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EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION

(113–63)

HEARING

BEFORE THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

APRIL 2, 2014

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CONTENTS

Page

Summary of Subject Matter v

TESTIMONY

Hon. Cynthia L. Quarterman, Administrator, Pipeline and Hazardous Materials Safety Administration 8
William F. Downey, executive vice president for corporate affairs and chief security officer, The Kenan Advantage Group, Inc., on behalf of the American Trucking Associations 8
Thomas E. Schick, senior director of distribution, Regulatory and Technical Affairs, American Chemistry Council 8
Stephen Pelkey, chairman, Transportation Committee, American Pyrotechnics Association 8
Elizabeth M. Harman, assistant to the general president for hazardous materials, weapons of mass destruction training, and grants administration, International Association of Fire Fighters 8

PREPARED STATEMENTS AND ANSWERS TO QUESTIONS FOR THE RECORD SUBMITTED BY WITNESSES

Hon. Cynthia L. Quarterman:
Prepared statement 39
Answers to questions for the record from the following Representatives:
Hon. Jeff Denham, of California 47
Hon. Janice Hahn, of California 50
William F. Downey, prepared statement 53
Thomas E. Schick:
Prepared statement 58
Answers to questions for the record from Hon. Janice Hahn, of California 62
Stephen Pelkey:
Prepared statement 64
Answers to questions for the record from the following Representatives:
Hon. Jeff Denham, of California 71
Hon. Janice Hahn, of California 76
Elizabeth M. Harman, prepared statement 77

SUBMISSIONS FOR THE RECORD

Hon. Corrine Brown, a Representative in Congress from the State of Florida, request to submit a list of issues surrounding the movement of hazardous materials compiled by the following rail organizations: ATDA, BLET, BMWED, BRS, IAM, IBEW, TCU and TCU Carmen, IBT Teamsters, TWU, and SMART—Transportation Division 4
Hon. Cynthia L. Quarterman, Administrator, Pipeline and Hazardous Materials Safety Administration, responses to requests for information from the following Representatives:
Hon. Grace F. Napolitano, of California, regarding the safety and security of toxic gas shipments 23
Hon. Corrine Brown, of Florida, regarding testing information that PHMSA has requested of the American Petroleum Institute 33
Hon. Elijah E. Cummings, of Maryland, regarding PHMSA's assessment of penalties over the past decade 38

ADDITIONS TO THE RECORD

Air Line Pilots Association, International, written testimony 84

Page

John P. Tolman, vice president and national legislative representative, Brotherhood of Locomotive Engineers and Trainmen, written testimony 93
Commercial Vehicle Safety Alliance, written testimony 97
Cynthia Hilton, executive vice president, Institute of Makers of Explosives, written testimony 100
LaMont Byrd, director, Safety and Health Department, International Brotherhood of Teamsters, written testimony 107

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March 28, 2014

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

EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION

WEDNESDAY, APRIL 2, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m. in Room 2167, Rayburn House Office Building, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Mr. DENHAM. The subcommittee will come to order. Before we begin, I have an administrative item to cover. I would like to ask unanimous consent that former chairman, Don Young, and Representative Rick Larsen be permitted to join the subcommittee for today's hearing, and ask questions.

[No response.]

Mr. DENHAM. Without objection, so ordered. Well, good afternoon, and welcome to the Subcommittee on Railroads, Pipelines, and Hazardous Materials. Our hearing today will focus on reauthorizing of the Hazardous Materials Safety Program of the Pipeline and Hazardous Materials Safety Administration, PHMSA. The current authorization was part of MAP–21, which expires October 1, 2014.

Our goal is to continue the advances made by MAP–21 in reducing regulatory burdens while ensuring hazardous materials are transported in a safe and efficient manner. We have a distinguished panel of witnesses today, and it is my pleasure to welcome back once again Ms. Cynthia Quarterman, Administrator of PHMSA, as well as—as you know, the Transportation Committee is working on a reauthorization of MAP–21, and I am proud that Chairman Shuster's leadership on the committee is looking at addressing a wide variety of transportation needs, including the reauthorization of the Hazardous Materials Safety Program. So, I look forward to the testimony and discussion today, as we move forward in that process.

The movement of hazardous materials in commerce is integral to our Nation's health and economy. Hazmats include common, everyday products like paints, fuels, fertilizers, fireworks, explosive, alcohols, and batteries, that are essential to such industries as farming, medicine, manufacturing, mining, water purification, and entertainment industries.

PHMSA is the agency within DOT entrusted with that mission, and determines what materials are hazardous, and promulgates

and enforces, among others, the regulations that set forth the packaging, marking, labeling, placarding, and other requirements for the movement of these goods.

Unlike other modal administrations within the DOT, PHMSA is unique in that its regulations apply across the modes, reaching to every form of commercial goods transportation. Our role is to ensure that these goods are moved in a safe, reliable manner that helps drive our continued economic growth.

MAP–21 made several reforms and established new requirements for the transportation of hazmats. And I am looking forward to hearing about their ongoing implementation. A number of these requirements were important to developing new technologies and standards for hazmat transportation, improving the data collection analysis, and reporting of the agencies, and improving training for first responders and hazmat employees.

MAP–21 also set new requirements and reviews of programs and processes to create more regulatory certainty, establish greater transparency, and cut red tape. In addition, the act enhanced enforcement power to ensure an already safe industry was made safer.

I look forward to hearing from our witnesses, including PHMSA Administrator Quarterman; Mr. Downey, on behalf of the American Trucking Associations; Mr. Schick, of the American Chemistry Council; Mr. Pelkey, of the American Pyrotechnics Association; and Ms. Harman, with the International Association of Fire Fighters, regarding these issues concerning hazmat transportation.

I would now like to recognize the ranking member, Corrine Brown from Florida, for 5 minutes for any opening statement she may have.

Ms. BROWN. Thank you, Mr. Chairman. The subcommittee is meeting today to hear testimony on reauthorization of the Department of Transportation hazmat program, which was last reauthorized in MAP–21. This hearing is very timely, because the purpose of this program is to protect people and the environment from the risks of hazardous material transportation.

In just a few weeks, on April the 28th, we will observe Workers Memorial Day to remember those who have suffered and died on the job, and to renew efforts to safeguard our Nation's workers. Just 44 years ago, Congress passed the Occupational Safety and Health Act, promising every worker the right to a safe job. Since that time, many in Congress have fought hard to make this promise a reality. But our work is far from done.

Many jobs—hazards still exist, particularly in hazardous material transportation. Since I was first elected to Congress, one issue comes up every time we authorize the hazmat program: the authorizing of OSHA and DOT to protect hazmat workers. Let me be clear. The role these two agencies play in protecting hazmat workers is crucial. Yet some in the industry have proposed to eliminate OSHA jurisdiction, claiming that there are overlaps and confusing regulation. This is not the case.

DOT has regulations on packaging and on safety procedures for loading and unloading materials. On the other hand, OSHA has regulations that provide for worker safety, including noise and air quality control, emergency preparation, personal protection equip-

ment, and hazard communications. These regulations are not new. DOT and OSHA have shared this responsibility for decades, and these regulations are critical to maintaining the highest level of safety for hazmat workers.

The fact is that 12 workers die every day in our country from work-related injuries. In 2013 alone, more than 4,300 workers were killed at work. I am committed to maintaining a safe and healthy workplace for all American workers, including those in this critical industry. And I will work to defeat any proposal that would eliminate OSHA protection for hazmat workers.

In my home State of Florida, we recently had several dangerous explosions involving hazmat material. In July of last year, eight workers were in critical condition following an explosion at a Blue Rhino plant that was—forced an evacuation of area residents and shook houses 10 miles away. In July of 2007, a devastating explosion at the T2 chemical plant located close to my home in Jacksonville, Florida, killed 4 people and injured 32.

Not only must we ensure the safety of hazmat workers, but we also need to focus on the safety of those responding to hazmat accidents, like our Nation's firefighters. I want to give a special welcome to the Democratic witness from the International Association of Fire Fighters, Elizabeth Harman. With her help last Congress, we were able to enact strong training standards in MAP–21 for firefighters and other emergency responders, and ensure continuing funding for important firefighters training program. According to DOT, more than 2 million emergency responders received training through their program.

With that, I welcome the witnesses and look forward to hearing your testimony.

Mr. Chairman, I ask unanimous consent to include in today's hearing record a written statement from the Transportation Trades Department of AFL–CIO and 10 labor unions.

Mr. DENHAM. Without objection.

[The information follows:]

The rail organizations that participated in creating this list of issues that must be dealt with in the Movement of Hazardous Materials for the record of the T&I Committee are ATDA, BLET, BMWED, BRS, IAM, IBEW, TCU and TCU Carmen, IBT Teamsters, TWU, and SMART - Transportation Division.

We have itemized the main issues that impact public safety with the movement of hazardous materials. Almost all these issues are rail specific, but all these organizations remain opposed to any threat to OSHA's ability to protect workers at all loading and unloading facilities regardless of mode.

A partial list of pertinent issues:

- Training of rail employees involved with movement of hazmat trains and first responder requirements – Rail labor's suggested curriculum for hazmat employee training is attached -
- Positive Train Control (PTC) – the percentage of main line trackage in the United States that will be required to have PTC installed and the types of hazmat materials that will be moving on non PTC equipped rail corridors
- Availability of Emergency Escape Breathing Apparatus for Operating Employees working on a subdivision that has haz mat trains
- Key Train requirements
- Fatigue Risk management plans and their impact on crew scheduling -
- Train placement of hazmat cars and their separation from occupied locomotives
- Pre departure mechanical inspections – intervals between mechanical inspections of equipment -
- Brake inspections
- Operations in dark territory of haz mat trains and main line switch monitors in dark territory -
- Train securement issues for unattended hazmat trains -

- Documentation of control and security of hazmat cars when interchanging with another railroad and at crew change locations -

Please let us know if we can share additional information.

James Stem
National Legislative Director
SMART - Transportation Division
304 Pennsylvania Avenue, SE
Washington, DC 20003-1147
(202) 543-7714
Fax (202) 544-3024
Cell (202) 256-8021
jamesastem@aol.com

Labor's Training Proposal to the Hazardous Materials Working Group

2-17-14

EACH CARRIER SHALL REVIEW THEIR HAZARDOUS MATERIALS TRAINING PROGRAM AND INCORPORATE, AT MINIMUM, THE FOLLOWING TRAINING ELEMENTS INTO THEIR EXISTING TRAINING PROGRAM:

Basic Toxicology

- Acute vs Chronic exposures
- Sensitizers/Sensitization
- Routes of entry
- Permissible Exposure Limits (PEL)
- Recommended Exposure Limits (REL)
- Types of toxic substances and toxic health effects of :
    - Asphyxiates (including TIH/PIH), Corrosives, Irritants, Sensitizers, Carcinogens, Mutagens, Teratogens.

Recognition and Identification in Transportation

- Shipping Papers/Waybills
- Placards
- Markings
- Labels
- Hazard Class
- Packing Groups
- Containers:
    - Pressurized cars
    - Non-pressurized cars
    - COFC/TOFC
    - Placement in train
    - Buffer cars

Resources

- DOT ERG
- MSDS/SDS (Safety Data Sheets)
- AAR Emergency Action Guides
- NIOSH Pocket Guide to Chemical Hazards

- OSHA 29 CFR 1910.1000 (OSHA Air Contaminants)

First Responder Awareness Level Training

Training in compliance with OSHA 1910.120 (q)(6)(i) (A-F) for First Responder Awareness Level employees "likely to witness or discover a hazardous substance release...." First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

- Understanding of what hazardous substances are, and the risks associated with them in an incident;
- Understanding of the potential outcomes associated with an emergency created when hazardous substances are present;
- Ability to recognize the presence of hazardous substances in an emergency
- Ability to identify the hazardous substances, if possible to safely do so;
- Understanding the role of the first responder awareness level in the employer's emergency response plan including site security and control and the DOT's Emergency Response Guidebook;
- Ability to realize the need for additional resources, and to make appropriate notifications to the communication center.

In addition to the requirements above, First Responder Awareness Level training for rail employees to include, at minimum the following elements:

- Protect yourself and crew;
- Move up wind;
- Contact appropriate company official to initiate emergency response sequence;
- Never approach incident, don't contact materials, don't rely on sense of smell or taste to detect the presence of hazardous materials;
- Provide Emergency Responders with information (shipping papers, placement in train, placard and car numbers, etc.) from a safe distance;
- Carrier-specific plans
- Basic training on what to do in the event of a Chronic or Acute exposure to self or co-worker, including provisions for reporting delayed symptoms of exposure.

KEY Trains and UNIT Trains

- Train Crew Job briefings to include review of shipping papers and "resource guides" regarding the hazards and properties of placarded materials in the train.
- Train Crew confirmation with Train Dispatcher of Key Train or Unit Train status at departure.

Plant Specific

- Crews that service plants which ship or receive placarded materials by rail shall receive additional information and training specific to that plant and the commodities handled, including but not limited to:
    - The hazards and properties of the commodities to be transported;
    - The plant's Emergency Action Plan (Emergency Alerting, evacuation procedures and routes; nearest hospital, eyewash station, deluge shower location (if any), etc.)

Basic Security Training (craft specific)

- Understand why and how railroads transporting HM may be security targets;
- Understand how railroads are vulnerable and the role of employees (craft specific) in reducing such vulnerabilities;
- Understand methods to enhance rail security;
- Ability to recognize and report possible security threats, and company feedback to reporting employees on actions/outcomes resulting from such reports.

Location Specific Training (craft specific)

- At locations were specific equipment and/or evacuation procedures are required to protect employees from airborne hazards (e.g., tunnels where Self Contained Breathing Apparatus [SCBA] is stationed), training on the use of such emergency equipment and evacuation procedures shall be provided. Such location specific training shall include simulation exercises involving affected employees.

###

Mr. DENHAM. I would like to again welcome our witnesses here today. I ask unanimous consent that our witnesses' full statements be included in the record.

[No response.]

Mr. DENHAM. Without objection, so ordered. Since your written testimony has been made part of the record, the subcommittee would request that you limit your oral testimony to 5 minutes.

Ms. Quarterman, you may proceed. Thank you for joining us.

TESTIMONY OF HON. CYNTHIA L. QUARTERMAN, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION; WILLIAM F. DOWNEY, EXECUTIVE VICE PRESIDENT FOR CORPORATE AFFAIRS AND CHIEF SECURITY OFFICER, THE KENAN ADVANTAGE GROUP, INC., ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS; THOMAS E. SCHICK, SENIOR DIRECTOR OF DISTRIBUTION, REGULATORY AND TECHNICAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL; STEPHEN PELKEY, CHAIRMAN, TRANSPORTATION COMMITTEE, AMERICAN PYROTECHNICS ASSOCIATION; AND ELIZABETH M. HARMAN, ASSISTANT TO THE GENERAL PRESIDENT FOR HAZARDOUS MATERIALS, WEAPONS OF MASS DESTRUCTION TRAINING, AND GRANTS ADMINISTRATION, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Ms. QUARTERMAN. Thank you for having me. Good afternoon, Chairman Denham, Ranking Member Brown, and members of the subcommittee. Thank you for inviting me here today to testify on PHMSA's progress in implementing Title III of the Moving Ahead for Progress in the 21st Century Act, also known as MAP–21.

Safety is the top priority for Secretary Foxx, the Department of Transportation, PHMSA, and all of its employees. All of us at DOT appreciate your dedication and leadership in advancing hazardous materials transportation safety. For a relatively small agency with limited resources, the staff at PHMSA works diligently to protect the American people and the environment from hazardous materials transportation incidents, and have made great strides in implementing the provisions included in MAP–21.

Since MAP–21's enactment in 2012, PHMSA has met or will meet more than 90 percent of the established timelines for the 32 separate provisions assigned to the agency. This is very significant, especially given the many challenges and emerging issues that PHMSA has faced over the same time period, including efforts to enhance the safe transportation of crude by rail, and continuing to consistently reduce the number of major hazardous materials incidents, as we have done over the past 25 years.

A significant contributor to PHMSA's success has been the strategy and action plan we developed and implemented to bolster compliance with hazardous materials regulations. As the transportation sector continues to evolve and become more interconnected with the international community, PHMSA has attempted to adopt smarter strategies to adapt to the challenges.

As part of our enforcement strategy, and through the authority of MAP–21, PHMSA raised its maximum civil penalty amount for violations resulting in death, illnesses, and injuries. In addition,

PHMSA is moving forward with advancing efforts in hazardous materials research and development. Our hazardous materials technical assessment research and development and analysis program is allowing us to work cooperatively with stakeholders to identify and mitigate hazardous materials risks, and to promote innovative approaches to support a safe, multimodal hazardous materials transportation system.

We are also working to develop uniform performance standards for training our hazardous materials inspectors and investigators to ensure field staff continue to accurately identify instances of noncompliance and take appropriate enforcement actions.

In addition to the nonregulatory efforts to improve safety I just described, PHMSA is continuing to fulfill our commitment to streamline hazardous materials regulations and processes. Since 2011, PHMSA has been reviewing and analyzing special permits to determine which ones can be converted into the hazardous materials regulations. We are currently working on a rulemaking effort that will address the conversion of active special permits into regulations that we expect to be published by October of this year.

These are just a few of the many actions PHMSA has undertaken to address and implement the mandates included in MAP–21. As I have stated earlier, PHMSA is committed to improving transportation safety, and I believe our approach is working. Our safety mission is guided by our vision that no harm results from hazardous materials transportation, and I truly believe our efforts will continue to prevent and mitigate accidents and move us closer to our goal of zero deaths and incidents.

Thank you again for the opportunity to speak today. We look forward to continuing to work with Congress to safeguard people, property, and the environment from hazardous materials transportation risks. I would be pleased to answer any questions the committee may have.

Mr. DENHAM. Thank you, Ms. Quarterman.

Mr. Downey?

Mr. DOWNEY. Chairman Denham, Ranking Member Brown, and members of the subcommittee, thank you for the opportunity to testify today about reauthorizing the Hazardous Materials Transportation Act.

My name is William Downey, and I am the executive vice president and chief security officer for The Kenan Advantage Group, which is located in North Canton, Ohio. We are North America's largest tank truck transporter and logistics provider to the petroleum, specialty products, and merchant gas industries. We employ approximately 9,000 people, and we are the only fuels delivery carrier with a nationwide presence. I am testifying today on behalf of the American Trucking Associations and the National Tank Truck Carriers. ATA and NTTC are members of the Interested Parties group, and endorse their comprehensive recommendations for hazmat reauthorization.

Of the roughly 800,000 shipments of hazmat on a daily basis, in terms of product value, tonnage, and number of shipments, trucks move more hazmat than all other transportation modes, combined. Today I propose three commonsense solutions to improve the safe, secure, and efficient transport of hazmat. First, the present back-

ground screening process for hazmat endorsement on a commercial driver's license can be reformed. Second, the proposed wet lines rule can be halted. And, finally, the State hazmat permitting process can be improved.

On background screening, presently a TSA-administered fingerprint-based background check is required for all hazmat CDL endorsements. This costs $86.50 in States that use TSA's contractor, but as much as $150 in States that perform the checks themselves. This security check is required for transporting all hazmat, including paint, nail polish, or alcohol-based products like perfume. None of those products pose a weaponized threat.

Congress should limit fingerprint background checks to drivers transporting weaponized hazmat, also called "security sensitive hazmat." All hazmat drivers would still be required to pass the relevant safety tests, as well as the name-based background checks. Drivers transporting security-sensitive hazmat would also be required to undergo a fingerprint-based background check before acquiring another card demonstrating the driver poses no terrorist threat. This proposal passed the House in 2009 with bipartisan support as part of the SAFE Truckers Act.

To my second recommendation, wet lines are fuel-loading pipes used to fill and drain cargo tanks. MAP–21 banned PHMSA from issuing any final wet line regulation until GAO studied the rule. PHMSA's proposed regulation had very few benefits and high cost. Because of this, and the fact that better alternatives are available, GAO recommended withdrawing the rule. But, PHMSA has not done so. Instead, PHMSA has indicated their intent to promulgate a rule, anyway. Given GAO's finding, and PHMSA's refusal to withdraw the rule, a legislative ban is both appropriate and necessary.

Finally, hazmat regulations forbid States from enacting any regulation or permit requirements that are not substantively the same as Federal regulations. However, States may require motor carriers to apply for permits to transport hazmat in their States. State permits are, unsurprisingly, substantively the same as Federal requirements. Carriers compliant with Federal requirements will, by definition, also be compliant with State requirements.

