

Interested Parties for Hazardous Materials Transportation

Testimony of
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on behalf of
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“Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline,
and Hazardous Materials Safety Regulation and Opportunities for Reform”

Before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials of the
Committee on Transportation and Infrastructure
U.S. House of Representatives

on

April 26, 2017

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Chairman Denham, Ranking Member DeFazio and members of the Subcommittee, thank you for the opportunity to provide the perspectives of the Interested Parties for Hazardous Materials Transportation¹ (Interested Parties) on issues related to regulatory reform.

I am Paul Rankin, and I serve as Chair of the Interested Parties group, which is a volunteer-run coalition of 46 organizations that share an interest in legislative and regulatory issues related to the safety and security of hazardous materials in domestic and international transportation.

Members of the Interested Parties strongly support a robust and efficient hazardous materials transportation regulatory program. Industry recognizes the benefits of a centralized regulatory agency within the Department of Transportation (DOT) that has cross-modal and international authorities. Safety is of paramount importance to industry and our exemplary record in this area and support for effective regulation underscore this goal.

The Pipeline and Hazardous Materials Safety Administration (PHMSA), and more specifically the Office of Hazardous Materials Safety (OHMS), has operated as the lead regulator for the multi-modal transportation of hazardous materials for decades. The Interested Parties believe the Agency has done an admirable job regulating the safe transportation of hazardous materials in both domestic and international transportation. Given that there are approximately 900,000 shipments of hazardous materials every day in the United States with very few incidents, the cross-modal safety record of the regulated industry is a testament to both the effectiveness of PHMSA's regulatory programs and the attentiveness to safety demonstrated by industry every single day.

This morning, I will discuss several key issues of importance to members of the Interested Parties.

1. The importance of reasonable federal regulation in the field of hazardous materials transportation. Unlike most commercial activities, which companies are free to engage in unless specifically proscribed by regulation, the transportation of hazardous materials is essentially prohibited unless authorized by a regulation, special permit or approval. This is true not only for domestic movements of hazardous materials, but also for international movements of regulated products. As such, reasonable regulation contributes positively to the flow of domestic and international commerce.

¹ The following IP members have approved this testimony: Agricultural Retailers Association; American Chemistry Council; American Coatings Association; American Fuel and Petrochemical Manufacturers Association; American Pyrotechnics Association; American Short Line and Regional Railroad Association; American Trucking Associations; Association of HazMat Shippers; Council on the Safe Transportation of Hazardous Articles; The Fertilizer Institute; Gases and Welding Distributors Association; Industrial Packaging Alliance of North America; Industrial Steel Drum Institute; Institute of Makers of Explosives; International Liquid Terminals Association; International Vessel Operators Dangerous Goods Association; National Industrial Transportation League; National Private Truck Council; National Propane Gas Association; National Tank Truck Carriers; Petroleum Marketers Association of America; Radiopharmaceutical Shippers Conference; Reusable Industrial Packaging Association; Sporting Arms Ammunition Manufacturers Institute; Utility Solid Waste Activities Group.

This is why the Interested Parties support reasonable federal regulation of hazmat transportation activities, and a robust role for PHMSA in the development of international model regulations for the various modes.

2. Preemption. In line with our desire for reasonable federal regulation is our support for federal “preemption” authority, which is granted in Section 5125 of the Hazardous Materials Transportation Act (HMTA). The purpose of federal preemption is to promote safety by ensuring, to the extent practicable, that a patchwork of state and/or local regulations do not impede interstate commerce or encourage communities to export transportation risks to their neighbors. Imagine, for example, if the nation’s approximately 89,000 local jurisdictions were authorized to regulate differently the delivery of a common hazardous material, such as gasoline. The situation would, of course, be untenable. The hazardous materials industry relies upon uniform regulation, both domestic and international, to ensure the safe, secure and efficient transportation of hazardous materials. Uniform regulation has the added benefit of promoting effective hazmat employee training, which is crucial because the safe transportation of hazardous materials begins with well-trained employees.

