packaging (from cylinders and containers to cargo truck and rail tank cars); marking and labeling; shipping papers; loading, unloading, and storage of hazmat; placarding; segregation; and accident/incident reporting.

MAP-21 made several reforms and established new requirements for the transportation of hazmat in commerce. The Committee will explore the progress of implementing the reforms, requirements, and programs established under MAP-21, which are described below.

Special Permits and Approvals: Section 33012 of MAP-21 requires a rulemaking by PHMSA to establish standard operating procedures for the administration of the special permits and approvals programs and to create objective criteria to support evaluation of special permit and approval applications.

For special permits, the section directs a review and analysis of such permits that have been in continuous effect for a 10-year period to determine which permits can be adopted into the HMR. After the analysis is complete, but no later than three years after enactment, the section authorizes the Secretary to issue regulations for incorporating such special permits into the HMR. The section also directs the Secretary to publish in the Federal Register justification in the case of special permits that are not appropriate for incorporation into the HMR. Similarly, the section includes a process for PHMSA to review a special permit for incorporation into the regulations once that permit has been in effect for 10 years.

Hazardous Materials Safety Permits: Section 33014 directs the Secretary to conduct a review of the implementation of the hazardous materials safety permit program. It directs the Secretary to consider factors, including the list of hazardous materials requiring a safety permit, the criteria used by the Federal Motor Carrier Safety Administration (FMCSA) to determine whether a hazardous materials safety permit issued by a state is equivalent to the federal permit, and actions to improve the program including an additional level of fitness review. Based on the findings of the review, the Secretary may either issue a rulemaking to make necessary improvements to the program, or publish in the Federal Register justification for why a rulemaking is not necessary. The Secretary issued the report on March 11, 2014, and is working on implementing the recommendations to improve the program.

Hazmat Transportation: Section 33015 included a requirement for the Government Accountability Office (GAO) to study the safety of transporting flammable liquids in the external pipes of cargo tanks (wetlines). The section specifies that the Secretary may not issue a

rulemaking on wetlines until the study is complete. The study was completed in September 2013, and found that incident data could not be used to reliably identify risks from incidents involving collisions and spills from tank trucks' wetlines because they are not specifically identified in PHMSA's database and the data contains inaccuracies. It also expressed concern that PHMSA's analysis of the costs and benefits of its proposed 2011 rule did not account for uncertainties in its analytical assumptions and limitations in the underlying incident data. As a result, GAO found that PHMSA inaccurately represented the costs and benefits of the proposed rule. GAO made several recommendations to PHMSA for improving their data and rulemaking processes.

With regard to inspections of packages, section 33009 required notice to the offeror, carrier, package manufacturer, or other person of the decision to inspect, findings made, and actions to be taken. It also required regulations to ensure the safe resumption of perishable hazardous materials after inspection, means of placing non-compliant packages out of service, training for inspectors and proper closure of packages. Final regulations on these matters were issued in October 2013.

Furthermore, section 33013 ensures that states update every two years the information submitted for the hazardous materials route registry kept by DOT, including the agency responsible for determining the hazmat route designation and the current list of the highway route designations.

Training Programs: Section 33008 of MAP-21 required the Secretary to establish standards for training hazmat inspectors and investigators to ensure uniformity in training on: (1) how to collect, analyze, and publish findings from inspections and investigations of accidents and incidents; and (2) how to identify noncompliance with hazmat regulations and take appropriate enforcement action. These standards are due within 18 months of enactment or April 1, 2014.

Section 33004 includes provisions that amend training requirements for emergency responders of hazardous materials. These provisions require organizations receiving grant funding for training emergency responders to train such responders to be able to protect against accidents or incidents involving the transportation of hazardous materials in accordance with existing regulations and standards. Furthermore, the section allows for competitive grants to be made to nonprofit fire service organizations for training, including portable training, which can be offered in any suitable setting rather than specific, designated facilities, allowing training at locations and times convenient to students and instructors. Finally, PHMSA was required to submit an annual report to Congress, including the detailed accounting of each grant expenditure, number of persons trained by the grant, efficacy of the planning and training programs, and recommendations for improving the program.

Data Collection and Research: To improve data collection on hazardous materials programs, MAP-21 required in section 33006 that PHMSA submit to Congress a report on improvements to collection, analysis, reporting, and use of data related to accidents and incidents involving hazmat. The report was submitted to Congress in September 2013, and included PHMSA's action plan on how to improve their data.

Similarly, section 33007 allows PHMSA to develop a technical assessment, research and development, and analysis program to reduce the risks of transporting hazmat and to identify and evaluate new technologies. PHMSA is developing its research and development program.

MAP-21 also included a new pilot program for paperless hazard communications, essentially electronic shipping papers. Section 33005 permits the Secretary to conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. PHMSA will conduct the pilot tests this year, which will occur in at least three United States regions possessing high concentrations of hazardous materials registrants and presenting historically high numbers of hazmat incidents, and will include a rural area in at least one region. The pilot tests will focus on the use of e-systems to communicate hazmat shipping paper information while shipping hazmat from origin to final destination and during law enforcement inspections and emergency response simulations. A report on the pilot project is due to Congress by October 1, 2014.

Civil Penalties: Section 33010 amends the civil penalties enforceable by PHMSA to remove the minimum penalty amount for violations of hazardous materials laws and regulations and enhances penalties for knowing violations or violations that result in death, serious illness, or severe injury. It also allows for penalties for obstruction of inspections and investigations. Finally, it allows PHMSA to prohibit a person from conducting regulated hazmat operations if that person fails to pay a civil penalty. PHMSA is developing its final rule, which is due in October 2014.

INVITED WITNESSES

The Honorable Cynthia Quarterman
Administrator
Pipelines and Hazardous Materials Safety Administration

William F. Downey
Executive Vice President and Chief Security Officer
Kenan Advantage Group, Inc.
On Behalf of the American Trucking Association

Thomas E. Schick
Senior Director, Regulatory and Technical Affairs
American Chemistry Council

Stephen Pelkey
Chairman, Transportation Committee
American Pyrotechnics Association

Elizabeth Harman
Assistant to the General President for Hazardous Materials Training
International Association of Fire Fighters