Five States—Michigan, Nevada, Ohio, Oklahoma, and West Virginia—are currently members of the Alliance for Uniform Hazmat Transportation Procedures. The alliance States have amalgamated their application process online. A carrier can visit the site once, provide all the necessary information through a single interface, select the States in which the carrier transports hazmat, and pay a single composite fee. States that wish to require hazmat permits should be compelled to join the alliance. States already participate in similar programs for administering fuel taxes and processing motor carrier registrations.

ATA and its members, along with The Kenan Advantage Group, support safe and secure transportation of hazmat. Hazmat regulations can be improved by reforming hazmat endorsement background check, forbidding PHMSA from issuing a final warning on the wet line rule, and compelling all States to join the alliance for issuing hazmat permits. All three, I believe, are very commonsense approaches.

On behalf of The Kenan Advantage Group and ATA, I would like to thank you for this opportunity, and I would welcome any questions from the Members.

Mr. DENHAM. Thank you, Mr. Downey.

Mr. Schick, you may proceed.

Mr. SCHICK. Good afternoon, Chairman Denham, Ranking Member Brown, members of the subcommittee. My name is Tom Schick, I am here on behalf of the American Chemistry Council. We appreciate this opportunity to testify on reauthorization of the Hazardous Materials Transportation Act.

ACC represents the leading companies engaged in the business of chemistry. Our members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. I would like to underscore the important role that the products manufactured and shipped by our members serve in virtually every aspect of our lives. The Nation depends on our industry to produce the chemicals that are necessary for safe drinking water, life-saving medications, medical devices, safe and plentiful food supply, energy-saving solar panels, and much more.

Our members rely on all transportation modes to deliver products wherever they are needed to get the job done, from water treatment, to farms, to factories. Because a number of the shipments involve hazardous materials, we work constantly with our transportation partners to find ways to build upon an already impressive safety record. Through ACC's Responsible Care initiative, our member and partner companies are committed to continuous safety improvement in every aspect of transportation. Collectively, we have invested billions of dollars in training, technology, and equipment, and will continue to do so.

We have also worked to establish a strong and successful partnership with emergency responders. For example, our members, working with other stakeholders, developed transportation community awareness and emergency response, known as the TRANSCAER program. This is a voluntary training effort to help communities prepare for possible hazmat incidents.

Emergency responders also have access to a wide range of experts through ACC's CHEMTREC Center. When an incident does take place, the center provides the information on the best way to handle all types of hazmat. CHEMTREC provides this service 24 hours a day, 7 days a week, at no cost to emergency responders, other callers, Government, or taxpayers. We invite the members of the subcommittee and the staff to tour our CHEMTREC Center in northern Virginia, or attend a TRANSCAER event.

Turning to HMTA reauthorization, we believe the Federal Government must continue to play the central role in ensuring safe transportation of hazmat. Congress has wisely established a comprehensive national regulatory system that is administered by DOT. HMTA has worked well in making the transportation of chemicals and other hazardous materials safe for the public, for workers, and emergency responders.

As you consider legislation to reauthorize HMTA, we strongly support the uniform national regulatory program that assures that all aspects of hazmat transportation are consistent across this country. We also support DOT's excellent work in harmonizing, to

the maximum extent possible, U.S. hazmat regulations with international standards. This harmonization not only facilitates commerce in these important products, but also promotes safety through consistent hazard communication requirements, and consistent procedures and equipment.

We are concerned, however, about two aspects. One is the loading and unloading of hazardous materials. Several years ago, DOT withdrew from the regulation of loading and unloading in certain circumstances. Yet DOT, as well as others, are critically aware of the importance of loading and unloading in safety. We think that loading and unloading are fundamental to safe transportation, and that Federal regulation is the way to provide that uniformity to enhance the training of hazmat employees and the preparedness of emergency responders. So we would like to see DOT re-establish its full regulatory position on loading and unloading.

Turning to special permits, these allow safety-based variations from the existing rules. Applicants for special permits come forward voluntarily with proposals, and these can only be approved if DOT finds there is at least an equivalent level of safety to what the regulations require. Special permits are a win-win process. The applicants gain operational flexibility at no loss of safety. Other parties can learn from and even use the same special permits, if they are approved by DOT to do so. And the Department learns about new procedures and technologies that can later be incorporated into the regulations. In fact, MAP–21, as mentioned earlier, has DOT doing that.

There has been some talk about user fees for special permits. We oppose that at ACC. Special permits are an inherent and beneficial part of the regulatory process that governs hazmat transportation. We think it is appropriate to maintain that function without imposing user fees that could interfere with the development and implementation of new safety enhancements.

In conclusion, the country depends on HMTA and the safe and reliable system to move hazmat. Where improvements are deemed appropriate, we can all work together to continuously improve it. We look forward to cooperating with you in this, and I would be glad to answer any questions.

Mr. DENHAM. Thank you, Mr. Schick.

Mr. Pelkey, you may proceed.

Mr. PELKEY. Good afternoon, Chairman Denham, Ranking Member Brown, other members of the subcommittee. I sincerely appreciate the opportunity to appear before you this afternoon to discuss issues regarding hazardous materials reauthorization, an issue of vital importance to the U.S. fireworks industry. I am Stephen Pelkey, president and CEO of Atlas Advanced Pyrotechnics, headquartered in Jaffrey, New Hampshire. I also currently serve on the board of directors of the American Pyrotechnics Association, and as the chairman of the APA's Transportation Committee.

Atlas was founded in 1950 and is a prominent professional fireworks display company, producing award-winning displays throughout New England the world. Atlas employs 24 full-time workers. During our busy Fourth of July season, our employment rolls swell to 750 employees.

I am here today on behalf of the APA. APA participates in the Interested Parties for Hazardous Materials Transportation coalition, commonly referred to as the IPs. I have been tasked to address the IPs and APA's number-one priority, which concerns the Federal Motor Carrier Safety Administration's Hazardous Material Safety Permit Program, and the ongoing delays in reforming this vital program.

The HMSP program has been seriously flawed since inception, and I have detailed those flaws in my written submission. At the present time, to retain an HMSP, a carrier must maintain out-of-service inspection rates for vehicle, driver, and hazmat violations below a set percentile. HMSP holders are judged against all other carriers under the vehicle and driver rates. However, they are judged against themselves when determining the hazmat out-of-service rate, which is based on violations that, for the most part, are not crash-causal. And this is the most troubling and difficult area in which to maintain compliance.

Unlike large, long-haul freight of all-kind transporters that operate year-round and are inspected frequently, display fireworks transporters operate primarily on a seasonal and periodic peak-time basis, typically driving much shorter distances and many fewer miles. Thus, we have far fewer inspection opportunities to offset any potential violation.

In order to stay above the designated hazmat threshold, a carrier must have 14 clean inspections to overcome the effects of just 1 bad inspection. Atlas has firsthand experience with this extremely flawed program, as we unfortunately lost our permit in 2011 as a result of receiving several erroneous out-of-service citations that put our company above the hazmat disqualification threshold. Without a permit, in order for us to stay in business, we were forced to ship products in separate trucks, each legally transporting the less than 55 pounds of fireworks, the threshold which triggers the application of the HMSP.

For the better part of a year, we put 8 to 10 trucks, separate trucks, on the road, legally moving less than the 55 pounds in each vehicle to each of our contracted display sites, as we aged out of the 12-month period to renew our permit. Needless to say, this placed an undue burden on our company, and one has to question whether public safety was enhanced by having multiple vehicles on the road, rather than transporting these products in just one vehicle.

We appealed the erroneous paperwork-related citations to Federal Motor Carriers' DataQs. However, the State authority issuing the citation incorrectly entered the citation as "no shipping papers offered." As Federal Motor Carrier Safety Administration chose to side with the State authority, rather than provide us with an opportunity and appropriately appeal the citation directly to Federal Motor Carrier.

While we understand limited agency resources necessitate the delegation of enforcement to the States, we believe it is not appropriate that the agency has delegated its ultimate authority to determine whether a hazmat safety permit should be renewed or denied. The APA, along with several other IPs has been advocating for the need of an administrative process that would also allow

Federal Motor Carrier to intervene outside of the DataQs. We will call this an additional level of safety review to determine a carrier's fitness prior to the denial of a permit.

In 2011, Federal Motor Carrier agreed that the HMSP program was flawed, and accepted our petition for rulemaking. However, we are disappointed that the agency has not made reform of this program a priority. While the agency's recently released assessment report to Congress recognized the need to provide a means for corrective actions and/or second level of review for carriers, the agency does not establish a timeframe to address this ongoing problem.

I am pleased to see a number of recommendations outlined in the assessment. Several of the recommendations, however, will require rulemaking, which is a lengthy process. In short, hazardous material safety permit holders will have no prospect of immediate relief. Providing HMSP holders an opportunity for an additional level of safety review before their permit is denied must be a priority.

We are grateful to members of this subcommittee who have joined in efforts to reform this program. Atlas is committed to ensuring safety in the handling, transportation, and execution of our fireworks displays. Atlas and members of the APA will continue to provide safe and spectacular fireworks displays and delight and thrill American families across our great Nation.

Mr. DENHAM. Thank you, Mr. Pelkey.

Mr. PELKEY. And I thank you for this opportunity to testify.

Mr. DENHAM. Thank you for your testimony.

Ms. Harman?

Ms. HARMAN. Good afternoon, Chairman Denham, Ranking Member Brown, and members of the subcommittee. My name is Elizabeth Harman, I serve as the assistant to the general president for hazmat, WMD training, and grants administration for the International Association of Fire Fighters. I am pleased to appear before you today on behalf of IFF General President Harold Schaitberger and the 300,000 firefighters and emergency medical personnel who comprise our organization.

Fire departments in the United States receive over 350,000 calls related to hazmat response each year. When an incident involving hazmat does occur, the individuals tasked with responding to the incident are most—almost, without fail, firefighters. Unfortunately, despite the potential for such an incident in every community in America, too many firefighters are insufficiently trained to ensure a safe and effective response.

The reasons for the lack of properly trained firefighters vary, although, for the most part, it is simply a lack of funding. Nationwide, fire departments' funds are stretched thin, a situation which has been exasperated by the recent recession. In tight budgetary environments, training is often among the first items to be cut. Unfortunately, the lack of adequately trained personnel in the fire service means there are significant portions of the country where first responders are not prepared for an incident. This is an untenable situation which must be rectified.

We must ensure that firefighters receive the type of training that is most appropriate for emergency response. Unfortunately, of the training that is being provided to firefighters, much is provided at an insufficient level. OSHA regulations identify special com-

petencies for employees who are engaged in emergency response. Awareness level training is intended for individuals who are likely to witness or discover hazardous substance release, and notify the proper authorities, which, in most cases, would be a fire department.

Operations level training is intended for workers who respond to releases or potential releases of hazardous substances. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. These regulations clearly indicate operations level training is the minimum level intended for firefighters. This is also supported by national consensus standards, such as NFPA 472. Providing awareness level training to firefighters is not sufficient. There is little point in training firefighters to learn how and when to call the fire department.

Unfortunately, the number of firefighters receiving awareness level training, rather than operations level training, is growing. Congress has begun to address the inadequacies of hazardous materials training among firefighters. In MAP–21 Congress required that all training delivered to firefighters via PHMSA's hazardous material emergency preparedness grant program must be at the operations level or greater. While a positive step in the right direction, training provided via HMEP represents only a tiny fraction of the training received by firefighters nationwide.

Congress should explore ways to encourage States and localities to provide all firefighters with operations level training, regardless of the funding source. We must also ensure that training is provided in a manner that must be customized and incorporate real-world events. Under the HMEP grant program, the IFF has received an annual grant to train instructors to deliver hazardous materials training to emergency responders nationwide in communities of all sizes. We have also recently, due to amendments in MAP–21, begun direct delivery of training, in addition to administering our train-the-trainer program.

We believe our training provides the best model for training firefighters to respond safely and effectively to real-world hazmat incidents. We provide training to both professional and volunteer fire departments at no cost to them. The grant has enabled the IFF to sufficiently increase training rates in the first responder community. The IFF's unique training model provides responders with real-world training in hazmat response that few institutions can match. Instructors train through the IFF's program deliver training directly to responders in their own communities, allowing them to tailor their presentations to address unique concerns or challenges facing a particular community, such as a specific hazmat shipping route.

The IFF model also utilizes highly experienced firefighter instructors to each its courses in a peer-to-peer setting. Independent evaluations of this training have found the programs to be cost effective, and evaluations have found the instruction to be highly effective. Simply put, the IFF provides exemplary hazmat training at a time when first responders need highly effective, appropriate training more than ever. We encourage the subcommittee to continue funding this valuable program, and use it as a model when considering expanding training opportunities for firefighters.

PHMSA also has an important role to play in making it easier for responders to identify hazardous materials. The paperless hazardous communications pilot program established by MAP–21 represents a significant step forward in the development and advancement of identification tools. Providing first responders with access to updating e-shipping papers will help responders identify hazardous substances during a hazmat incident without putting personnel at risk.

As PHMSA continues to develop HM–ACCESS, the program's success will depend upon meeting certain key criteria. First, responders must have access to e-shipping information. HM–ACCESS must conduct pilot tests in all forms of transportation. And PHMSA should consult with first responders, including rank-and-file users, at every step of the system's development.

This concludes my testimony, and thank you for the opportunity to testify today. I am happy to answer any questions you may have.

Mr. DENHAM. Thank you, Ms. Harman. I will now recognize each Member for 5 minutes' worth of questioning. Mr. Young, you are recognized.

Mr. YOUNG. Thank you, Mr. Chairman. I do appreciate the courtesy.

Administrator Quarterman, in the wake of the recent train derailments involving crude oil, the Department of Transportation issued a safety alert announcing that Bakken crude oil could be more volatile than conventional crude oil, and may need to be handled differently. Instead of focusing on the cause of the derailment, your agency seems to be preoccupied with the characteristics of crude oil. When crude oil is transported by railcar, it is labeled as group one, two, and three. And which of these packing group, Mr.—Madam Administrator, is the most dangerous?

Ms. QUARTERMAN. Thank you for your question. The Administration is not just focused on identifying the characteristics of the crude oil. In fact, we have a three-part approach, which includes, as the very first step, prevention of incidents. The second is mitigation of incidents, should they occur. And the third is making response available to incidents.

In terms of the packing group that is the most dangerous, packing group one, sir.

Mr. YOUNG. And Bakken oil is number two, if I am not mistaken. Bakken oil is two.

Ms. QUARTERMAN. Bakken oil may be one or two. We have seen from our testing——

Mr. YOUNG. It is two. It is two. One is the most volatile. Bakken oil is two.

At the last safety hearing you said that cars are not a silver bullet, and we should be focused on preventing derailments. Yet yesterday, you publicly complained that the oil industry has not shared Bakken crude characteristics with your agency. What is the number one cause for rail—tankers to be derailed?

Ms. QUARTERMAN. I think we have been clear from the beginning, sir, that it is a multi—it is a very complicated problem which requires a comprehensive approach. Included among that approach are determining the characteristics of the crude. And, as I said at the beginning, prevention is the very first leg of the three-legged

stool that we think will prevent this from occurring, and we have been working very hard——

Mr. YOUNG. In all due respects, madam——

Ms. QUARTERMAN. Sure.

Mr. YOUNG. In all due respects, where is the problem of any rail going off because of what you are carrying?

Ms. QUARTERMAN. [No response.]

Mr. YOUNG. There is none. It is at the rail. It is not the liquid which you are carrying in the container. This is not a new process.

Ms. QUARTERMAN. Everything has to be——

Mr. YOUNG. This has been going on for years and years and——

Ms. QUARTERMAN [continuing]. Considered, sir.

Mr. YOUNG [continuing]. Years and years, and I—my interest in this, we have—we transport volatile fuel in tank cars, as they are made today, the same cars that are used in the Bakken field, and yet there seems to be some interest in your agency to say that it is the car's fault. It is the rail's fault.

Ms. QUARTERMAN. I am not here to ascribe blame to anyone. I am here to tell you that, as a multiple—it requires multiple responses. It is a comprehensive approach which includes prevention. Yes, you are correct, we need to ensure that train cars stay on the track, absolutely true. But we also need to ensure that the package itself is appropriate, and that the materials that are in the package are appropriately packaged, and that the materials are appropriate to be shipped.

Mr. YOUNG. Mr. Chairman, my interest in this is this is another agency that doesn't understand what in the world they are doing. A multiple facet, and you are going to package something different that has been packaged all these years, and you say we have to have a new way, area, time of packaging crude oil that—makes no difference what we have been doing all these years. Happens to be more volume. There is probably rails that have been misused, and that is where we should be concentrating.

And, by the way, how many of the oil companies have shared their data with you on Bakken oil?

Ms. QUARTERMAN. I believe we have received information from three companies so far.

Mr. YOUNG. It is four, but that is OK. I just—because they have communicated with you. And have they ever said anything about the cars?

Ms. QUARTERMAN. I beg your pardon?

Mr. YOUNG. Have they ever said anything about the cars?

Ms. QUARTERMAN. Well, as I said, I believe that there were three companies that provided information to us. And in terms of the cars, I don't understand your question.

Mr. YOUNG. No. What I am saying—have they ever said anything about the cars being inadequate to carry the fuel?

Ms. QUARTERMAN. Have the companies——

Mr. YOUNG. Yes.

Ms. QUARTERMAN [continuing]. Said that the cars were—I have no idea.

Mr. YOUNG. No? OK. Mr. Chairman, again, what I don't want to see is an agency, "OK, we are going to have a silver bullet, we are going to produce new cars, double hull," da, da, da—has nothing to

do with these derailments. As ex-chairman of this committee, that is what we should be concentrating on, not the other stuff. Thank you, Mr. Chair.

Mr. DENHAM. Thank you, Mr. Young. Ms. Brown?

Ms. BROWN. I think we need to follow up on this discussion, because the last meeting we had AAR said the cause was inadequate, and they are beginning to develop additional cars. But in addition to that, it really doesn't matter if your city explodes, whether the car was at fault or whether what they was carrying is at fault. We need to make sure that we do the multiplicity of things, including prevention. That is the first thing.

But the question that I have here is that we asked the last time, and seeing your testimony, that the Petroleum Institute said that they were cooperating. I need to know. Have they provided you with the information that you need for the testing? And, if not, what is it that we need to do to make sure that you are getting what you need, whether it is this crude, the oil crude, or this new crude we using? If it kills you, then it is the same.

Ms. QUARTERMAN. Well, let me just say that we are working hard with all the stakeholders involved in this, and asking them to come to the table and cooperate with us, in terms of providing information, whether they be a rail industry or a petroleum industry.

We have, as I mentioned, a few companies who have come forward, and we applaud——

Ms. BROWN. How many companies are we talking about?

Ms. QUARTERMAN. We have had three companies provide us detailed information. We have had conversations with several companies who have provided more anecdotal information. My statement went more to the American Petroleum Institute, who has not provided any individual information on that. They have, however, come forward to put together a working group to look at classification piece, and try to come forward with the standard, and we appreciate that assistance.

Other organizations have also stepped forward: the American Petroleum—wait, fuel—the Association of Fuel and Petroleum Manufacturers have indicated that they are going to put together some information for us. My statement really went to the American Petroleum Institute, who has not supplied any data with respect to the characteristics of the crude. And one would think that they would know.

Ms. BROWN. Two questions. What, as far as the material is concerned, the firefighters, when we train them—and this is for you also, Ms. Harman—how can we make sure that they have the adequate equipment and training so that they can protect themselves when we have an explosion? We have had two in Florida where people were killed. And we have got to make sure that that does not happen.

Ms. HARMAN. Thank you very much. That is an excellent point, and I appreciate your comments in your opening comments. And you may not be aware, we do have some of our instructors from Jacksonville, Florida, who are part of our instructor cadre that teach all over the United States, as well as Canada, with other funding sources.

And training, for us, is key. Training for urban areas, rural, and suburban, is key. And there are times when our instructors will arrive at locations. They know they need the training, they have requested the training. And I can tell you when our instructors arrive there, they don't necessarily have the proper equipment to do what they need to do. And that is where our training model that comes into play brings those outside experiences, folks that have dealt with experiences—unfortunately, like you have in Florida—to bring that to those smaller, rural areas, to say, "You know what? You need this equipment, you need that equipment."