3. Programmatic Authority. Several federal agencies, including the Occupational Safety and Health Administration (OSHA) and the Department of Homeland Security (DHS), have an interest in hazardous materials transportation activities, but these agencies should be limited in their authority to regulate in this area. OSHA, for example, recently tried to exercise authority over container marking (labeling) but, after consultation with PHMSA, agreed through a Memorandum of Understanding, to recognize PHMSA’s unique expertise and preeminent authority in this area. Similarly, DHS oversees a wide range of security issues related to the handling of hazardous materials, but works very closely with PHMSA on all hazmat transportation matters.

The Interested Parties strongly support what appears to be a growing recognition, at least at the federal agency level, of PHMSA’s knowledge and authority on issues related to hazmat transportation. We urge members of the Subcommittee to ensure that PHMSA has the legislative authority it needs to fulfill its role as the preeminent regulator of hazardous materials transportation activities in the United States.

4. Special Permits and Approvals. Hazardous materials may only be transported if appropriately authorized. Regulatory flexibility is needed for such activities as authorizing one-time movements of hazardous materials and facilitating the emergence of new and innovative technologies or packagings. Special Permits and Approvals are the regulatory mechanisms that PHMSA uses for these purposes. PHMSA is authorized to grant “special permits” (SP), when no clear regulatory authority exists, and “approvals” (A), when required by regulation, to companies as well as federal agencies to transport certain hazardous materials (or articles). PHMSA processes thousands of SP and A requests annually.

We are grateful for the attention Congress, and this Committee in particular, has given to addressing delays in the processing of SPs and As, and to ensuring that PHMSA acted to incorporate

certain Special Permits into the Hazardous Materials Regulations (HMR). PHMSA has made significant progress in streamlining and making more efficient the SP and A process. For example, in accordance with MAP-21, the Agency conducted a general review of existing Special Permits in effect for 10 years or longer and issued a rulemaking incorporating some of them into the Hazardous Materials Regulations. However, this review was done only once.

More can and should be done to improve this program. The Interested Parties recommend that Special Permits of general applicability which have been in force for 6 years (2 years for the initial approval and 4 years for a renewal period) be evaluated in advance of their expiration dates for incorporation into the Hazardous Materials Regulations. PHMSA should publish a Special Permit rulemaking annually that provides a list of Special Permits that have been evaluated and provides justification for either proposing to incorporate each Special Permit into the HMR or reasons such a Special Permit is not suitable for incorporation.

Additionally, while we appreciate the work of this Committee to improve the timeliness of explosive classification approvals, we believe the explosives and fireworks classification system should be further evaluated to identify opportunities to eliminate redundant testing and permit reciprocity of approvals with other countries, where applicable.

5. International Affairs. The Secretary of DOT is authorized under Section 5120 of the HMTA to represent the United States at the various international forums that harmonize global standards for the safe and secure transport of hazardous materials, including the U.N. Sub-committee of Experts on the Transport of Dangerous Goods (UNSCETDG), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). The Secretary has delegated this authority to PHMSA.

Presently, the United States enjoys the privilege of having a PHMSA employee serve as Chair of the United Nations Sub-committee of Experts on the Transport of Dangerous Goods (UNSETDG). The Interested Parties both strongly support and encourage this level of commitment by DOT to representation at the UN and other international regulatory forums. Frankly, it would be difficult to overstate the value of U.S. leadership in these settings. International trade in hazardous materials, such as chemicals, is significant and historically represents a positive net trade balance for the United States. And U.S. expertise in international hazmat transportation matters is second to none.

Therefore, in addition to maintaining a leadership role at the U.N, the Interested Parties believe it is crucial that a PHMSA representative serve as an ICAO Panel member and lead the Dangerous Goods Panel delegation to ICAO. This properly reflects the fact that PHMSA is recognized globally as the “Competent Authority” (lead agency) for the U.S. on hazardous materials transportation issues.

6. Enforcement. The Interested Parties supported a provision in MAP – 21 that directed PHMSA to develop uniform performance standards for training hazardous materials inspectors and investigators. We believe more work needs to be done in this regard. PHMSA should take steps to exert greater control over their field enforcement offices to ensure greater uniformity in the

inspection and enforcement processes. Steps to effect this would include improved training of its inspectors and revising its inspection and re-inspection criteria to focus on known safety problems with a material, packaging, or operating practice. Penalties should be commensurate with the potential safety consequences of the violations.