Then, the next question is, "Where is the funding that comes from that?" They are small departments working off a—rural volunteer fire departments working off budgets of $89,000 a year. There are large metropolitan areas that are working on much larger budgets. But the key to this equipment is true operations-based training, which, at times, is your basic firefighting equipment and a whole lot of water. Sometimes foam is at play in some of this, but if it is a running liquid that is going, foam is not going to eventually help that. So, our instructors will help guide those departments where they need to go.

Ms. BROWN. Ms. Quarterman, you mentioned in your testimony, or the last time, there are grants available. How do you let the community know that these grants are available for training, and to educate the community?

Ms. QUARTERMAN. Yes, there are grants available: the HMEP grants, which were referred to earlier. And when those grants come out we have a—obviously, we send out a press release, we tweet it around the country, we talk to individual members to let them know that this is available to their States and localities. And in this past instance, we have included a special provision related to crude oil.

Let me just add to what Ms. Harman said on the firefighter front. We have put together a working group to talk about the Bakken crude in responding to those incidents. As was mentioned earlier, we sent out a safety alert, which was focused, in many ways, to the emergency response community, so that they would know that when they see these trainloads of crude going across the country, it is not crude that they may be accustomed to responding to. It is really a much lighter, more volatile crude. Thank you.

Mr. DENHAM. Thank you, Ms. Brown.

Ms. BROWN. Thank——

Mr. DENHAM. Mr. Hanna?

Mr. HANNA. Thank you, Chairman. Administrator Quarterman, can you answer a quick question for me? Are more hazardous materials—meaning oil, gas, et cetera, natural gas, propane—carried underground than over ground?

Ms. QUARTERMAN. I think the answer is yes.

Mr. HANNA. So that the XL pipeline might not be a bad idea?

Ms. QUARTERMAN. That is not under my authority——

Mr. HANNA. No, I realize that. I just couldn't resist.

[Laughter.]

Mr. HANNA. The—Mr. Pelkey—thank you. You said that you need 14 positive inspections to offset 1. Is that regardless of the size or number of trips that your particular business is making?

Mr. PELKEY. Yes. There is a certain threshold that you have to maintain under for any hazmat type of——

Mr. HANNA. So that—the conclusion would be that if you are not a big company, you may never get back to a point where you are making—you have made enough inspections. You may be—find yourself in a position where you are begging to be inspected, because you need to get past that 14 threshold.

Mr. PELKEY. Correct.

Mr. HANNA. So, shouldn't it be more flexible for somebody who is small, as opposed to big? I mean, does 14 fit every company?

And, let's—conversely, if you are a huge company, you may get inspected 14 times in a day, which lets them—you know, they would actually be able to have an error a day, because they are off the hook the next day. Am I getting that——

Mr. PELKEY. Thank you, Congressman. That is a great question. It is further exacerbated because most display companies across the country normally would perform their duties and their work over this July 2nd, 3rd, 4th of July, New Year's Eve or Labor Day. And in most cases, there aren't any enforcement teams that are out there that are inspecting on those particular——

Mr. HANNA. So you——

Mr. PELKEY [continuing]. Nights and weekends, and you are lucky to see one. If you did receive one—and sometimes you do—often times you wouldn't even have a hazardous material authorized person to inspect. Therefore, you would be going through the inspection process——

Mr. HANNA. So you can't get a ticket if you beg for one on the wrong day.

Mr. PELKEY. We have gone through, and several of our members of the American Pyrotechnics Association have gone through a stop, a weigh point, and begged for an inspection, for a hazmat inspection, and there just isn't a certified inspector there.

Mr. HANNA. Mr. Schick, did you want to say something?

Mr. SCHICK. I am not going to—we don't operate motor carriers, for the most part——

Mr. HANNA. Right, right.

Mr. SCHICK [continuing]. I am not going to join into that one.

Mr. HANNA. Well, thank you very much. Chairman?

Mr. DENHAM. Mr. Hanna yields back. Mr. DeFazio?

Mr. DEFAZIO. Thank you, Mr. Chairman. I would—he is not here, but I would respectfully disagree with the former chairman. We need to know what materials are being carried, and both obviously deal with operational issues, which is FRA, and they are not before us today, and deal with, you know, the actual containment of those materials. And it does make a difference, in terms of the containment. It certainly makes a difference to the first responders, in terms of the knowledge of—the training and the materials to deal with that. So I would have some disagreement there.

But on—Madam Administrator, on February 26th we held a hearing. And, as you might remember, we had some discussion. I was trying to find out about a potential date for rulemaking for the new tank cars. I am wondering what the current status is. Have you completed your work? Is it at the Secretary's office? Is it down there with the trolls at OMB? Where is it?

Ms. QUARTERMAN. We have made great progress since we—I last testified before you. We have a—shall we say a draft in circulation? So we are working very hard, and hoping to move that rule out very soon.

Mr. DEFAZIO. Can we just go back to what "very soon" might mean? Not to belabor my point from the last hearing, but I would like—here is the issue—we have one major rail company looking at making a huge investment. Whether or not they will have a safe harbor if they go ahead with their improved tank car, whether or not other people will buy the AAR version, or whether or not people will try and make the 111's safer, depends upon both the rule you put forward, what it proposes, and what conditions it puts on the existing cars.

Ms. QUARTERMAN. No, I agree with that, and we have been having ongoing conversations with those folks, as well. So we know that commitments are being considered, and that is why we are working as fast as we possibly can to get a rule out.

Mr. DEFAZIO. OK. So I am not going to get much further with that.

So, there is another issue, which I actually was surprised by. I have been on the Aviation Subcommittee for a very long time, and I had no idea that the lithium batteries are nominally the jurisdiction of PHMSA, but have been delegated to FAA. And I would note that I think we are 8 years or so into a rulemaking, which I hope doesn't happen with tank cars. Can you give me any idea about what DOT is doing to harmonize our standards with those of ICAO, which would seem to be reasonable to me?

Ms. QUARTERMAN. Absolutely. Yes, it is actually our rulemaking, and we are responsible for hazmat, no matter how it moves, as well as operational issues related to hazmat in different modes. We have a rule that we are hoping to get out very soon to complete our harmonization with ICAO on the lithium battery, as well.

Mr. DEFAZIO. OK. And is that rule somewhere other than in your agency?

Ms. QUARTERMAN. It is.

Mr. DEFAZIO. Would it be down at OMB?

Ms. QUARTERMAN. I think it is all public, where it is. It is——

Mr. DEFAZIO. Is it there? I mean you can tell me yes or no?

Ms. QUARTERMAN. Yes, it is.

Mr. DEFAZIO. Yes. I can find it, yes.

Ms. QUARTERMAN. Yes.

Mr. DEFAZIO. OK. I once had a colleague, Al Swift, from Washington State. And he described to me the people at OMB. He says, "DeFazio, they are the trolls with the green eyeshades that hide under the bridges, and they come out and gnaw on your leg every once in a while."

I know OMB is concerned about cost effectiveness, but when it comes to saving lives or keeping an airplane in the air, I think they need to move more promptly. So now I know where to direct my concerns. Although, in terms of the tank car, I think they are still to you; in terms of lithium batteries, it is to OMB.

Thank you, Mr. Chairman.

Mr. DENHAM. Ms. Quarterman, the GAO report on the safety of wet lines raised significant concerns with the accuracy of the data,

and found that the costs and benefits were not accurately presented in the proposed rule. Yet PHMSA refuses to withdraw proposed wet lines rule. Do you plan on withdrawing the proposed rule? And why, or why not?

Ms. QUARTERMAN. Let me just say for my friends at OMB who work really hard on our issues, that, you know, that they are supportive, I think, of safety, as well.

On your question on wet lines, we are in the process of reviewing the results from the GAO study to determine—I mean they were critical of our regulatory evaluation, determining the costs and benefits associated with the wet lines rule. So we are still in the process of reviewing that, looking at the data that we have associated with that, looking at the recommendations that they gave to us about how we might improve that data.

And then, we will determine whether we withdraw the rule or move forward with it. Whether we do either, we will certainly want to improve the safety of wet lines, whether it is through a rulemaking or something else. My colleague, Mr. Downey, mentioned that there are other options available. I welcome him to come talk to our staff about ways that we might improve wet lines in the future.

Mr. DENHAM. So, just to be clear, you do not disagree with the GAO report.

Ms. QUARTERMAN. They drew some conclusions about our analysis, our cost benefit analysis. We are going back to look at their recommendations, and try to improve that, and then we will make a determination on how to proceed.

Mr. DENHAM. Thank you. And what is your timeline on that?

Ms. QUARTERMAN. We don't have a timeline, that I am aware of, at the moment. You know, the next few months we will be looking at that.

Mr. DENHAM. This is something you intend on either—making a recommendation one way or another within the next couple of months?

Ms. QUARTERMAN. Yes. We have been a little busy recently.

Mr. DENHAM. Thank you. Mr. Downey, you expressed concern about the wet lines rulemaking. How would you propose that PHMSA use its resources in order to withdraw its proposed rulemaking?

Mr. DOWNEY. With the GAO report, but also the independent evaluation that was done. Our position is that we can take the dollars that would be required to retrofit our trailers, or buy new trailers with some type of device that would evacuate the wet lines, and put those dollars to training or other types of technologies that would prevent accidents, such as anti-rollover stability equipment.

Mr. DENHAM. Thank you. Mr. Schick, you are supportive of PHMSA's regulating loading and unloading of hazardous materials. What are the benefits PHMSA's—what are the benefits of PHMSA's doing so? And, specifically, will it help the preparedness of emergency responders?

Mr. SCHICK. Mr. Chairman, we are totally supportive of that. As I said in the written testimony, they had somewhat withdrawn the application of their authority, which they pretty clearly have. We think that that is primarily for operational safety and operational

efficiency of the shippers and the consignees who do the loading and unloading and are present when that happens. It is important for safety for everyone that the same kind of activity, say the same unloading conducted with the same equipment from the same, let's say, cargo tank, be under PHMSA's jurisdiction, so they have oversight over everything. It should not matter whether the person doing the unloading happens to be the employee of the trucking company or happens to be the employee of the consignee.

I think since that happens mostly on site, it is primarily for those kind of operations, rather than emergency responders. But more fundamentally, the loading and unloading are known to be potential causes of accidents. So, if you are looking to prevent accidents, obviously you want your loading and unloading to be done in a safe manner. And we believe that if it is done in a consistent manner under Federal oversight, as opposed to possibly disparate ways under different State and local jurisdictions, that will enhance safety.

Mr. DENHAM. Thank you. And can you also explain the concerns you have with imposing further costs on special permits and approvals of applicants?

Mr. SCHICK. Yes, I can, sir. As I said in testimony, the special permit applications actually come from parties—it could be shippers or carriers, it could be Government agencies who are in the role of a shipper, for example—that have come up with a new way to do something. But they know, full well, it does not fit under the current written PHMSA regulations. So they come forward, they acknowledge that, they make a presentation to the agency, and the agency evaluates it. It cannot proceed to grant a special permit unless it is shown to be at least as protective as what the rules apply.

If it passes that test, and it can be put into place by the applicant who gets a special permit, other parties who do the same thing can also use that, and the agency, in effect, gets research and development. They get new ideas brought to them, and they get to look at them. And then, over time, they can move those into the regulations. So everyone benefits.

Mr. DENHAM. Thank you. Ms. Napolitano?

Mrs. NAPOLITANO. Thank you, sir. Ms. Quarterman, what steps are being taken to ensure the safe, secure shipment of chlorine and other toxic gases? The railroad companies recently partnered with DOT and TSA to put in place the procedures to further improve the safety and secure shipment of the gas. Could you share some of those procedures, quickly?

Ms. QUARTERMAN. I will have to get back to you for—on the record on that.

Mrs. NAPOLITANO. Would you report that back, please?

Ms. QUARTERMAN. Yes, absolutely.

[The information follows:]

Working closely with FRA and TSA, PHMSA established several critical requirements to ensure safety and security of toxic gas shipments. Key requirements and procedures include:

- **Security Plans** (49 CFR § 172.800)—Each person who offers for transportation in commerce or transports in commerce a PIH material must develop and adhere to a transportation security plan. The security plan must be based on an assessment of the possible transportation security

risks for materials transported, stored, or unloaded incidental to movement. Key components of the security plan include:
- Measures to address assessed risks regarding personnel security, unauthorized access, and en route security;
- Identification by job title of the senior management official responsible for development and implementation of the plan;
- Security duties for each position or department responsible for implementing the plan; and
- Training for hazmat employees.

- **Rail Routing** (49 CFR § 172.820)—Rail carriers must assess available routes using, at a minimum, the 27 factors listed in Appendix D to Part 172 of the HMR to determine the safest, most secure routes for security-sensitive hazardous materials. These factors address safety and security issues, such as the condition of the track and supporting infrastructure; the presence or absence of signals; past incidents; population density along the route; environmentally sensitive or significant areas; venues along the route (stations, events, places of congregation); emergency response capability along the route; measures and countermeasures already in place to address apparent safety and security risks; and proximity to iconic targets. The regulations require rail carriers to make conscientious efforts to develop logical and defendable routing decisions using these factors.
- **Speed Restriction by Rail** (49 CFR § 174.86)—For trains transporting any loaded, placarded tank cars containing a material poisonous by inhalation, the maximum allowable operating speed is 50 mph.
- **Enhanced Tank Car Design** (49 CFR §§ 179.100 and 179.102–3)—Increased tank car design standards for head and shell puncture resistance, nozzles, and top fittings protection.

Mrs. NAPOLITANO. Thank you. Mr. Schick, you were talking about the training of loading and unloading. That is a real serious issue with me. I have one of the largest corridors of rail transportation and truck transportation in my area. And I visited some of the places where they build the double wall for chemicals.

My concern is that we are providing training at one of the local university colleges for firefighting in hazmats. But are we training them in the proper procedures of loading and unloading?

Mr. SCHICK. I don't believe, ma'am, that the firefighters would be doing the loading and unloading. I am talking about the loading that happens at the production site, and the unloading at the receiver's site.

Mrs. NAPOLITANO. Right, but——

Mr. SCHICK. Rather than what might happen——

Mrs. NAPOLITANO [continuing]. If there is a spill, the firefighters have to come in and help clean up. Do they not?

Mr. SCHICK. If it is on—if it is outside of transportation, there—certainly could be called in certain circumstances. If it happens during transportation, obviously, it is out in the public space, and it is a different issue, I think, in that sense.

But, again, I think the loading and unloading itself is not done by the emergency responders. The National Transportation Safety Board a number of years ago—took a very close look at this back in 2001—this was at the time when PHMSA was in the process of drawing back its regulatory authority. And the NTSB said in no uncertain terms that they are not convinced that if RSPA—it was then called RSPA, Research and Special Programs Administration; it is PHMSA today—relinquished its regulatory authority over hazardous materials loading/unloading operations, other Federal, State agencies would be able—they are concerned whether they would be able to exercise the necessary safety oversight of these very specific

areas of transportation. That is why we at ACC support—and I believe the large Interested Parties community generally supports—the re-establishment of loading and unloading as primary functions under DOT's jurisdiction, and not to leave it to disparate points of view.

Another aspect from industry is if someone is involved in that at a plant site, if they are going to be transferred and have a job opportunity elsewhere within their corporation, it would also be helpful—it is not a safety issue, but it would be helpful, not only for the company, but for the personnel, to be able to go somewhere else and have the same rules apply.

Mrs. NAPOLITANO. But are the chemical companies required to report on-site accidents of loading and unloading?

Mr. SCHICK. I would—I think I will ask Ms. Quarterman, who is here. I think that when the carrier is present, the carrier files a 5800 report, which is the report for the unintended release of hazardous materials. I think what happens without the carrier being present—even, as I said, with exactly the same process and equipment, I think you may be having PHMSA deprive itself of exactly that kind of knowledge.

Mrs. NAPOLITANO. Ms. Quarterman?

Ms. QUARTERMAN. If there is a loading and unloading incident that is associated with transportation, then, yes, it would be reported on the 5800 report.

Mrs. NAPOLITANO. OK, thank you. And, Ms. Harman, how much placarding information should be displayed on the railcars carrying material? And is this important to the local folks to be able to know what is being transported?

Ms. HARMAN. Thank you for your question. Yes, it is absolutely critical that we understand what is being placarded. Your first responders that arrive to a scene of an incident like that, their job is defensive operations, not just to recognize, but also to prevent any further damage to the community, whether they have to dam and dike. They have got to notify the community, they have got to look up that particular item in the ERG book, and figure out if there needs to be some sort of evacuation, how far that needs to be. So, yes, it is absolutely critical that we are able to know what is in that container.

Mrs. NAPOLITANO. Where should be the best place for displaying of such material that is being transported?

Ms. HARMAN. Right in the public view, of where those are located now. In addition, if there is an incident, and that is an obstructed view, the shipping papers are critical for us, as well.

Mrs. NAPOLITANO. Well, that question has come up in the past, because there have been some instances in my area in years past, and there was no way of getting to the cab, to the front of the locomotive. And so there was a question about what was inherently being carried.

Ms. HARMAN. Right.

Mrs. NAPOLITANO. Because the placarding was not sufficient.

Ms. HARMAN. Right. And the key for us—you know, worst case scenario—I mean, obviously, the placarding needs to be there for us. The shipping papers need to be there for us. Even if—when we move into an e-shipping, electronic world, you know, that shouldn't

replace the paper shipping papers for us. There is always a way for us to go back to the basics. It is critical for firefighters.

But if we cannot view those, it is going to be treated as any other flammable liquid until additional resources arrive.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. HANNA [presiding]. Ms. Esty?

Ms. ESTY. Thank you, Mr. Chairman. I am really glad we are having this hearing today. Just last year, we had one of these chemical spills in Fulton Park, in one of my cities in Waterbury, Connecticut.

And, again, the issues Ms. Harman has raised about the preparedness of those who arrive at the scene and often do not know what they are encountering, and have to make life-and-death decisions immediately for a community. So I want to drill down a little bit more into some of those issues.

So, Administrator Quarterman, does PHMSA currently have a system that can collect and analyze hazardous material incident data collected by emergency responders?

Ms. QUARTERMAN. We do not have the data that is collected by emergency responders. We do require reporting by anyone who has an incident, and we have that data, which we correlate. We have had conversations. My deputy is actually a former fire chief, and he has had conversation with several different firefighting organizations about what data they do collect, and the extent to which we might get some of that data and integrate it with ours, because we actually collect data not just for us, but for all the modes who have involvement in hazmat.

Ms. ESTY. So is there a reason we don't have a system that, as a regular course of business, collects this data?

Ms. QUARTERMAN. I—it is an ongoing conversation. Part of it has to be attributed to resources.

Ms. ESTY. All right. And following up on that, Ms. Harman had expressed concern about—that whatever systems are developed, that they need to be accessible 24 hours a day, and whether there is paperwork there or not. What provisions, if any, is—you know, is the agency looking at?

And, in PHMSA, what is in place now to ensure that electronic communications are accessible in these dramatic incidents? It might be 2 a.m., chaos is reigning, somebody is trying to look at a sheet of paper and determine what these substances are, and what they should do.

Ms. QUARTERMAN. Currently, paper is the only thing that is available. We are in the process of putting together a pilot to do electronic reporting for movement of hazardous materials. We actually had a session last year including, most importantly, emergency responders, because we viewed their opinions as, you know, paramount, in terms of how do we move from paper to electronic. To what extent do we need paper? So that is an ongoing conversation.

Obviously, when we have a pilot, hopefully this year, that will be a part of what we want to learn, a big part of what we want to learn, and make sure that things move smoothly.

Ms. ESTY. For Ms. Harman, I know that the National Fire Protection Agency estimates that 65 percent of departments that are responsible for responding for hazmat do not have formal training.

What can we do in Congress? What can we do to address that? And, obviously, as we are seeing—as you can tell by the questioning about Bakken crude, we expect there are going to be more transportation within our borders on these issues.

What do you recommend that we in Congress ought to be looking at? It is resources, obviously, some of that. But if it is just up to grants, I have got to tell you I represent 41 cities and towns. Some of these towns are 4,000 people. And if we are leaving it up to the volunteer firefighters in Goshen, Connecticut, to know that there is funding available someplace, and a grant application maybe, that their 100 volunteers will get life-sustaining training, I don't think that is acceptable. I don't think that is acceptable for our communities, and it is not acceptable for our volunteers, who put their lives on the line. So, what should we be doing on the congressional level?

Ms. HARMAN. Well, not the answer you want to hear, but continued funding is key for us. I mean training is key. The training is out there. There are multiple modes of training deliveries. There are fixed facility training. We are proud of the portable delivery training model that we bring. We have a strong demand for training right now. There is a wait list for classes that we can't even get to.

The train-the-trainer model is important for us, particularly for those smaller communities. We don't see as many requests for train-the-trainer coming in, particularly now, and particularly from the smaller volunteer communities, because you have got folks in this economy not only trying to volunteer, but working multiple jobs, finding it difficult to do training. They take a train-the-trainer, now they have got to prepare themselves as an instructor to teach the rest of their community, and they may not have some of those larger scale incidents like you have had there in Waterbury to bring that experience into their facility.

So, it is important, I think, for Congress to continue to, number one, enforce that operations level training. It should be the minimum level of training for all firefighters, regardless if they are career or volunteer, and encourage them to reach out to organizations. They have got to take a proactive approach. We are certainly there to provide training throughout career or volunteer. There is other funding sources that are there. There is online training modules that we offer. The resources are there, but it takes a level of effort to also get that.

Ms. ESTY. Also, if you could, quickly, give us your advice on gear, what sort of gear they ought to be looking at having.

Ms. HARMAN. Gear is critical. I mean your traditional turnout gear for firefighters, which is your firefighting ensemble, a self-contained breathing apparatus, is key. A lot of water, a lot of hose. There has been a lot of discussion about foam, and foam caches set up. You know, a large-scale incident, I don't think any large jurisdiction is going to have enough foam to put out any of these. So it is really the traditional firefighter that you see now, if you were to call 911 and showed up here, is the same firefighter that is initially going to show up on a scene like that in their regular turnout gear.

Mr. DENHAM [presiding]. Thank you. Thank you. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman. And I want to thank the panelists, as well, for testifying today. This question is for Ms. Harman.

As you are aware, last summer, when the train wreck in Lac-Mégantic—the severity of that wreck. And, since then, several of my colleagues and I have advocated for multiple-person crews on freight trains, particularly those carrying hazardous materials or meeting trains carrying hazardous materials. We believe that this is a public safety issue, and the FRA actually believes it is a safety issue, as well. And if you look at past rail accidents, there are many incidents of multiple-person crews being able to mitigate the damage by separating the train from the burning cars, and being able to work with first responders.

My question to you is, could you share with us your thoughts on how having multiple crewmembers on hazmat trains could improve safety and interaction with the first responders?

Ms. HARMAN. Sure. We believe in multiple crews—are crucial for us to get the response done appropriately and efficiently. You know, the original driver of that train can easily be injured in the crash themselves. Having multiple people, particularly multiple people who are trained, who are trained to work collaboratively with the first responders so they don't meet for the first time at the scene of that incident, that is critical for us.

Mr. MICHAUD. Thank you. The second question is for you, as well. I recently met with a mayor who is a head of the Maine Municipal Association and learned that many local fire departments only carry enough foam to extinguish a car fire. That would be incapable of responding to a major rail or truck disaster calling for additional foam from surrounding areas.

I recognize that we probably can't ensure that every fire department in the country has the resources to respond to every kind of major disaster, but I do think that local fire departments should have the information to quickly locate and call for those additional resources in the case of an emergency. Is there something that we should do at the congressional level to facilitate this type of information sharing? Or do you have any ideas of what we can do, as far as foam, as it relates to major train wreck?

Ms. HARMAN. No, that is an excellent question. We get a lot of questions on foam. How much is enough? How much is not enough? The true underlying resolve to a lot of this is pre-planning. It is knowing who your partners are, knowing what is coming through your community, knowing what you need to be prepared for, and potentially how much.

As I said earlier, I don't think enough foam is going to cover any major incident. And it has to do with the pre-planning. And at times, really, if you are in a rural area and there is not an immediate threat to life or significant property, there is going to be a time where you are just going to let it burn off.

So, you know, we are supportive of free planning, of collaborative training, and bringing folks together so that they truly—they are not meeting for the first time at the scene of that incident.

Mr. MICHAUD. Thank you. Does anyone else on the panel want to address the issue about adequacy of foam, particularly if you are in a rural area with a major train wreck?

Ms. QUARTERMAN. I will just comment on the end comment from Ms. Harman, in that my deputy has said the same thing. It is not intuitive for me, not being a firefighter, but he has said, you know, in an instance like that, you try to get the people out, and you probably just let the fire burn out. So——

Mr. MICHAUD. OK. Thank you, Mr. Chairman. Yield back.

Mr. DENHAM. Thank you. Ms. Hahn?

Ms. HAHN. Thank you, Mr. Chairman. Ms. Quarterman, I had an incident that just happened in my district in Wilmington, California, where 40 barrels of crude oil from a crack in an idle oil pipeline spewed into a residential neighborhood in Wilmington, California. Obviously, this spill endangered the health and safety of hundreds of my constituents, as well as caused untold amounts in property damage and cost to the local economy.

And while the spill is still under investigation, information that we have learned so far suggests that the spill was caused by an internal corrosion of an idle pipeline that, unfortunately, still contained a lot of oil. The current owner of the pipeline believed that the idle pipeline was empty when it was received 15 years ago from the previous owner. And no inspection of the inside of the pipeline apparently is required under PHMSA or State guidelines.

So, while there is a clear process for shutting down pipelines that are not intended to be used any more through the process of abandonment, and there is clear inspection and monitoring process for active pipelines, it seems to me there is no process for ensuring that idle, out-of-service pipelines that are believed to be empty, but are intended to be used again, are actually empty of hazardous material.

I just feel like if at any point during this 15 years, if the current owner of the pipeline had verified that it was empty, or State officials would have verified it was empty, or the Federal Government would have verified it was empty, this spill would have never occurred. And I think it is this lack of verification that led to a hazardous pipeline spill and seriously, you know, endangered my constituents, who are already kind of the—on the short end of the stick, living next to the ports of Los Angeles and Long Beach, which is—any manner of hazardous event could happen on a daily basis. Also, this community probably sits on more pipelines than any other community, I believe, in southern California.

So, am I not understanding it properly? Is there a process for any kind of verification of an out-of-service, idle pipeline, versus an active or abandoned pipeline? And, if not, why not? And is this a loophole that we should try to close?

Ms. QUARTERMAN. Well, as you know, the—this current situation is under investigation, so we can't really talk about the details of that situation. But you are right, that my understanding is that the pipeline was idle, as opposed to abandoned. Whether a pipeline is idle for 15 years, I think, is an open question. Certainly, if it is an abandoned pipeline, it should have been——

Ms. HAHN. It has to be capped and——

Ms. QUARTERMAN. It has to be capped and cleaned. So that is something that we will follow up with you on as we go through the investigation——

Ms. HAHN. Are you aware—is PHMSA aware of this kind of a loophole in——

Ms. QUARTERMAN. It is the first time I have heard anything about this before, so——

Ms. HAHN. Right. I just think it is—might need to look at how we verify. It is all simple verification of a pipeline that has been deemed idle or out of service. Particularly when they acquire it from another company. Nobody—there was no third-party verification that, in fact, it was empty. And while it may not be a lot of crude oil to the oil company, they seemed to scoff when I was like, "Forty barrels before you capped it?" And they were sort of like, "That is not that much." But, obviously, in a residential neighborhood, that is an extreme problem and hazard and smell and——

Ms. QUARTERMAN. Well, it is a lot——

Ms. HAHN. The equipment that has to come in to try to cap it, it was a big mess. But I feel like it might be something we should work together to solve.

Ms. QUARTERMAN. Absolutely.

Ms. HAHN. My second question is about strengthening pipeline inspections. And right now, California has 5 inspectors inspecting over 750 pipelines in the ground. Additionally, in accordance with PHMSA guidelines, companies, and not the actual inspectors themselves, are in charge of conducting inspections of pipeline. Inspectors are in charge of conducting audits of the companies' inspections. Is this the best process we have, going forward? And can you give me some assurance that we are—all pipelines are inspected in a timely manner?

And how do we strengthen this current system so there is more accountability for the companies who have failed to adequately inspect their pipelines?

Ms. QUARTERMAN. Well, you will see in the Department's fiscal year 2015 budget, we have a large request for the pipeline safety program. Included in that is additional grant money for States to improve—and our inspection, I mean, the biggest part of that goes to our inspection force, adding many, many new people. So, the President's budget supports that right now.

In terms of inspection—and in some ways it is a misnomer. I mean our staff does go out and review the documents of companies, but they also go out during construction, and doing some maintenance, so they do inspect to that.

I think what you are referring to is an internal inspection of a pipeline, which is something that—the Government doesn't own these pipelines, so we have no way to put any equipment in them to verify that. So that is really reviewing the inspections, or the assessments that companies have performed. Absolutely, we need more resources.

Ms. HAHN. Thank you. Thank you.

Mr. DENHAM. Thank you. Thank you, Ms. Quarterman.

Ms. HAHN. I yield back.

Mr. DENHAM. Mr. Larsen?

Mr. LARSEN. Thank you, Mr. Chair. First off, I want to dispel a notion that PHMSA believes in a silver bullet approach. Ms. Quarterman was in my office 2½ months ago.

And I think I am quoting you when you said, "There is no silver bullet to resolving this issue."

But classification is part of it. Railcar safety is part of it. Training for first responders is part of it. There is probably other parts I am missing.

But I want to understand the classification issue, because API was here with us last hearing and said in 6 months—not a 2-year timeline they usually take, but a 6-month timeline they usually take to establish a new classification standard for Bakken. That is what they said. But the reports the last couple days seems to come across, from PHMSA's perspective, they expected information sooner than that.

Am I conflating two issues, or am I—or are you—do you have a faster timeline than API has?

Ms. QUARTERMAN. There are actually two different issues. One, the work that API is doing is on an industry standard for classification, which is what they do quite frequently on different issues. And we have a staff person who is on that committee, working towards assisting in that classification standard. Should it be something that we agree at the end of the day is worthwhile, we could adopt it and put it in our regulations. That is one thing.

The other thing is actual data about the attributes of the crude, itself. What is its initial boiling point? What is its flash point? What is its vapor pressure?

Mr. LARSEN. Yes, right.

Ms. QUARTERMAN. Those kinds of details, which Mr. Young may know, because he suggested this was a class II——

Mr. LARSEN. Right.

Ms. QUARTERMAN [continuing]. Crude, whereas we have some information of our own which doesn't necessarily support that.

Mr. LARSEN. OK.

Ms. QUARTERMAN. It could be class I or class II.

Mr. LARSEN. So you said that three companies—it could be four companies—have provided information. How many other companies have you requested information from and have not received information from?

Ms. QUARTERMAN. We went out, initially, to API and asked that they bring in some of their members. After that, we sort of expanded our reach, and we had a series of crude oil meetings where we invited not just API, we invited AFPM, who I mentioned is coming forward with some information. We also individually reached out to some of the biggest shippers. I forgot how many, I don't know if it was——

Mr. LARSEN. OK.

Ms. QUARTERMAN [continuing]. The top 10 or top 20, but we invited them all to come in and talk to us. And those who couldn't come, we sent a letter and said, "If you can't come, we will set up a separate meeting for you, or we will call you, whatever we can to get as much information as possible."

Mr. LARSEN. OK. And then, so that is where you are right now on trying to establish these basic data points about the Bakken crude. And those are—that is the basic data that you are trying to uncover currently.

Ms. QUARTERMAN. Yes. But let me just add that, you know, we can't wait for data from other companies or from any industry organization. We have been on the ground in an unprecedented effort, with our sister agencies, drawing crude oil from trains, from trucks, from pipelines, and sending it to labs and having it tested ourselves. So we are getting information on the attributes of that crude from the ground up.

Mr. LARSEN. Yes. And just—you know, as you know, in my district alone we have four refineries. We are moving from about zero gallons a day maybe last year, late last—or early last year, to about 12 million gallons a day of Bakken crude moving through the district on rail when all four facilities have their offload facilities built. So this has really become an issue quickly in our district. And part of it, part of the answer, has to do with firefighters.

And, by the way, before I go further, not just the firefighters, all first responders, but certainly firefighters, Arlington Fire District and Darrington Fire District and folks from Clark County, Nevada; Boone County, Missouri; Colorado, all converging on Highway 530 to deal with the mudslide and be part of FEMA's incident command teams. And they are all doing a great job, and this last weekend they have been able to turn over and get some new people in, to give people some rest. And we appreciate what firefighters and other first responders are doing. I want to pass that on to you.

And then, Mr. Schick, I want to take up your—you don't need to turn on the mic for this—I just want to take up your invitation to visit the facility, so long as you include a briefing on the—not just the CHEMTREC, but the——

Mr. SCHICK. TRANSCAER, as well?

Mr. LARSEN. TRANSCAER as part of that. Can you do that?

Mr. SCHICK. Yes.

Mr. LARSEN. Thank you so much. Yield back.

Mr. DENHAM. Thank you, Mr. Larsen. Mr. Lipinski?

Mr. LIPINSKI. Thank you, Mr. Chairman. I want to thank you and Ranking Member Brown for holding this hearing today. Certainly the public safety in the transport of hazardous materials is a very important responsibility of this subcommittee, so I am glad we are here to look at PHMSA's progress since the authorization of MAP–21.

One area that I know we all have a great interest and concern about is the transport of hazardous material by rail. I know Mr. DeFazio had covered some of the issues already. What I want to focus on is the paperless manifest for trains that carry hazardous materials. I know it is very important, it is an issue that has been raised in some of the accidents that have occurred is the need for first responders to know what is on the trains in case there is an accident, and find out what the risk is from any material on the trains.

So, I was happy that MAP–21, I know, had a requirement for PHMSA to evaluate a paperless system. And I know that right now the railroads themselves are working on electronic systems. As I raised before on this committee to the AAR, that I think more should be done in order to make sure that this information is available to first responders.

So, I wanted to ask Administrator Quarterman. Can you tell me where PHMSA is right now on this requirement that was put in in MAP–21? And I want to know if you are working with the railroads at all on what they are working on doing with these paperless manifests.

Ms. QUARTERMAN. We are working with all constituents. I mentioned earlier we had a workshop in July of last year, and included the emergency responders and all of the modes to talk about use of this electronic format. Right now there is a requirement in our rule for—on rail that the train consist must show where the hazardous materials are on the train, and it must be updated if it gets moved around, so that emergency responders will have that knowledge, or should have that knowledge if they go to fight a fire at—because of hazardous materials.

Mr. LIPINSKI. And do you anticipate PHMSA issuing any further regulations in the space—in rail, or any other——

Ms. QUARTERMAN. We are at the pilot project phase. We are not at the regulation phase. I mean we really need to go and do a few pilots, see how it works before we talk about issuing any regs. So we are early on.

Mr. LIPINSKI. OK. Well, I just wanted to make sure that we continue to work on this, and as we go down the road, and make sure that we do have the best system in place, so that first responders can have adequate information.

And, with that, I will yield back. Thank you.

Mr. DENHAM. Thank you, Mr. Lipinski. Ms. Brown?

Ms. BROWN. Thank you. Ms. Quarterman, this is a yes or no question. Yesterday we received your statement that the American Petroleum Institute and its members have not been cooperative with your agency, and have refused to provide testing information with your safety experts. Is that yes or no?

Ms. QUARTERMAN. Yes.

Ms. BROWN. OK. Could you give us in writing what questions that you have asked them and they have not responded to, please?

Ms. QUARTERMAN. I would be happy to.

[The information follows:]

PHMSA posed the following questions to API and crude oil shippers prior to meetings in early February.

- What tests or methods do you use to determine the properties of the crude oil to include its vapor pressure, flammable gas content, flash point, boiling point, hydrogen sulfide content and corrosive properties prior to offering it in transportation?
- Who performs these tests and how frequently are they completed?
- When you find high levels of gases in crude, what actions do you require of your oilfield personnel before loading into a transport vehicle? What information about the crude oil properties, if any, is provided by the producers to you prior to transportation? How is this information communicated?
- What information do you share with truck and rail carriers about the crude oil properties?
- Are there any prescribed limits involving vapor pressure, flammable gas concentration or hydrogen sulfide content above which the crude oil is not placed into transportation? If so, what are these limits and how are they determined?

To date, PHMSA has received some testing information from individual crude oil companies but thus far the data has been limited. As part of ongoing efforts, PHMSA has supported the American Petroleum Institute Stand-

ards Committee initiative to develop industry standards for proper sampling techniques, testing criteria and frequency for crude oil. PHMSA is actively participating in the discussions during working group sessions and plans to continue up through expected completion in July.

Ms. BROWN. OK. Now, my next question, Mr. Downey, I was very involved with the wet lines issue. And, in fact, I went over to Baltimore to test it, you know. And I know that we are on tight budgets. And so, in your testimony, you said it would be better if you all use that money for anti-rollover technology, which is really the problem in the industry, and not the wet lines. Can you expound upon that, please?

Mr. DOWNEY. That is a very good point, Ranking Member Brown. In fact, I was in Baltimore at that hearing, as well. And if you look——

Ms. BROWN. And I went around——

Mr. DOWNEY. I know you did.

Ms. BROWN [continuing]. Before we went to the hearing.

Mr. DOWNEY. Yes, and one of our folks was there.

Ms. BROWN. I recommend the chairman do the same.

Mr. DOWNEY. I guess our point is that, looking at the cost benefit analysis that was done in the surveys, looking at the dangers of retrofitting some of the trailers—and I know that when you——

Ms. BROWN. I don't think your mic is on.

Mr. DOWNEY. It is. I believe it is——

Ms. BROWN. Well, pull it up, pull it up.

Mr. DOWNEY. Is that better?

Ms. BROWN. Yes, sir.

Mr. DOWNEY. OK, thank you. But looking at the risks to retrofitting the trailers—and when you were in Baltimore, I believe that they discussed that with you—we could take those dollars and minimize risk and put it into technology that would make the traveling public safer, keep our tractors and trailers on the road, with the anti-roll stability. That is our position. Does that answer your question?

Ms. BROWN. Yes, sir. And I would be interested in making sure that we get some directions to the agency in that vein, because, basically, in—from what I can gather, the information that we have gotten, that is where the problem is, and not with the wet lines.

Mr. DOWNEY. Yes. Yes, ma'am.

Ms. BROWN. OK. My last question, pertaining to making sure that we protect the firefighters and the first responders, and—do the firefighters have the gear to respond to the hazmat incidents? And I am particularly concerned about the crude oil, ethanol, and the lithium batteries. And those batteries, I understand, could play a major part when it comes to airplane crashes and other things.

Ms. HARMAN. The traditional gear for—that firefighters are going to be wearing, donning and doffing as they show up to these scenes here, is your traditional turnout gear. That is your initial response. Your typical firefighter that is coming in here in their bunker jacket, their bunker boots, and their pants with their suspenders and their self-contained breathing apparatus, gloves, a lot of hose, a lot of fire—not fire—a lot of water. Your second set that is coming in are definitely going to be going more into the hot zone. Those are your technicians, those are your specialists. So that gear that is out

there we believe right now is sufficient that is out there. There is new technologies coming out every day. We stay abreast of that, and there is a cost that comes to that. So we are always watching that to see, you know, how is this going to be afforded, how are these skill sets going to be acquired.

But the gear that is there now, so long as the fire departments have the minimum level of what they need, and the training that they need to respond in an operational capacity, they should be pretty well set to go.

Ms. BROWN. Ms. Quarterman?

Ms. QUARTERMAN. Yes? You want me to answer the same question about gear?

Ms. BROWN. Yes.

Ms. QUARTERMAN. Yes, we agree that it is important. We would have to look at our grant language to ensure that it is something that we could fund through our existing HMEP grant program, the extent to which we can fund it.

Ms. BROWN. Is it possible to let the Members know when the grant applications are available?

Ms. QUARTERMAN. We would love to.

Ms. BROWN. So that we could make sure our communities know about it?

Ms. QUARTERMAN. Absolutely. If you don't know, we will make sure you know.

Ms. BROWN. Because are you saying that you put it in the Federal Register?

Ms. QUARTERMAN. We put it in the Federal Register, but we realize that not everybody reads that, so we have been tweeting it——

Ms. BROWN. And some small communities don't have a person that is looking for that all the time.

Ms. QUARTERMAN. Yes, we try to do a press release, as well. But we will absolutely let the Members know.

Ms. BROWN. Thank you. Thank you, Mr. Chairman.

Mr. DENHAM. Thank you, Ms. Brown. Ms. Hahn?