The Interested Parties also encourage the creation of an “On-site Consultation Program” patterned on other similar programs offered or overseen by, among other agencies, the Occupational Safety and Health Administration. We envision such a program being offered to small and mid-sized businesses throughout the United States. Consultation services would not be provided by PHMSA enforcement personnel and would not result in penalty or enforcement actions. Rather, the program would utilize state agency consultants or approved experts in the field.

7. PHMSA Office of Planning and Analytics. In recent months, PHMSA adopted a reorganization plan that included the creation of a new “Office of Planning and Analytics” (OPA). The Interested Parties are concerned that the new office, while created with the best of intentions, is administratively confusing and will likely create operational inefficiencies because OPA’s strategic planning and economic forecasting mandates overlap existing staff responsibilities in OHMS.

OPA is intended to serve two PHMSA offices – pipelines and hazardous materials safety – that are programmatically related, but separately authorized by Congress. As such, it is likely that OPA staff will regularly find themselves torn between conflicting operational mandates that require the use of staff resources on matters that are not necessarily in sync with the day-to-day needs of one or another of the two offices they serve.

In an effort to foster programmatic efficiency, the Interested Parties recommend that the administrative functions of OPA be redistributed to OHMS and OPS.

8. Incident Reporting. PHMSA’s hazardous materials transportation safety program relies upon DOT Form F 5800.1, *Hazardous Materials Incident Report*, to gather basic information on incidents that occur during transportation, which meet specified criteria as required by Section 171.16 of the HMR. PHMSA uses the data and information reported to evaluate the effectiveness of the existing regulations and industry operating procedures; ascertain the need for regulatory changes; and, to identify major safety issues that should receive priority attention. This data is also used by both the government and industry to chart trends, identify acute transportation safety problems and training inadequacies, evaluate packaging performance and assess ways to reduce releases. Therefore, the integrity and the quality of the data and related information is extremely important.

The Interested Parties believe that the incident data now being collected on Form 5800.1 is not as comprehensive, consistent or robust as it could and should be to meet the laudable goals of the program. To this end, the Interested Parties urge PHMSA to revise the data collection form to eliminate inconsistencies, limit the opportunity for subjective and non-specific responses, and revise the descriptive portions of the Form to require a purely factual account of the incident. While PHMSA has completed some of this work already by automating the system, the Interested Parties recommend that many of the codes indicating the type of packaging that failed,

how it failed, and the cause of failure be evaluated for specificity and relevance. In addition, the Interested Parties also encourage PHMSA to focus on the collection of essential incident data that can guide the development of future hazardous materials transportation practices that reduce or eliminate the risk of harming people, property or the environment.

9. General Regulatory Reform. The IPs support adoption of administrative reforms for PHMSA similar to those enacted by Congress in the FAST Act applicable to the Federal Motor Carrier Safety Administration. This would include:

- Each proposed and final rule must include a regulatory impact analysis that considers the effect of the rule on different segments of industry, uses the best available science to formulate estimates and findings, uses data representative of various types of shippers or carriers, and considers the effects on carriers of various sizes and types.
- All significant rules must begin with an advance notice of proposed rulemaking or a negotiated rulemaking before PHMSA issues a proposed rule.
- All guidance documents (including regulatory interpretations and statements of enforcement policy) issued by PHMSA must be dated and include the name and contact information of a person who can respond to questions on the guidance; the guidance must be posted on the PHMSA website for public availability. Within five years, PHMSA must incorporate the guidance into Title 49 CFR or reissue an updated version of the guidance. All current PHMSA guidance documents must be reviewed within one year to ensure they remain current and are publicly available.
- PHMSA must post a summary of all petitions for rulemaking, regulatory interpretation or clarification, on the agency's website. PHMSA must decide within 180 days of receipt of a petition whether to accept, deny or further review the petition, and must prioritize petitions based on their potential to reduce incidents, improve enforcement, and reduce unnecessary burdens.

Thank you very much for allowing me to present the views of the Interested Parties. I will gladly answer any questions at this time.