Ms. HAHN. Thank you, Mr. Chairman. Ms. Quarterman, one of the other issues I have been dealing with for a long time, even before I came to Congress, is that I have a facility, LPG tanks, which are located in San Pedro. I think they were built in 1976, aging facilities, they can hold up to 25 million gallons of LPG. I have been trying to get them moved or shut down for as long as I can remember. They are on private property, so I am struggling with what to do. But the threat of leakage and vaporizing and igniting and—it sits next to a soccer field, an elementary school, residential neighborhood.

So, just have two things on that. One, in 1986, I guess, Congress passed the Emergency Planning and Community Right-to-Know Act, EPCRA. And after 9/11, DHS came in and many of these highly volatile facilities now are being classified as a possible homeland security threat. You know, attack on one of them, obviously, could produce the same effect as a natural disaster.

So now, that has superseded EPCRA. So now I believe a member of the community has to go downtown to their fire department, look at documents in secret, not allowed to take out copies of those documents, so it really has undermined, in my opinion, a community's

right to know the kinds of hazardous materials and threat to their livelihood that exists in their community.

Is this something that you feel like we should do a better job of balancing? Is this something maybe you and Jay Johnson could have a conversation about? Because I really do think—I mean I am all about homeland security, but I am also about a community's right to know what kind of hazardous material is in their neighborhood, and what they need to do to prepare themselves against disaster.

Ms. QUARTERMAN. I agree with you, and we have a similar effect on the pipeline side, where, as we had created, I think—or the agency had created very detailed maps of the pipeline system, and put it on the web, and almost immediately had to pull it down because of 9/11, I think it is worthwhile to have that conversation.

I have heard that some of those things are no longer as covered as they used to be. There are less concerns. But I agree with you, the public has a right to know where these facilities are, and to be prepared to respond. And certainly emergency responders need to be prepared to respond in those instances. So I will take you up on that, and have a conversation——

Ms. HAHN. Great. And maybe even there is a compromise in how they—you know, besides going downtown to a fire department and looking at documents in secret, is there a compromise there?

Ms. QUARTERMAN. Absolutely.

Ms. HAHN. Yes. And the other thing, what can I tell my constituents in San Pedro, California, that PHMSA is doing to protect them from a possible leak, vapor cloud, ignite? I mean, the threat of something happening with 25 million gallons of propane and butane is just a daily concern. And we can't figure out which agency could help us, you know, protect the community against a disaster.

Ms. QUARTERMAN. I am not sure that we have oversight of that particular facility. Our oversight is to pipelines and things that are moving in transportation. But I would say to your constituency that, you know, PHMSA is a small agency with a huge mission, and you will see the number of incidents going down, down, down over time.

Our folks are dedicated to ensuring that nothing happens, and we really are moving towards zero incidents. So you walk around every day——

Ms. HAHN. And this facility actually has a rail line now.

Ms. QUARTERMAN. Yes.

Ms. HAHN. And so this product is being——

Ms. QUARTERMAN. Is moving in and out.

Ms. HAHN. Is moving by rail. So——

Ms. QUARTERMAN. Most of the time nothing happens. We are all surrounded by pipelines, by trucks moving hazardous materials, by trains every moment of the day. So we are talking about an infinitesimal possibility of something going wrong. I mean, really, considering the amount of——

Ms. HAHN. If it makes them sleep better at night.

Ms. QUARTERMAN. I know.

Ms. HAHN. Well, if you would take a look into this facility and the railcars for me, I would appreciate it.

Ms. QUARTERMAN. Absolutely.

Ms. HAHN. Thank you, Mr. Chairman.

Mr. DENHAM. Thank you, Ms. Hahn. Mr. Cummings?

Mr. CUMMINGS. Thank you very much. Ms. Quarterman, in 2009 this committee conducted an investigation of DOT's hazmat program, and were made aware of an internal DOT analysis which showed that 60 to 90 percent of all accidents were unreported, and that little had been done to address it.

The audit also found that there were several invisible risks where DOT had little to no data, such as LNG facility incidents, hazmat incidents in the maritime mode, loading and unloading of rail tank cars, and environmental effects of hazmat spills.

Four years later, in September 2013, the GAO reported that DOT's incident data is still significantly flawed, raising concerns for what should be a data-driven agency. What is DOT doing to improve its hazmat data, particularly data on accidents and incidents?

Ms. QUARTERMAN. We have had, since the September of 2009, we have had teams working on data quality, especially with respect to unreported incidents. We now do our own intelligence gathering, if you will, for incidents that are not reported to us on the 5800 report. And we include those within our database. So we are trying to get data from as many different sources as possible, and include it within our system. And then we go out, we follow up with anybody who has not reported that incident.

So I think our data quality has improved a great deal. I am not familiar with the GAO report that you are referring to——

Mr. CUMMINGS. OK.

Ms. QUARTERMAN [continuing]. In 2013.

Mr. CUMMINGS. Well, do you think we are missing—still missing some of these incidents and accidents?

Ms. QUARTERMAN. I am certain we are missing some of these. I mean if they are not reported any place that we are looking, then we are not getting that.

You know, the—we have very recently completed a data report about how we might do even more to clean up our data and make it better. But it is a resource-intensive exercise, and we need more resources to be able to continue to make our data better.

We put in place an IT modernization program as part of the response to that 2009. We have had only small pieces of that funded. So it is an uphill battle, but I think we are doing a good job at cleaning up the data.

Mr. CUMMINGS. Well, in your testimony you indicated that, pursuant to MAP–21 legislation, PHMSA adopted a new rule on April 17, 2013, to remove the maximum penalty for a violation of hazardous materials rules, and to raise from $75,000 to $175,000 the maximum penalty for a knowing violation, and a violation resulting in death, serious illness, or severe injury to any person, or substantial destruction of property.

How many times over the past decade has PHMSA assessed the maximum penalty for either a willful violation, a violation that resulted in death, or injury, or substantial destruction of property, and how—have any such penalties been assessed since the enactment of the new rule?

Ms. QUARTERMAN. I would have to go and get that data for you. I can tell you that our penalty authority has gone up. And for the first time, I think, in many, many years, we also revised our penalty guidelines, which sort of circumscribe how much the penalties are. In my view, the penalties are still extremely low. But I will provide that record for you——

Mr. CUMMINGS. Yes.

Ms. QUARTERMAN [continuing]. That answer for you for the record.

Mr. CUMMINGS. How soon can you get that to me?

Ms. QUARTERMAN. We should be able to do it in a week or so.

[The information follows:]

Question: How many times over the past decade has PHMSA assessed the maximum penalty for either a willful violation, a violation that resulted in death, or injury, or substantial destruction of property?

Answer: Seven (three at $50,000 and four at $55,000).

Question: Have any such penalties been assessed since the enactment of the new rule?

Answer: Zero.

Mr. CUMMINGS. Chairman, I yield back. Thank you very much.

Mr. DENHAM. Thank you, Mr. Cummings. I want to thank each of our witnesses for their testimony today. If there are no further questions, I would ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that have been submitted to them in writing, and unanimous consent that the record remain open 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

[No response.]

Mr. DENHAM. Without objection, so ordered. I would like to thank our witnesses again for their testimony.

If no other Members have anything to add, this subcommittee stands adjourned.

[Whereupon, at 3:53 p.m., the subcommittee was adjourned.]

UNITED STATES DEPARTMENT OF TRANSPORTATION
Pipeline and Hazardous Materials Safety Administration

Hearing on
Examining Issues for Hazardous Materials Reauthorization

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

Written Statement of
Cynthia L. Quarterman, Administrator

April 2, 2014

WRITTEN STATEMENT
OF
CYNTHIA L. QUARTERMAN
ADMINISTRATOR
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION

April 2, 2014

Mr. Chairman, Ranking Member Brown, and Members of the Subcommittee, thank you for inviting me to testify today on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) progress in implementing title III of the Moving Ahead for Progress in the 21st Century Act, the Hazardous Materials Transportation Safety Improvement Act of 2012 (MAP-21). Enacted on July 6, 2012, MAP-21 provides the Agency with important new tools to bolster compliance with the hazardous materials laws and regulations and enhance emergency response capabilities.

Safety is PHMSA's number one priority. PHMSA works diligently to protect the American people and the environment from the risks of hazardous materials transportation. PHMSA achieves its safety mission through efforts to prevent and mitigate accidents by developing regulations, taking rigorous enforcement actions, collaborating with stakeholders, and educating emergency responders and the public. PHMSA's safety mission is guided by its vision that no harm results from hazardous materials transportation. We cannot accept death as an inevitable consequence of transporting hazardous materials, so we will work continuously to find new ways to reduce risk toward zero deaths, injuries, environmental and property damage, and transportation disruptions. The agency follows a Strategic Plan focused on reducing incidents and environmental consequences while maintaining a diverse workforce that will meet the Nation's long-term needs. MAP-21 aligns well with the agency's Strategic Plan and supports our agency's important safety initiatives.

Overview

MAP-21 authorized or mandated numerous rulemakings, reports, and programmatic changes for PHMSA's Hazardous Materials Safety Program. PHMSA finalized its strategy to implement the Act on August 31, 2012 and a supporting Action Plan on October 10, 2012. The Action Plan assigned responsible staff to 13 areas, covering 32 separate provisions. As a result, PHMSA has met or will meet established timelines for more than 90 percent of the 32 provisions. This is

significant given the many challenges and emerging issues that PHMSA has faced over the same period. The MAP-21 mandates are organized below into three categories:

1. Rulemakings;
2. Studies and Reports to Congress; and
3. Other Mandates, and Programmatic Changes.

Rulemakings

Update of Published Guidelines on Civil Penalty Amounts
MAP-21 removed the minimum penalty amount for a violation, except that the maximum penalty amount of $450 was retained for a training violation. In addition, MAP-21 raised the maximum penalty amount for a knowing violation and a violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to $75,000 and $175,000, respectively. PHSMA adopted these changes in an April 17, 2013 final rule (78 Fed. Reg. 22798).

Open Package – Resumption of Transportation
MAP-21 required PHMSA to implement regulations by October 2013 to provide procedures for an agent of the Secretary of Transportation to open packages of perishable hazardous materials and to provide notification to the responsible party that an agent has performed a safety inspection or investigation. In addition, MAP-21 stressed that inspectors be provided appropriate training and equipment to open and close a packaging in accordance with the Hazardous Materials Regulations (HMR). The Department's enhanced inspection, investigation, and enforcement procedures were previously established through notice and comment rulemaking and thoroughly addressed the hazardous material transportation matters identified by Congress. PHMSA published a final rule (78 Fed. Reg. 60755) in October 2013 to codify changes to Federal hazardous materials transportation law and to ensure transparency and consistency for hazardous materials inspectors across all modes of transportation.

Failure to Pay Civil Penalties
MAP-21 directed PHMSA to issue regulations by October 2014 to require a person who is delinquent in paying civil penalties for violation of the hazardous materials transportation law or regulations to cease any activity regulated under the Federal hazardous materials transportation law until payment has been made or until an acceptable payment plan has been arranged. On September 24, 2013, PHMSA published a Notice of Proposed Rulemaking (NPRM) (78 Fed. Reg. 58501) addressing the MAP-21 mandate to prohibit hazardous materials operations by persons delinquent on payment of civil penalties. The comment period for the NPRM closed on November 25, 2013. The final rule is currently under review and is expected to be published by October 2014.

Standard Operating Procedures (SOPs) for Handling Applications for Special Permits (SPs) and Objective Criteria for Evaluating SPs
MAP-21 required PHMSA to issue regulations that establish (1) SOPS to support administration of the SP and approval programs, and (2) objective criteria to support the evaluation of SP and approval applications. Stakeholders have expressed an interest in resolving SP and approval processing concerns through rulemaking, commented on whether an applicant's fitness needs to be

assessed to perform a requested task, and suggested several alternatives. MAP-21 mandates a final rule by October 2014. PHMSA's NPRM is currently under Departmental review.

Incorporation of SPs into the HMR
MAP-21 required an initial review and analysis of SPs that have been in continuous effect for a 10-year period to determine which ones may be converted into the HMR. MAP-21 mandates a rule by October 2015.

Although, MAP-21 limited the review and analysis to SPs with a lifespan of greater than 10 years, PHMSA decided that an initial review and analysis of all active SPs would be more beneficial, as many SPs are interrelated. PHMSA's NPRM is currently under review and is expected to be published by October 2014.

Continued Incorporation of SPs
MAP-21 requires an ongoing review, analysis, and incorporation of SPs that are over 10 years old. Based on this review and analysis, PHMSA must either institute a rulemaking to incorporate the SPs into the HMR or publish in the *Federal Register* its justification for why the SPs are not appropriate for incorporation into the regulations. MAP-21 mandates a rule annually, beginning October 2016. As required by MAP-21, PHMSA plans to conduct future reviews of SPs with a lifespan of greater than 10 years on an annual basis. PHMSA's ongoing review and analysis of SPs will use the same methodology and tools as the initial NPRM, outlined above. However, in future reviews, PHMSA will only focus on SPs that are over 10 years old. PHMSA anticipates future analysis and review will be more streamlined due to the reduced volume of SPs to be evaluated. In the initial SPs incorporation NPRM, PHMSA plans to request comments and supporting documentation for SPs that are suitable for incorporation in future rulemakings.

Studies and Reports to Congress

Hazardous Materials Emergency Preparedness Grant Report
The Hazardous Materials Grants Program (HM Grants Program) was a key focus area of MAP-21. This HM Grants Program is comprised of three types of grants:

1. Hazardous Materials Emergency Preparedness (HMEP) Grant ($21.8 million;
2. Hazardous Materials Instructor Training (HMIT) Grant ($4 million); and
3. Supplemental Public Sector Training (SPST) Grant ($1 million).

MAP-21 required PHMSA to submit a report to Congress by October 2013 providing a detailed accounting and description of the HMEP grant expenditures by each grant recipient, including the amount of, and purpose for, each expenditure. In addition, MAP-21 imposed a biennial reporting requirement on a State, political subdivision of a State, or Indian tribe that levies a fee in connection with the transportation of hazardous materials. In order to collect and report this information to Congress, PHMSA must receive approval to collect the necessary information in accordance the Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501-3521). Once PHMSA obtains authorization to collect the additional information, grantees will be asked to submit quarterly and final reports containing the requisite information. PHMSA published a 60-day *Federal Register* Notice on December 4, 2013 (78 Fed. Reg. 72972). PHMSA expects to publish the 30-day *Federal Register* Notice in April of 2014 in order to begin collecting the information during fiscal year

2015. The information collected during fiscal year 2015 will be reported on in the 2016 report to Congress.

Paperless Hazardous Materials Communication Pilot Program
MAP-21 authorized PHMSA to conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. If the pilot program is conducted, at least one pilot project must be in a rural area. In addition, PHMSA is not authorized to waive the current statutory shipping paper requirements and must consult with organizations representing fire and other emergency responders, law enforcement, and regulated entities. Upon the completion of the pilot program, a report to Congress is due by October 2014 covering the following: (1) a description and performance evaluation of each pilot project; (2) a safety and security assessment; (3) costs and benefits; and (4) a recommendation for incorporation into the HMR. Once PHMSA obtains authorization to collect the additional information, it will be authorized to initiate a pilot program. PHMSA published a 60-day *Federal Register* Notice on July 19, 2013 (78 FR 43263). PHMSA published the 30-day *Federal Register* Notice on November 25, 2013 (78 FR 70399). In preparation for Paperwork Reduction Act approval, PHMSA hosted a roundtable discussion with law enforcement and the emergency response community on March 13, 2014.

In a matter related to the paperless hazardous materials communication initiative, PHMSA issued an SP to UPS, Inc., on December 30, 2013 authorizing the electronic transfer of shipping paper information for certain low hazard shipments within their ground operation. As I have stated previously, we made it a priority to cut red tape and improve efficiency and moved expeditiously with this SP. Further, sharing hazardous materials information electronically will improve transportation efficiency without sacrificing public safety.

Improving Data Collection, Analysis, and Reporting
MAP-21 required PHMSA, in consultation with the United States Coast Guard to conduct an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials. MAP-21 further required PHMSA to review methods for collecting, analyzing, and reporting accidents and incidents involving the transportation of hazardous materials. Upon completion of the assessment and review, PHMSA was required to report to Congress on its plan and timeline for improving the collection, analysis, reporting, and use of data, including revising PHMSA databases, as appropriate. PHMSA reported its findings to Congress on September 3, 2013. PHMSA continues to implement its recommendations based on the availability of resources.

Other Mandates, and Programmatic Changes

Enhancing Emergency Response Preparedness, Response, and Training
As mentioned in the HMEP Grant Report discussion above, MAP-21 provided several provisions related to PHMSA's HM Grants Program. These changes came as PHMSA had already taken steps to enhance the program. Specifically, MAP-21 requires HMIT and SPST grants to be awarded through a competitive process. In addition, under MAP-21, PHMSA must ensure that HMEP and SPST grants are awarded to emergency responders that will have the ability to respond to effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association (NFPA) standards. Further, SPST

grant agreements must specifically state that training courses shall comply with Federal regulations and national consensus standards for hazardous materials response.

As a result of our own initiatives and the MAP-21 provisions, PHMSA has increased its oversight of grantee training programs to ensure that responders and instructors trained under PHMSA hazardous materials grant programs will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards.

PHMSA has and will continue to increase its outreach efforts to ensure that States, Native American Indian Tribes, Territories, and eligible non-profit organizations are aware of the MAP-21 program changes. This outreach will also serve to broaden the pool of applicants and ensure that stakeholders are aware that the HMIT and SPST grants are awarded competitively. PHMSA has created an online certification program that will require each HMEP and SPST grantee to certify during the application process that they will use the grant funding to train to the NFPA '472 standard.

Hazardous Material Enforcement Training
MAP-21 mandated that by April 2014, PHMSA must develop uniform performance standards for training hazardous materials inspectors and investigators on the following: (1) how to collect, analyze, and publish findings from inspections and investigations of accidents and incidents involving the transportation of hazardous materials; and (2) how to identify noncompliance with the HMR, and take appropriate enforcement action. These standards may provide the following: (1) guidelines for hazardous materials inspector and investigator qualifications; (2) best practices and standards for hazardous materials inspector and investigator training programs; and (3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents and incidents involving the transportation of hazardous materials. PHMSA's standards are in final review with its modal sister agencies and will be in place in April 2014. Once the standards are in place, we will evaluate the effectiveness of the standards in coordination with our other modal administrations.

Hazardous Material Technical Assessment, Research and Development, and Analysis Program
MAP-21 permitted PHMSA to develop and implement a hazardous material technical assessment, research and development, and analysis program. If PHMSA implements the program the agency must coordinate with other modal administrations and work cooperatively with regulated and other entities in the development and implementation of the program. On January 17, 2014, PHMSA hosted a research and development forum to discuss the program with regulated entities and our modal partners and solicit comments. The forum transcript has been posted to PHMSA's research and development website (http://phmsa.dot.gov/initiatives/r-and-d). The comment period for the research projects discussed at the forum closed on March 21, 2014. PHMSA is currently reviewing 11 comments received from our stakeholders. Though commenters are very supportive of our program, they do recommend changes to research activities involving liquefied petroleum gas odorization, anhydrous ammonia, and explosives. PHSMA will post the comments and responses to the research and development website.

Wetlines
MAP-21 required the Government Accountability Office (GAO) to evaluate and report on the safety of transporting flammable liquids in the external product piping of cargo tank motor vehicles (wetlines) by October 2013. PHMSA was prohibited from issuing a final rule regarding wetlines prior to the completion of GAO's evaluation. Per MAP-21, the GAO completed an audit on wetlines-related issues and published the final report on September 11, 2013. We are committed to working with our stakeholders to discuss safe solutions to the risks posed by wetlines.

Fiscal Year (FY) 2015 Budget Request

The FY 2015 President's Budget request of $52 million for PHMSA's Hazardous Materials Safety Program would provide the resources necessary to actively protect the Nation's people and the environment from hazardous materials risks in transportation by air, rail, highway, and water corridors. The Budget also requests an increase of 3.0 full-time equivalent (FTEs), primarily to support Emergency Preparedness Information for Communities (EPIC) and research & development.

Of the total funding, $40 million comes from the general fund and supports continued implementation of on-going efforts related to enforcement, outreach, risk management, working closely with NTSB to close safety recommendations, research and development and other comprehensive safety programs that reduce serious injuries and deaths resulting from hazardous materials incidents. An additional $12 million is requested to be funded through special permit and approval fees. As discussed previously, PHMSA currently manages a significant number of special permits and approvals, and PHMSA anticipates that the costs associated with administering this program will progressively increase. PHMSA anticipates increased costs for the thorough engineering evaluations of each permit application from new package designs, the increasingly stringent monitoring of a company's fitness/competence to hold a special permit or approval, continuous evaluation of the technologies or materials subject to a special permit and accelerated incorporation of special permits in the HMR. The agency's proposed reauthorization will further PHMSA's mission through amendments to improve the effectiveness of the Hazardous Materials Emergency Preparedness Grants program, establish user fees for special permits, and facilitate the movement of essential hazmat during national emergencies or disasters. This budget request bolsters the resources available to the R&D program and establishes a reliable means of modern communication between PHMSA's hazmat program and emergency responders, the public, and the hazardous materials community.

Conclusion

Thank you, Mr. Chairman, for the opportunity to discuss PHMSA's implementation of MAP-21. We very much appreciate your partnership as we work together to safeguard people, property, and the environment from hazardous materials transportation risks.

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

Bill Shuster
Chairman

Christopher P. Bertram, Staff Director

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Staff Director

May 8, 2014

The Honorable Cynthia L. Quarterman
Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

Dear Administrator Quarterman,

Thank you for your testimony before the Subcommittee on Railroads, Pipelines, and Hazardous Materials on April 2, 2014 concerning "Examining Issues for Hazardous Materials Reauthorization." I am pleased you appeared and testified on behalf of the Pipeline and Hazardous Materials Safety Administration. The Subcommittee gained valuable insight from the information you provided at the hearing.

Enclosed please find additional questions for written responses for the record. The Subcommittee appreciates your written responses no later than May 22, 2014. Please provide an electronic version of your response via email to Walker.Barrett@mail.house.gov.

If you have any questions please contact Mike Friedberg of the Subcommittee at (202) 226-0727.

Sincerely,

Bill Denham
Chairman
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Enclosures

Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on "Examining Issues for Hazardous Materials Reauthorization"
April 2, 2014
Questions for the Record

Questions from Rep. Denham:

- In March 2011, PHMSA issued a rule extending jurisdiction over certain loading and unloading activities, but recently withdrew that proposed rule. Could you please explain why the rule was withdrawn?
    - Given the withdrawal why doesn't the agency continue to pursue a memorandum of understanding with other federal agencies to clarify responsibilities among the agencies for regulations on loading and unloading?

- While the MAP-21 mandated report on the HMSP program is primarily under Federal Motor Carrier Safety Administration's (FMCSA) jurisdiction, the report from the Secretary did recommend changing the PHMSA registration form to require the USDOT number as a mandatory field. This would help reduce the potential for improper denials based on lack of PHMSA registration. Will you commit to making that change?

- MAP-21 required that PHMSA develop a paperless hazard communications pilot program, what is the agency's timeline on implementing that pilot project?

Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on "Examining Issues for Hazardous Materials Reauthorization"
April 2, 2014
Questions for the Record

Questions from Rep. Denham:

Question 1: *In March 2011, PHMSA issued a rule extending jurisdiction over certain loading and unloading activities, but recently withdrew that proposed rule. Could you please explain why the rule was withdrawn?*

Answer 1: PHMSA closed this rulemaking after careful reconsideration of the proposal for additional regulations associated with cargo tank motor vehicle (CTMV) loading or unloading operations. This action was based on the findings of the regulatory assessment, comments to the docket of this rulemaking, and completion of a supplementary analysis on how best to address the safety risks of bulk loading and unloading operations.

While the rulemaking was withdrawn PHMSA still plans to address the issue of loading and unloading activities within its regulatory scope. As an alternative to new regulatory requirements, PHMSA will be issuing guidance to provide best practices for CTMV loading and unloading operations; and will be conducting research to better understand the wide range of human factors that contribute to hazardous materials incidents, including those associated with CTMV loading and unloading operations. In addition, PHMSA continues to work with other agencies that share jurisdiction over such operations to improve safety.

Question 2: *Given the withdrawal why doesn't the agency continue to pursue a memorandum of understanding (MOU) with other federal agencies to clarify responsibilities among the agencies for regulations on loading and unloading?*

Answer 2: PHMSA is evaluating all of its options to maximize safety. PHMSA will continue to work with other agencies that share jurisdiction over such operations to ensure safety. PHMSA is confident that all agencies with oversight over loading and unloading operations have a clear understanding of their respective responsibilities.

Question 3: *While the MAP-21 mandated report on the HMSP program is primarily under Federal Motor Carrier Safety Administration's (FMCSA) jurisdiction, the report from the Secretary did recommend changing the PHMSA registration form to require the USDOT number as a mandatory field. This would help reduce the potential for improper denials based on lack of PHMSA registration. Will you commit to making that change?*

Answer 3: The Federal hazardous materials transportation law (49 U.S.C. 5108 et seq.) requires PHMSA to simplify the registration process by minimizing the number of applications, documents, and other information a person is required to file. Nonetheless, PHMSA plans to amend its registration form through rulemaking and will consider that recommendation.

Question 4: *MAP-21 required that PHMSA develop a paperless hazard communications pilot program, what is the agency's timeline on implementing that pilot project?*

Answer 4: PHMSA initiated the project on September 26, 2011 with assistance from DOT's Volpe Center entitled "*Hazardous Materials Automated Cargo Communication for Efficient and Safe Shipping*" (HM-ACCESS). As part of its HM-ACCESS project, PHMSA is evaluating the feasibility and effectiveness of paperless hazardous materials (e-HM) communication systems (e-systems). PHMSA has completed a series of public meetings and has obtained stakeholder feedback regarding e-systems that will be helpful in the implementation of HM-ACCESS.

In MAP-21 Congress authorized PHMSA to conduct pilot projects on paperless hazmat information sharing among carriers and first responders. PHMSA plans to initiate pilot tests in 2014. Pilots are planned to occur in at least three U.S. regions possessing high concentrations of hazardous materials registrants and presenting historically high numbers of hazardous materials incidents resulting in deaths and injuries; as well as a rural area in at least one region. The pilots will focus on the use of e-systems to communicate hazardous materials shipping paper information from origin to final destination and during law enforcement inspection and emergency response simulations.

PHMSA held a roundtable with law enforcement and emergency response representatives on March 13, 2014 to discuss the pilot projects. These discussions focused on whether hazardous materials shipping information under the pilot can be adequately provided electronically. Upon completion, PHMSA will report on the results of the pilot to Congress.

Congresswoman Janice Hahn (CA-44)

Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials

Hearing:
"Examining Issues for Hazardous Materials Reauthorization"

Wednesday, April 2, 2014
2:00 p.m.
2167 Rayburn

For Ms. Cynthia Quarterman, Administrator, Pipelines and Hazardous Materials Safety Administration (PHMSA)

Wilmington Oil Spill

Q1: On March 17th, thousands of gallons of crude oil from a crack in an idle oil pipeline spewed into a residential neighborhood of Wilmington, California, which is in my district. This spill endangered the health and safety of hundreds of my constituents as well as caused untold amounts in property damage and costs to the local economy. While the spill is still under investigation, information that we have learned so far suggests that the spill was caused by internal corrosion of an idle pipeline that still contained oil. The current owner of the pipeline believed that the idle pipeline was empty when it received the pipeline from its previous owner, and thus conducted no inspection of the inside of the pipeline and were not required to under any PHMSA or state guidelines in the 15 years that they controlled the pipeline.

While there is a clear process for shutting down pipelines that are not intended to be used anymore through a process known as "abandonment" and there is a clear inspection and monitoring process for active pipelines, there is absolutely no process for ensuring that idle pipelines, pipelines that are believed to be empty but are intended to be used again, are actually empty of hazardous materials.

If, at any point during the 15 years in which the current owner of the pipeline had verified that it was empty, or state officials would have verified it was empty, or the federal government would have verified it was empty, this oil spill would have never occurred. This lack of verification lead to a hazardous pipeline spill that endangered my constituents, who could neither afford nor deserved such a hazard. That's why I am currently working on legislation to close the gaping loophole that allowed this incident to occur.

Why isn't there any verification system to ensure that idle pipelines no longer have any hazardous material in them?

The operator is responsible for ensuring that all of their pipelines are properly abandoned. Idled pipelines, that is pipelines that have commodities still in them, must meet all of the same safety requirements as pipelines that are actively flowing product. In other words, the status of a

pipeline is either classified as active or abandoned; idled pipelines must be treated as active pipelines.

Shouldn't someone verify the status of a pipeline any time that pipeline has been sold or transferred to another entity?

Yes, the operator of the pipeline is required to know at all times the status of all of their pipelines.

Is PHMSA currently aware of this loophole and are they working on closing it? If not, why?

The operator of the pipeline is required to know at all times the status of all of their pipelines. A pipeline is considered either in "active" status or "abandoned." If the pipeline is in active status, Federal regulations apply. "Idled" pipelines must meet all of the same safety requirements as pipelines that are active - flowing product. Operators are responsible for verifying that a pipeline is safely abandoned, and ensuring no product is flowing.

PHMSA is in the process of proposing a number of new regulations for company accountability for the safety of the pipelines they operate. Any regulations issued would also apply to "idled" pipelines, as Federal regulations apply to idled lines.

For Ms. Cynthia Quarterman, Administrator, Pipelines and Hazardous Materials Safety Administration (PHMSA)

Strengthening Pipeline Inspections

Q2: Right now, California has 5 inspectors inspecting over 750 pipelines in the ground, making it difficult to inspect pipelines in a timely manner. Additionally, in accordance with PHMSA guidelines, companies and not the actual inspectors themselves, are in charge of conducting inspections of pipelines. Inspectors are in charge of conducting audits of the company's inspections.

What suggestions do you have for ensuring all pipelines are verified in a timely manner? Do we need to be allocating more resources towards this?

Federal regulations require pipeline companies to comply with existing safety regulations, including the proper abandonment of pipelines. Idled pipelines are considered to be active pipelines that must still comply with all Federal regulations which include operation, maintenance, and integrity testing requirements. We expect all pipeline operators, including Phillips 66, to positively know the operating status of idled or abandoned pipelines and be able to confirm that status during Federal and State inspections. PHMSA and state partners allocate pipeline inspection resources based on relative risk to the public and the environment. During inspections, PHMSA and state inspectors ask pipeline companies to provide information about all active pipelines, including those that may be idled.

How can we strengthen the current system to ensure there is more accountability for companies who fail to adequately inspect their pipelines?

PHMSA is in the process of proposing a number of new regulations for company accountability for the safety of the pipelines they operate. Any regulations issued would also apply to "idled" pipelines. PHMSA and its state partners will continue to inspect for regulatory compliance and take strong action when non-compliance is identified.

Before the

United States House of Representatives

Committee on
Transportation & Infrastructure

Statement of

William Downey
Executive Vice President for Corporate Affairs &
Chief Security Officer
The Kenan Advantage Group

Regarding

Hazardous Materials Transportation Act Reauthorization

On Behalf of

950 N. Glebe Road
Arlington, VA 22203
703-838-1996

APRIL 2, 2014

Introduction

Chairman Denham, Ranking Member Brown, and members of the Subcommittee on Railroads, Pipelines and Hazardous Materials, thank you for the opportunity to testify today about reauthorizing the Hazardous Materials Transportation Act. My name is William Downey and I am Executive Vice President for Corporate Affairs and the Chief Security Officer for The Kenan Advantage Group.

The Kenan Advantage Group is North America's largest tank truck transporter and logistics provider to the petroleum, specialty products and merchant gas industries. KAG operates approximately 370 terminals, satellite locations in forty-two states and five Canadian provinces and territories, and has the ability to deliver within all forty-eight contiguous states, as well as to Canada and to Mexico. Although The Kenan Advantage Group is the largest transporter of gasoline in the United States, we represent but a drop in the bucket of total national daily gasoline deliveries. We employ approximately 9,000 people and are the only fuels delivery carrier with a national presence. We are based out of North Canton, Ohio.

I am testifying today on behalf of the American Trucking Associations (ATA). Founded in 1933, ATA is the nation's preeminent organization representing the interest of the U.S. trucking industry. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation. The Kenan Advantage Group is also a member of the National Tank Truck Carriers. ATA and NTTC are members of the Interested Parties for Hazardous Materials Transportation and both endorse the IP Group's comprehensive recommendations for Hazardous Materials Transportation Act reauthorization.

The trucking industry is an integral component of our Nation's economy, transporting more than 81% of our nation's freight bill and employing approximately 7 million workers in trucking-related jobs, including more than 3.2 million commercial drivers. It is important to note that the trucking industry is comprised primarily of small businesses, with 97.3% of trucking companies operating 20 trucks or less, and 90.6% operating six trucks or less.[1]

More importantly, about 75 percent of all U.S. communities depend solely on trucks to deliver and supply their essential commodities. Included in these deliveries are roughly 800,000 daily shipments of hazardous materials that provide chemicals for water treatment facilities, medical products and supplies, vital manufacturing inputs, and a number of other products that are important components of our daily lives. In terms of product value, tonnage, and number of shipments, trucks move more hazardous materials than all other transportation modes combined.[2]

Background

ATA and its members are grateful for the hard work and bipartisan leadership demonstrated by this Committee and the U.S. House of Representatives in reauthorizing the HMTA two years ago as part of the Moving Forward for Progress in the 21st Century Act of 2012 (MAP-21).[3] By passing the American Energy and Infrastructure Jobs Act of 2012's (H.R. 7) hazardous materials title, this committee underscored the importance of the safe and secure transportation of hazardous materials.

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[1] American Trucking Associations, *American Trucking Trends 2014* (March 2014).
[2] Bureau of Transportation Statistics, *2012 Commodity Flow Survey* .
[3] Public Law 112-141 §§ 33001-17, 126 Stat. 405, 832-41, (July 6, 2012).

MAP-21's hazardous materials title instituted several improvements, including requiring the Government Accountability Office (GAO) to study the Pipeline and Hazardous Materials Safety Administration's (PHMSA) proposed wetlines rule before it could be promulgated, clarifying inspectors' authority to open hazardous materials packages en route, requiring the Federal Motor Carrier Safety Administration (FMCSA) to publish changes to hazardous materials routes before they could take effect, instructing the FMCSA to review its process for issuing Hazardous Materials Safety Permits, and instituting an electronic shipping paper pilot program, among other provisions.

This committee has an opportunity to capitalize on the successes of MAP-21. Today, I want to propose four common sense solutions that will improve the safety, security, and efficient operations of transporting hazardous materials. The present background screening process for a hazardous materials endorsement on a commercial driver's license (CDL) can be reformed to save commercial drivers and the federal government both time and money without compromising security. In accordance with the GAO's recommendations, the proposed wetlines rule can be halted. The hazardous materials regulations can be strengthened by better allocating responsibility for safety functions between shippers and carriers. Finally, the state hazardous materials permitting process can be improved to maintain current safety practices and state funding streams while easing carriers' application burden.

Reforming the Hazardous Materials Endorsement (49 U.S.C. § 5103a)

Any driver transporting placardable quantities of hazardous materials must obtain a hazardous materials endorsement on her CDL. Presently, a Transportation Security Administration-administered (TSA) fingerprint-based background check is required for all hazardous materials endorsements. This background check costs $86.50 in states that utilize the TSA's contractor to conduct their checks, but can cost as much as $150 in states that perform the check themselves.[4] This security check is required for transporting all hazardous materials, including those that pose little threat of weaponization—such as paint, nail polish, or alcohol-based products like perfume.

Congress can maintain our current level of hazardous materials transportation security by limiting fingerprint-based background checks to drivers transporting weaponizable hazardous materials. Both PHMSA[5] and TSA[6] have issued lists of security-sensitive hazardous materials (SSHM) and have harmonized them.[7] All drivers transporting hazardous materials would still be required to pass the relevant safety tests for a hazardous materials endorsement as well as a name-based background check. Drivers transporting hazardous materials that appear on the SSHM lists would also be required to undergo a fingerprint-based background check by acquiring a separate credential with a check equivalent to the current fingerprint-based threat assessment.

ATA asks this committee to work with the Committee on Homeland Security to implement legislation that achieves this effect. Such proposed legislation passed the House in 2009 with bipartisan support as the SAFE Trucker Act.

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[4] https://hazprints.tsa.dhs.gov/Public/ (accessed March 30, 2014).
[5] 49 C.F.R. § 172.800(b) (2013).
[6] 75 Federal Register 45, *Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements*, 10974, 10976 (March 9, 2010).
[7] *Id.*

Banning Unnecessary Proposed Wetlines Regulation

Wetlines are fuel loading lines used to fill and drain cargo tank trucks. Wetlines are placed underneath tank trucks (bottom-filling) to promote safety by allowing workers filling tanks to remain on the ground and to ensure that gasoline fumes do not leak into the atmosphere. Worker safety and environmental concerns, in fact, are why tanks are loaded from the bottom today. MAP-21 forbade PHMSA from issuing any final wetlines regulation until the GAO could study its proposed regulation and weigh in about any societal benefits or drawbacks in the proposed rule.

GAO issued its report in September 2013, stating that PHMSA's "incident data cannot be used to reliably identify risks from [wetlines] incidents" and that information about the consequences of wetlines incidents is not accurate.[8] PHMSA's proposed regulation studied the roughly 365 million gasoline deliveries in a decade and found only eight fatalities that could be reliably traced to a wetlines-incident.[9] There are far more cost efficient and effective ways to lower the release of flammable liquids from tank trucks, such as installing anti-rollover technology on vehicles and training drivers to anticipate and avoid rollovers before they occur. GAO therefore recommended withdrawing the rule for lack of a rationale to impose it.

Despite GAO's statement that the proposed rule's benefits were few to none and that its costs were underestimated, PHMSA has not withdrawn the rule. Rather, PHMSA staff have indicated their intent to promulgate a rule despite the GAO report's conclusions.[10] In the last HMTA reauthorization, this committee initially recommended that PHMSA be restricted from promulgating any wetlines regulation, but MAP-21's final text was reduced to a study of the problem. Given the GAO's findings and PHMSA's refusal to withdraw the rule, this committee's previous wetlines provision is more appropriate than ever today.

Equitably Assigning Responsibility between Shippers and Carriers (49 U.S.C. § 5123(a)(2))

The Hazardous Materials Regulations consist of over 500 pages of individualized requirements governing the packaging, marking, and labeling of hazardous materials, as well as other requirements that vary based upon each individual material being transported. As the party that knows the specific qualities of their products, shippers are tasked with complying with these regulations. But, because most violations are discovered during roadside inspections, drivers and motor carriers frequently receive citations for violations of the Hazardous Materials Regulations that they cannot reasonably be expected to discover, know of, or prevent.

The law can encourage accountability by distinguishing between the functions that are performed by shippers and the functions that are performed by carriers. Present interpretations are able to draw such a line only when a driver picks up a pre-loaded and pre-sealed trailer and the driver is instructed not to break the seal except under the direction of law enforcement.[11] Current regulations that define loading a trailer as both a "pre-transportation" (shipper) function[12] and a transportation

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[8] GAO Report 13-721 *Cargo Tank Trucks: Improved Incident Data and Regulatory Analysis Would Better Inform Decisions about Safety Risks Highlights* (September 11, 2013).
[9] Richard Moskowitz, *Comments of the American Trucking Associations*, Federal Docket ID PHMSA-2009-0303-0046 at 2 (quoting supporting material placed in the rulemaking docket by PHMSA).
[10] Statement of Charles E. Betts, Director of Standards & Rulemaking Division U.S. DOT/PHMSA to the January meeting of the Council on the Safe Transportation of Hazardous Materials (January 15, 2014).
[11] PHMSA Interpretation Letter Reference No. 13-0035 (November 13, 2013).
[12] 49 C.F.R. § 171.1(b)(12) (2013).

(carrier) function[13] simply confuse matters. HMTA reauthorization can promote accountability by drawing a bright line between shipper and carrier responsibilities.

Reforming State Hazardous Materials Transportation Permits (49 U.S.C. § 5119)

Finally, the specific dangers inherent to each different class of hazardous materials transported require complex regulations. Because of their complexity, the national rules are uniform. Congress regulated both interstate and intrastate hazardous materials transport. States may require motor carriers to apply for permits to transport hazardous materials within their state. Some states do so, though not all and not for all types of hazardous materials.

But, the Hazardous Materials Regulations forbid states from enacting any regulations or permit requirements that "are not substantively the same" as the federal regulations.[14] Because the Hazardous Materials Regulations set both a minimum and a maximum for regulation, state permits do little more than apply federal criteria to qualify for a state credential. Carriers compliant with federal requirements will by definition also be compliant with state permit requirements.

To address this issue, five states; Michigan, Nevada, Ohio, Oklahoma, and West Virginia; formed the Alliance for Uniform Hazmat Transportation Procedures (Alliance). The Alliance states have amalgamated their application processes online so that a carrier can visit the site once, provide all necessary information through a single interface, select the states in which the carrier transports hazardous materials, and pay a single registration fee. The Alliance then takes care of distributing the permit fees amongst the states.

Carriers would prefer to do away with these duplicative permits. But, if these permits are to remain, states should be compelled to join the Alliance. States are already effectively required to form similar programs for administering fuel costs and processing state motor carrier registrations.[15] Requiring all states to participate in the Alliance will lower administrative costs for carriers and for states while preserving States' revenue streams from permit applications.

Conclusion

ATA and its member companies like The Kenan Advantage Group support the safe and secure transportation of hazardous materials. Present levels of security can be maintained by requiring fingerprint-based background checks only for drivers transporting security-sensitive hazardous materials. Similarly, the proposed wetlines rule, which is not projected to have any safety benefits but is projected to have significant costs, should be withdrawn. Bright lines of responsibility can be drawn between shippers and carriers and enforcement can be given the tools to hold the actual violator accountable. Finally, requiring states to participate in the Alliance for Uniform Hazmat Transportation will ease administrative burdens on both states and carriers.

Again, on behalf of The Kenan Advantage Group, ATA and its members, I thank you for the opportunity to share some comments and our suggestions regarding reauthorizing the Hazardous Materials Transportation Act. I look forward to answering any questions from the Members of this Committee.

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[13] 49 C.F.R. § 171.1(c)(2) (2013).
[14] 49 C.F.R. 107.202(a) (2013).
[15] States and Canadian provinces allocate gasoline tax revenues via the International Fuel Tax Agreement and handle registrations via the International Registration Plan.

Statement of

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

Before the

United States House of Representatives Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials

"Examining Issues for Hazardous Materials Reauthorization"

April 2, 2014

Good afternoon, Chairman Denham and Ranking Member Brown. My name is Tom Schick, and I am here on behalf of the American Chemistry Council (ACC). We sincerely appreciate this opportunity to testify on the important matter of reauthorization of the Hazardous Materials Transportation Act (HMTA).

ACC represents the leading companies engaged in the business of chemistry. Our member companies apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $770 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for 12 percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

I would like to underscore the important role that the products manufactured and shipped by ACC's members serve in virtually every aspect of our lives. The nation depends on our industry to produce the chemicals that are necessary for safe drinking water, life-saving medications and medical devices, a safe and plentiful food supply, energy-saving solar panels and much more.

Chemical producers rely on all transportation modes to deliver products wherever they are needed to get the job done: from water treatment plants to farms to factories. Because a number of chemical shipments involve hazardous materials, we work constantly with our transportation partners to find ways to build upon an already impressive safety record.

Through ACC's Responsible Care® initiative, our member and Partner companies are committed to continuous safety improvement in every aspect of the transportation of our products. Collectively, we have invested billions of dollars in training, technology and equipment – and we will continue to do so in the future.

ACC and its members have also worked hard to establish a strong and successful partnership with the emergency response community. For example, ACC members – working together with the railroads and other stakeholders – developed Transportation Community Awareness and Emergency Response. This TRANSCAER® program is a voluntary national training effort that helps communities prepare for and respond to possible hazardous material transportation incidents.

Emergency responders also have access to a wide range of experts through ACC's Chemical Transportation Emergency Response Center, which is known as CHEMTREC®. When an incident does take place, responders contact CHEMTREC's state-of-the-art emergency center to determine the best way to handle chemicals as well as other types of hazardous materials. CHEMTREC provides this service 24 hours a day, seven days a week. There is no cost to emergency responders, other callers, government agencies, or taxpayers.

ACC invites the members of this Subcommittee and their staff to tour our CHEMTREC emergency center in Northern Virginia, or to attend a TRANSCAER event. These are both excellent ways to observe how industry works with local responders to help protect their communities.

With regard to HMTA reauthorization, ACC believes that the Federal Government must continue to play a central role in ensuring the safe transportation of hazardous materials. In HTMA, Congress wisely established a comprehensive national regulatory system that is administered by the Department of Transportation (DOT). The goal of this system is not to prevent the movement of chemicals and other hazardous materials, but rather to ensure that they are delivered safely, securely and reliably. HMTA has worked well in making the transportation of chemicals and other hazardous materials throughout the country safe for the public, workers and emergency responders.

We understand that Congress will soon consider legislation to reauthorize HMTA. ACC and our member companies strongly support DOT's uniform national regulatory program, which ensures that training, transportation equipment, emergency preparedness, and all of the other technical aspects of hazardous materials transportation are consistent across the nation. We also support DOT's excellent work in harmonizing – to the maximum extent warranted - U.S. hazardous materials regulations with international standards that have been adopted for the transportation of dangerous goods. This harmonization not only facilitates commerce in these important products, but it also promotes safety with consistent hazard communication (placards, labels, shipping papers, etc.) and consistent procedures and equipment.

ACC is, however, concerned about two aspects of DOT's current administration of the regulatory program that Congress established under HMTA. One is loading and unloading hazardous materials, and the other relates to the "special permits" that are issued under 49 U.S. Code Section 5117.

Some years ago, in what ACC considered to be an unfortunate interpretation of its statutory authority, DOT withdrew from regulating the loading and unloading of hazardous materials. Yet DOT has also determined that, especially for bulk movements, loading and unloading are critical components of the safe transportation of such products. Subsequently a rulemaking (Docket HM-247) was initiated to take another look at this issue – although it was limited to the truck mode and was not especially well received by commenting parties. DOT recently "withdrew" that

notice of proposed rulemaking. In fact, ACC supports regulation of the loading and unloading of hazardous materials by the Federal agency with authority and expertise in this area for two important reasons:

1. Loading and unloading are fundamental to the safe transportation of hazardous materials.
2. Federal regulation provides uniformity across the country, which enhances the training of "hazmat employees" and the preparedness of emergency responders.

For those reasons, ACC would like to see the agency reestablish its regulatory position with respect to loading and unloading of hazardous materials.

Special permits allow safety-based variations from DOT's existing hazardous materials rules. Applicants for special permits come forward with proposals that can only be granted if DOT finds there to be at least an equivalent level of safety to what its regulations provide.

There has been some talk of charging "user fees" to companies that apply for special permits. ACC opposes that suggestion. Special permits are a win-win process:

- Applicants from industry and government gain operational flexibility with no loss of safety.
- DOT learns of new procedures and technologies that can later be incorporated into hazardous materials regulations on the basis of experience that has been monitored by the agency. In fact, DOT is currently engaged in rulemaking to move more special permit provisions into the Code of Federal Regulations.
- Meanwhile, other parties can learn from and apply to use existing special permits.

ACC believes that special permits are an inherent and beneficial part of the regulatory process that governs the transportation of hazardous materials. For that reason, it is appropriate maintain the special permit function without imposing user fees that would interfere with innovative safety enhancements.

In conclusion, this country depends on HMTA and our safe and reliable system for moving hazardous materials under DOT's uniform national rules. Some improvements may be deemed appropriate, the public and private sectors can work together to ensure that this system continuously improves and remains competitive in the global marketplace.

We look forward to working closely with this Subcommittee, the Department of Transportation, and others to achieve this goal.

Thank you. I would be glad to answer any questions that you might have.

Congresswoman Janice Hahn (CA-44)

Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials

Hearing:
"Examining Issues for Hazardous Materials Reauthorization"

Wednesday, April 2, 2014
2:00 p.m.
2167 Rayburn

For Mr. Thomas Schick, Senior Director, Regulatory and Technical Affairs, American Chemistry Council and Mr. Stephen Pelkey, Chairman, Transportation Committee, American Pyrotechnics Association

Route Planning for Hazardous Material Shipments

Q3: The Lac-Magentic train accident that occurred last year was a tragedy. The derailment and subsequent explosion of a train carrying crude oil led to the loss of 47 lives and caused approximately $200 million in property damage. Last month, the NTSB issued its recommendations to the Federal Railroad Administration (FRA) in response to the Lec-Megantic crash.

One of the most significant recommendations calls for "expanded hazard material route planning for railroads," so that trains carrying hazardous materials avoid populated areas and other sensitive regions. These recommendations encouraged stakeholders to work with the railroads and local government to ensure the routes these railroads took were considered in any regional or local hazardous prevention or response plan. As someone who represents a district in the most populated county in the nation, the adoption of this recommendation is extremely important to me and my constituents.

Mr. Schick and Mr. Pelkey, as the purveyors of these hazardous material shipments, I, along with many members of this committee, believe your members have a direct responsibility for ensuring these types of accidents don't occur in the future.

How are your companies working with the railroads and local governments to prevent future hazardous material accidents from occurring?

Answer:

Companies in the business of chemistry manufacture a range of hazardous materials, and also use such products in their own industrial processes. The movement of hazardous materials by rail contributes significantly to the growth of the US economy as well as to the health and safety of our population. ACC members and the railroads provide information and training to local

emergency responders – at no cost to the communities –through the TRANSCAER® (Transportation Community Awareness and Emergency Response) program. ACC also operates CHEMTREC® - the Chemical Transportation Emergency Center – on a 24-by-7 basis to assist when there is an accident or incident involving any type of hazardous material.

ACC members work with their rail service providers on an individual basis. In addition, ACC itself cooperates with the railroad industry, tank car suppliers, and the Federal Government on various rail-related hazmat safety initiatives, such as FRA's Railroad Safety Advisory Committee and its Hazmat Working Group; and the Tank Car Committee of the Association of American Railroads. ACC has also petitioned PHMSA to adopt new tank car standards and other regulations. We would be glad to discuss these or other aspects of rail safety with you or your staff.

TESTIMONY
Before

The United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials

Hearing on

"Examining Issues for Hazardous Materials Reauthorization"

Presented By

Stephen Pelkey
President & CEO
Atlas Advanced Pyrotechnics, Inc.

136 Old Sharon Road
Jaffrey, NH 03452

April 2, 2014

Chairman Denham, Ranking Member Brown, and other members of the Subcommittee, I sincerely appreciate the opportunity to appear before you this afternoon to discuss issues regarding Hazardous Materials Reauthorization, an issue of vital importance to the U.S. fireworks industry.

I am Stephen Pelkey, President and CEO of Atlas Advanced Pyrotechnics, Inc., headquartered in Jaffrey, New Hampshire. I also currently serve on the Board of Directors of the American Pyrotechnics Association (APA)[1] and as the Chairman of APA's Transportation Committee.

Atlas Advanced Pyrotechnics was founded in 1950 and is a prominent professional fireworks display company producing professional fireworks displays throughout New England, including Boston's 4th of July and First Night celebrations, and for 6 years from 1997-2002, we were contracted for the DC Capitol Fourth Display. We also produce 15 fireworks displays internationally. Most recently we received the Gold Jupiter Award during the Montreal International Fireworks Competition for best pyromusical performance among eight (8) countries represented, which is one of the highest honors for a U.S. display company. Through our matching budget program, Atlas in also engaged in producing numerous displays for charitable programs in New England such as the Special Olympics, Make A Wish Foundation, Making Strides Against Breast Cancer, United Way, and the Cystic Fibrosis Ski Challenge.

While we are primarily engaged in professional fireworks displays, Atlas also operates six (6) consumer fireworks retail stores located throughout New Hampshire and Maine.

Atlas employs 24 full-time workers. During our busy Fourth of July season, our employment rolls swell to approximately 750 total workers. Atlas produces 800 fireworks displays annually, 75% of which occur over a two week period surrounding the Independence Day holiday. Each fireworks display must be transported by a licensed and trained pyrotechnican who holds a valid Commercial Driver's License with a Hazardous Materials Endorsement and our drivers must operate under a valid Hazardous Materials Safety Permit (HMSP) issued to our company. Our display fireworks are classified, regulated and transported as Division 1.1 or 1.3 explosives and are subject to regulations of the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Motor Carrier Safety Administration (FMCSA) when transported in intrastate and interstate commerce. As such, we are a very interested stakeholder in today's hearing.

I am here today on behalf of the APA. APA also participates in the Interested Parties for Hazardous Materials Transportation (Interested Parties) coalition.[2] The Interested Parties have provided detailed recommendations to the Subcommittee for consideration of any new hazmat transportation legislation. While we endorse all these recommendations, I have been tasked to address the coalition's and APA's Transportation and Public Display Committee's number one priority. This priority concerns the FMCSA's Hazardous Materials Safety Permit Program (HMSP) and the on-going delays in reforming this flawed program. Given the enviable safety record of those subject to this permit program, FMCSA's lack of

[1] The APA is the principal safety and trade association for the fireworks industry representing manufacturers, importers, distributors, retailers, suppliers and professional display companies. The APA has over 240 member companies. Along with their subsidiaries, APA member companies are responsible for approximately 90% of the fireworks manufactured, imported, distributed and displayed in the U.S.

[2] The Interested Parties represent industries and public safety agencies with operations in every state, have combined business revenues in excess of $1 trillion, employ millions of workers, and have an enviable record of hazardous materials transportation safety and security. The Interested Parties exist to share information, to identify issues and to advocate for policies relating to the safe, secure and efficient transportation of hazardous materials.

attention to effect promised reforms is inexcusable. For many HMSP holders, loss of a permit is an "out-of-business" edict.

Background

Congress established the HMSP in 1990[3], although FMCSA did not implement the program until 2005.[4] In the preamble to the rule, FMCSA stated that the program would reduce crashes. In fact, the safety record of HMSP holders, while outstanding, is better during the nine years preceding the program than in the nine years since.

The HMSP Program Is Flawed

The HMSP program has been seriously flawed since inception.[5] Initially, FMCSA proposed that carriers with a satisfactory safety rating could get a permit by simply asking. The rationale was that a carrier's safety rating was the agency's fitness standard. To accommodate carriers with no rating, the agency proposed using a fitness metric based on out-of-service (OOS) violations and crash rate. This policy was repeated in the preamble to the final rule. However, the Agency changed the regulatory text to say the permit holders had to have a satisfactory rating and not exceed the OOS and crash rate thresholds. The Agency's rule provided a means for holders to appeal or seek waivers of determinations to revoke or suspend permits, but it provided no such due process if, on the day the holder's permit expired, it was below the OOS thresholds necessary to qualify for a permit.

Because of the safety record of those in the program, FMCSA cannot justify suspending or revoking permits of those holders who are "underwater" based on OOS and crash rates. In the entire course of the program, the agency has issued only six suspensions, and seven revocations. No HMSP holder has been declared an imminent hazard. So, the Agency's inaction to address compliance issues and work with carriers to help them recover when they are underwater results in automatic denials on the date their permits expire. Fireworks companies, like many of the other companies required to hold permits, are specialized carriers. If a fireworks display company loses its HMSP, it cannot haul something else while it waits to "age out" disqualifications. Fireworks are what the company does. It is effectively "out of business," unless it can find an alternate means to deliver those displays.

At the present time, to retain a HMSP, a carrier must maintain OOS inspection rates for vehicle, driver, and Hazardous Materials violations below a set percentile. While permit holders are judged against all carriers under the vehicle and driver rates, they are judged against themselves when determining the hazmat OOS rate. The result is that the hazmat OOS rate, which is based on violations that for the most part are not crash causal, are the most troubling and difficult to maintain compliance. In order to stay above the FMCSA designated hazmat OOS threshold, a carrier must have 14 "clean" hazmat inspections to overcome the effects of one bad inspection. The system is not set up to provide and record clean inspections. Unlike, large transportation companies that operate year round and are inspected frequently, display fireworks transporters operate primarily on a seasonal and periodic peak time basis, typically driving much shorter distances and many fewer miles as compared to long-haul freight transporters. In order to meet local and state regulations as well as meet their customer's needs,

[3] Senate Rept. 101-449. Hazardous Materials Transportation and Uniform Safety Act of 1990, August 30, 1990.
[4] 69 FR 39350, June 30, 2004.
[5] Id.

fireworks display transporters predominately operate over weekends, during holiday periods and at odd hours when inspection stations are not open.

While the permit is valid for two years, OOS rates are calculated only with data from the last 12 months of the permit cycle. During this time, a permit holder has no control over when it may get an inspection that results in an OOS violation. The closer a carrier gets to its permit expiration date, the greater the uncertainty for the carrier. The arbitrary outcome is that on any given date, one permit holder can be denied an HMSP while another holder with the same OOS rate but a later permit expiration date, is able to continue to operate.

Atlas's Experience

Atlas has first-hand experience with this extremely flawed permit program as we unfortunately lost our permit in 2011 as a result of receiving several erroneous OOS citations that put our company above the HMSP disqualification threshold. In order for us to survive, and deliver and execute our contracted fireworks displays, we legally transported less than 55 lbs. of fireworks – the threshold which triggers the application of the HMSP. For many displays we shipped products in separate trucks, at times up to 8 to 10 separate trucks on the road moving less than 55 lbs. in each vehicle to each of our contracted display sites for the better part of an entire year, while we "aged out" the necessary 12 month period to obtain a renewal of our permit. As you can imagine, placing additional trucks on the road to deliver Division 1 explosives to a display site, rather than transporting all of these products in one vehicle, does not enhance public safety nor does it satisfy the spirit of safety intended with the HMSP program. Moreover, it placed an undue burden on our company in terms of both time and money as we needed to secure additional rental trucks and CDL licensed drivers with Hazardous Materials Endorsement (HME) to ensure that our drivers could operate in compliance within the Hours of Service (HOS) requirements.

With regard to the citations that resulted in the loss of our HMSP, we should have been cited for having an improper UN identification number on the shipping paper, rather than the charge of "No Shipping Papers Offered." According to the inspection and enforcement criteria issued by the Commercial Vehicle Safety Alliance (CVSA), an incorrect UN Number does not constitute an out-of-service condition.[6] We appealed the erroneous citation in FMCSA's DataQs , however, the State authority issuing the citation, entered the citation as "No Shipping Papers Offered," and FMCSA chose to side with the State authority, rather than providing us with an opportunity to appropriately appeal the citation directly to FMCSA. Without the opportunity for an additional level of review, Atlas was also not afforded the opportunity to address the fact that all of the citations issued were after shipments had been delivered to their final destination, and most were loaded and ready for their respective community displays. While we understand limited Agency resources necessitate the delegation of safety regulation enforcement to the states, we believe it is not appropriate that the Agency has delegated its ultimate authority to determine whether a HMSP holder's permit should be renewed or denied.

APA's Transportation Committee recently completed a review of the available data on APA's 66 HMSP carriers to determine how many companies may be in jeopardy of losing their permit prior to the busy Independence Day holiday. Based upon a review of FMCSA's Safety Management System (SMS) data, three (3) carriers are currently at the threshold where they may lose their HMSP. While only three (3)

[6] Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, Revised April 1, 2011, Part III, Hazardous Materials Out-of-Service Criteria, Pg. 59.

carriers may sound like an insignificant number, it is an in or out of business proposition and illustrates the unfairness of a system based on the arbitrary date that your permit expires.

Need for Additional Level of Review

The APA, along with several other trade associations representing companies subject to the HMSP program, has been advocating for the need for an administrative process that would allow the FMCSA to intervene outside of DataQs.[7] We will call this an "additional level of safety review" to determine a carrier's fitness prior to the denial of a HMSP. What happened to Atlas, illustrates the great need for HMSP holders to be afforded a meaningful, clear and understandable opportunity for an additional level of review before a permit can be automatically denied for OOS disqualifications. Learning to challenge a violation in the DataQs is not a simple task, especially if a company does not have a full-time person specifically trained on the data system and focused solely on that job function. Had my company been afforded an additional level of review, I have no doubt whatsoever, that our HMSP renewal would not have been denied.

MAP-21 Mandated HMSP Assessment

In 2011, FMCSA agreed that the program was flawed and accepted a petition for rulemaking submitted by APA and other affected stakeholders to reform the HMSP. However, we are disappointed that the Agency has not made reform of this program a priority. Rather, FMCSA said it would not move forward until its CSA safety fitness rule was finalized. This rule has not even been proposed and it is unknown when it will be finalized. When Congress enacted MAP-21,[8] it mandated the Agency to report on actions that FMCSA could take to improve the program, including whether to provide carriers opportunities for an additional level of fitness review prior to the denial of a HMSP.[9] The APA participated in the assessment process as an invited stakeholder and shared our industry's concerns and recommendations for improving the program.

The assessment report to Congress was due on October 1, 2013. The report was just issued in March 2014, over five months late. In that report, the assessment showed that HMSP holders are among the safest motor carriers on the nation's highways as measured by crash and OOS rates. The assessment also illustrated that the HMSP carriers are being adversely impacted by flaws inherent in the HMSP program because of the timing and methodology of the HMSP renewal cycle.

In the assessment, FMCSA recognized the need to provide a means for corrective actions and/or a second level of review for carriers with little roadside data and high OOS or crash rates. However, the Agency does not establish a timeframe to address this ongoing problem which is of critical importance to the 1,497 carriers subject to HMSP program. HMSP holders need some level of assurance that they will not simply lose their permit, which their livelihood depends upon, due to this seriously flawed permit program.

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[7] The DataQ system is flawed. Among the criticisms of the program are that it required the officer issuing OOS citation to admit error; it asks this official to be proficient in relatively complex hazmat regulations; and the process only is available for appeals, not waivers.
[8] Moving Ahead for Progress in the 21st Century Act (P.L. 112-114)
[9] Id. Section 33014

I am pleased to see a number of recommendations outlined in the assessment; however, several of the recommendations will require rulemaking, which is a lengthy process. In short, HMSP holders still have no prospect of immediate relief. Every day that the Agency continues to enforce this program is one day too many. Providing HMSP holders an opportunity for an additional level of safety review before their permit is denied must be a priority.

Conclusion

We are grateful to members of this Subcommittee who have joined in efforts to reform this program. The effort has been bipartisan – Chairman Shuster, Rep. Rahall, and Rep. Graves, HMSP holders thank you. We regret that reasonable appeals have fallen on deaf ears. We look forward to a new legislative opportunity to require reforms by a date certain.

Atlas is committed to ensuring safety in the handling, transportation, and execution of our fireworks displays. We actively promote safety to our customers and the millions of Americans across the country that gather to celebrate our American tradition of lighting up the skies with fireworks as a symbol of our pride and patriotism on Independence Day.

Atlas supports the fireworks industry by actively participating in groups like the American Pyrotechnics Association, the American Fireworks Standards Laboratory, and the National Council on Fireworks Safety. We work cooperatively with state, local and federal regulatory officials as well as fire and code enforcement officials to ensure responsible regulation of fireworks activities.

Atlas, and members of the APA, will continue to provide safe and spectacular fireworks displays to delight and thrill America's families across our great nation. Atlas will strive to retain our HMSP and we hope that the several fireworks display companies, who currently are in jeopardy of losing their permit, will overcome that random fate, so collectively we are not at risk of disappointing the crowds of spectators, or our customers and sponsors, by finding ourselves in a position to cancel those contracted celebrations planned for America's birthday.

Thank you for this opportunity to testify. I would be happy to answer any questions that you may have.

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

Bill Shuster
Chairman

Christopher P. Bertram, Staff Director

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Staff Director

May 8, 2014

Stephen Pelkey
Chairman, Transportation Committee
American Pyrotechnics Association
7910 Woodmont Avenue, Suite 1220
Bethesda, MD 20814

Dear Mr. Pelkey,

Thank you for your testimony before the Subcommittee on Railroads, Pipelines, and Hazardous Materials on April 2, 2014 concerning "Examining Issues for Hazardous Materials Reauthorization." I am pleased you appeared and testified on behalf of the American Pyrotechnics Association. The Subcommittee gained valuable insight from the information you provided at the hearing.

Enclosed please find additional questions for written responses for the record. The Subcommittee appreciates your written responses no later than May 22, 2014. Please provide an electronic version of your response via email to Walker.Barrett@mail.house.gov.

If you have any questions please contact Mike Friedberg of the Subcommittee at (202) 226-0727.

Sincerely,

Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials

Enclosures

Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on "Examining Issues for Hazardous Materials Reauthorization"
April 2, 2014
Questions for the Record

Questions from Rep. Denham:

- MAP-21 required a rulemaking on the procedures and criteria for the special permits and approval program. What are some improvements you would like to see in forthcoming rulemaking regarding the special permits and approvals program?

- The Administration has proposed a user fee for the special permits and approvals program. Could you explain your views on that proposal?

May 23. 2014

The Honorable Jeff Denham
U.S. House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials
2251 Rayburn House Office Building
Washington, DC 20515

Re: "Examining Issues for Hazardous Materials Reauthorization"
Hearing Date: April 2, 2014
Response to Questions from Rep. Denham

Dear Chairman Denham:

On behalf of Mr. Stephen Pelkey, Transportation Committee Chairman, of the American Pyrotechnics Association (APA), we are responding to your inquiry regarding our thoughts concerning the upcoming MAP-21 rulemaking regarding procedures and criteria for the special permits and approvals program and our views regarding PHMSA's proposed user fee for special permits and approvals.

MAP-21 Rulemaking to Issue Regulations to Establish Operating Procedures and Fitness Criteria for Special Permits and Approvals

The APA believes that all rules governing special permits and approvals, including fitness determinations, should be the subject of notice and comment rulemaking. In fact, APA joined with other industry associations to urge a rulemaking by PHMSA specifically on fitness standards and qualifying criteria for special permit and approval applicants. The fireworks industry is the largest holder of approvals, outside of the government. Every single fireworks device must have a unique ten digit EX (explosive) approval number. With the vast majority of fireworks approvals (90%) being held by manufacturers based in China, we have great interest in seeing what criteria PHMSA will propose to determine whether these foreign manufacturer applicants are fit. Accordingly, we look forward to the rulemaking being published and for the opportunity to comment.

PHMSA Proposed User Fees for Special Permits and Approvals

The APA opposes user fees to fund the special permits and approvals program. User fees are essentially a tax on applicants for special permits and approvals that are required by regulation. Special permits and approvals are critical to the competitive participation of the regulated industry in the global marketplace. Both are regulatory tools used in situations where "a one size fits all" regulation is not possible. Neither are "exemptions" from established safety norms but rather, they are required for certain products, including fireworks, to enter into commerce. A special permit is based on evidence that an equivalent level of safety can be maintained that meets or exceeds the level of safety in the HMR. An approval may only be issued if there is a stated authorization within the domestic or international regulatory code which specifically permits the competent authority to recognize alternative methods of or affirm compliance.

7910 Woodmont Ave., Suite 1220 ● Bethesda, MD 20814 ● (301) 907-8181 ● FAX (301) 907-9148

PHMSA has proposed fees ranging from $700 per approval, to $3,000 per special permit. As mentioned above, every fireworks device requires an EX Approval before that product can be offered for transport. The fireworks industry is the largest holder of approvals, other than the Federal government which would not pay any fees. A fireworks company that seeks 200 new product approvals each year would incur a $14,000 tax for the processing of those applications. What if the agency charged the fee repeatedly for an application that needed minor adjustments before the application was approved? Many applications go through numerous rounds of submittal, rejection, then modification, then rejection, etc., before they are formally approved. If the fees were recurrent, the costs could be enormous. Accordingly, the fireworks industry, comprised of small businesses, would suffer the most harm if the fees, which are in fact "taxes", were imposed for entities required to obtain approvals by regulation.

The APA recently voiced our concerns regarding user fees to PHMSA and raised a couple of points for their consideration:

(1) How would the agency collect the applicant fees from foreign manufacturers? Will the agency have the means to accept payment via wire transfer or lump sum cash payments, which is common place in conducting business with China?

(2) Would the agency consider an alternate approach to user fees? Perhaps each company who wishes to file for approvals registers and pays a one time or annual fee. Such as a fee similar to the Hazmat Registration program that is fixed, rather than a fee per application. This would be far more palatable than a fee per application.

Additional Suggestions to Improve the PHMSA Approvals Program

The Approvals Program at PHMSA is of utmost importance to the APA and its members. Without approvals none of the products manufactured by the industry can be entered into commerce. While the program has improved slightly over the past several years, as it pertains to fireworks approvals, there is still room for more improvement and we have several suggestions that we would like to recommend:

I. PHMSA Should "Fast Track" Competent Authority Approvals and Applications for U.S. Manufacturers

U.S. fireworks manufacturers, who conduct business worldwide, must obtain classification approvals, from the countries where they intend to conduct business. The approvals are commonly referred to as a "Letter of Competent Authority" or Competent Authority Approvals (CAA). These products are tested and certified for classification from UN recognized testing laboratories including the Canadian Explosives Research Laboratory (CERL) and the German Federal Institute for Materials Research, commonly known as BAM. These classification approvals are difficult and costly to obtain. However, in order for these products to enter U.S. commerce, they must also be approved by PHMSA. Currently, the agency spends as much time, if not more time, reviewing these applications prior to assigning an EX number, although these products have already been scrutinized and vetted by an internationally recognized test facility. The UN classifications are supposed to be reciprocal and in theory, the agency should be able to promptly review a CAA and assign an EX number.

Unfortunately that is not the case. And the same scenario holds true for our foreign members who have obtained CAA classifications from recognized international testing agencies, who would like to export their products to the U.S. The UN certification / classifications would appear to be meaningless as CAA applications go through extensive scrutiny by PHMSA. Many of these product approvals are needed for multi-million dollar contracts and the approval process spans well beyond the 120 day period putting these

manufacturers, at a disadvantage to their other foreign manufacturing competitors. When a U.S manufacturer or CAA applicant has to wait four (4) months to obtain a decision from PHMSA on whether their CAA is accepted, the U.S. importer or manufacturer often loses significant prospective business contracts and they either delay hiring employees to manufacture the product or have to let employees go because of uncertain production schedules. With so few U.S. manufacturing jobs remaining in our country, PHMSA needs to do more to help these small U.S. manufacturers to not only survive but thrive, and be in a position to create jobs for our struggling economy. If PHMSA has accepted these UN certification agencies and listed them as Competent Authorities, which they have, there is no excuse for delaying these approvals and requiring additional scrutiny. The agency is questioning the entire foundation upon which the UN certification process was established. Once a manufacturer obtains an approval from a recognized UN certification body, they should be able to simply file it with PHMSA and go on and conduct their business. Otherwise, PHMSA is not supporting the UN certification / CAA process and frankly, should not promote such entities as being recognized certification entities to begin with if they are not going to accept their certifications. The system is supposed to be reciprocal, but unfortunately it is not.

II. PHMSA Must Improve Timeliness of Processing Approvals

We urge the agency to put more emphasis on the timely processing of approval applications, especially for manufactures that have a long history of obtaining approvals as many applications are taking far longer than the 120 day processing period. Applications are routinely rejected based upon clerical errors made by the applicant that can be quickly remedied by a phone call with the PHMSA application reviewer. When approvals are not issued in a timely manner the product cannot make the long voyage from China to the U.S. and the U.S importer loses the opportunity to expand their product line. For an industry that survives based upon how successful the Fourth of July selling season is a delay in obtaining approvals for new products can seriously harm the bottom line revenue.

III. PHMSA Must Prioritize Adopting the Revisions to APA Standard 87-1

The APA has been working with PHMSA personnel over the past several years to revise APA Standard 87-1, Standard for the Construction and Approval of Fireworks, Novelties, and Theatrical Pyrotechnics. APA's Standard is incorporated by reference in 49 CFR 173.56. The vast majority of fireworks approvals are issued based upon a manufacturer satisfying the criteria outlined in APA's Standard and by utilizing a specific approvals application modeled on the 87-1 requirements.

The current edition of the APA Standard was published in 2001 and was formally approved by DOT in 2003. At that time, the Standard went through an exhaustive preparation process within the APA that was followed by a lengthy review by DOT prior to its adoption into Title 49. It is, however, a fifteen year old document that outlines the basic construction and approval requirements for firework devices. There have been many advances in the industry during those 15 years and even in the decade since it was formally adopted. In particular, a variety of new devices have been developed and new technologies have become available to industry that has improved both safety for use as well as transportation safety.

Because of the expansion in the types of fireworks products now manufactured, which still meet precise chemical restrictions set forth in the APA Standard, and the new technologies employed, it is imperative that we finalize a revised Standard that will embrace these broadened concepts --many of which now have more than a decade of safe transportation experience—and will be of mutual benefit to PHMSA approvals personnel as well as industry. The current problem is that these new products may not be approved under the APA 87-1 application process. Because the new devices are not described in the 15 year old Standard, they are subject to approval only by extensive testing and approval under the 'explosives' application process. It makes no sense to subject these low transportation risk devices to the full scale testing required

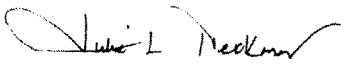
for other explosives approvals, and the proposed revisions provide for greater explanatory information to assist PHMSA approvals personnel in understanding the variety of fireworks devices and how to properly assign transportation classification approvals.

We are working with PHMSA on the revised Standard and hope that this important project can be elevated to a priority project for the agency so that we can move forward with the adoption of a revised Standard, incorporated by reference in the CFR within the next 6 -12 months. We strongly believe a revised Standard will provide PHMSA approvals personnel with more detailed information to assist them in processing fireworks approvals applications and help eliminate the backlog in applications, as many of the fireworks approval applications are denied simply because they go outside the scope of the 15 year old Standard.

We hope this letter is fully responsive to the questions that you have raised following the April 2 hearing. If we can provide any clarification or additional information, please do not hesitate to contact me.

Respectfully submitted,

American Pyrotechnics Association



Julie L. Heckman
Executive Director

cc. Stephen Pelkey, Chairman, APA Transportation Committee

May 7, 2014

The Honorable Janice Hahn
U.S. House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials
2251 Rayburn House Office Building
Washington, DC 20515

Re: "Examining Issues for Hazardous Materials Reauthorization"
Hearing Date: April 2, 2014
Response to Question 3: Route Planning for Hazardous Materials Shipments

Dear Rep. Hahn:

On behalf of Mr. Stephen Pelkey, Transportation Committee Chairman, of the American Pyrotechnics Association (APA), we are responding to your inquiry regarding route planning for Hazardous Materials Shipments, and NTSBs recommendation calling for "expanded hazard material route planning for railroads."

APA and its members are working with a number of Federal agencies on regulations to ensure the safe transportation of fireworks products including transportation by ocean carriers, railroads and commercial motor vehicles. Fireworks containers containing class 1.3G Display Fireworks, UN0335, Packing Group II and class 1.4G Consumer Fireworks, UN0336, Packing Group II, are shipped from ports in China by ocean carriers to U.S. ports as well as a number of inland ports served by the four (4) major rail carriers. Such shipments, when they include a rail portion, are in control of the railroads receiving the containers under contracts with the ocean carriers. Neither APA nor any of its members have any direct involvement in how the U.S. railroads plan the routing of the hazardous containers moving by intermodal rail to inland rail ramps.

APA members provide compliant shipping documents and declarations with all cargo offered for transport. To my knowledge, there has never been an incident involving fireworks products by rail where death or injury has been attributed to fireworks. The APA and its members stand ready to assist the Federal Rail Administration (FRA) and LEPCs if they have any questions or concerns regarding fireworks shipments via rail.

Respectfully submitted,

American Pyrotechnics Association

Julie L. Heckman
Executive Director

7910 Woodmont Ave., Suite 1220 ● Bethesda, MD 20814 ● (301) 907-8181 ● FAX (301) 907-9148

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

STATEMENT OF

ELIZABETH M. HARMAN

ASSISTANT TO THE GENERAL PRESIDENT

BEFORE THE

HOUSE SUBCOMMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

ON

EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION

APRIL 2, 2014

Good afternoon Chairman Shuster, Ranking Member Brown and distinguished members of the Subcommittee. Thank you for the opportunity to testify before you today. My name is Elizabeth Harman and I serve as Assistant to the General President for the Hazardous Materials, Weapons of Mass Destruction Training and Grants Administration Division of the International Association of Fire Fighters (IAFF). I am pleased to appear before you today on behalf of IAFF General President Harold Schaitberger and the 300,000 fire fighters and emergency medical personnel who comprise our organization.

IAFF members protect eighty percent of the nation's population and serve as the first line of defense during any hazardous materials incident. It is from this perspective as America's front line hazardous materials responders that we testify today to the important role the Department of Transportation plays ensuring the safe transportation of hazardous materials and ensuring first responders are able to safely and effectively respond to a hazmat incident should one occur.

I testify today not only as a representative of the IAFF, but also as someone who understands first-hand the importance of this issue. I am a fully certified fire service instructor and have previously administered training programs at the University of Maryland, Maryland Fire and Rescue Institute. I have also served as a professional fire fighter and paramedic for the City of Fairfax Fire and Rescue Department.

It is from this perspective that I wish to discuss the essential role the Department of Transportation plays to ensure a safe and effective response to hazmat incidents.

The Need for Training

According to the National Fire Protection Association (NFPA), fire departments in the United States receive over 350,000 calls related to hazardous materials emergency response each year. As the number of hazardous materials incidents has increased, so too has the complexity and dangerous nature of responding to such incidents. This is especially true as it relates to our nation's transportation systems. Hazardous materials of nearly every class are to be found on our nation's roads and rails, skies and seas. These materials may react violently to air or water, cause serious injury to individuals when inhaled or upon skin exposure, and may pose new hazards when exposed to other materials. While their transportation is generally safe and uneventful, an accident or incident involving hazardous materials can easily place the general public, as well as the individuals who respond to such incidents, at risk.

When an incident involving the transportation of hazardous materials does occur, the individuals tasked with responding to and containing the incident are, almost without fail, fire fighters. Unfortunately, despite the potential for a hazmat incident in every community in America, far too many fire fighters are insufficiently trained to ensure a safe and effective response. In its Third Needs Assessment of the U.S. Fire Service, NFPA estimates that sixty-five percent of fire departments responsible for hazmat response have not formally trained all of their responding personnel.

While it is clear from such data that training is needed for new recruits and personnel who have yet to undergo training, it is also worth noting that hazardous materials response training is not a one-time event. It is essential that all first responders undergo refresher training to ensure continued proficiency. The Occupational Safety and Health Administration's Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard requires emergency responders to receive annual refresher training "of sufficient content and duration to maintain their competencies." In addition to providing responders the opportunity to maintain their skills, refresher training is vital to familiarize responders with new technology or new hazardous materials which may be used or encountered during a response. One real-world example of the need for refresher training is the recent uptick in transportation of Bakken crude oil. Bakken crude has a higher vapor pressure than other forms of crude, meaning that it will breach its container more quickly than other crude in the event of an accident. Furthermore, Bakken crude is more flammable than other forms of crude. Without refresher training, even a highly-trained first responder may lack this information vital to his or her response.

The reasons for the lack of properly-trained fire fighters vary, although for the most part it is simply a lack of funding. Nationwide, fire department funds are stretched thin, a situation which has been exacerbated by the recent recession. In tight budgetary environments, training is often among the first items to be cut, and hazardous materials training is often seen as less important than structural fire or EMS training.

Unfortunately, the lack of adequately trained personnel in the fire service means that there are significant portions of the country where first responders are not prepared for an incident involving hazardous materials. This can have serious real-world implications including property loss, death and injury to both private citizens and responding fire fighters.

In addition to the threat inadequate training poses to lives and property, an improper response can also have serious economic implications. Emergency managers quite properly consider worst case scenarios. If there is a hazmat incident in which the first responders lack the training necessary to assess the danger, emergency management officials will err on the side of caution. This means that major highways are shut down and even large scale evacuations are ordered unnecessarily. These everyday occurrences result in millions of dollars of lost productivity.

Given the threat to individuals' personal safety and economic well-being, it is imperative that we ensure fire fighters nationwide receive hazardous materials training.

Providing Appropriate Training

We must also ensure that fire fighters receive the type of training that is most appropriate for their duties. Unfortunately, of the training that is being provided to fire fighters, much is provided at an insufficient level, and in an insufficient manner. As a result, scarce resources are being used to provide training that is of little or no benefit.

OSHA regulations indentify five different training levels for workers who may be required to respond to hazmat incidents as part of their duties: Awareness Level, Operations Level, Hazardous Materials

Technician, Hazardous Materials Specialist, and On-Scene Incident Commander. Each of these training levels has a unique curriculum.

Awareness level training is intended for individuals, such as transportation workers, "who are likely to witness or discover a hazardous substance release" in the course of their duties. Awareness level training teaches these workers to "initiate an emergency response sequence by notifying the proper authorities" which, in most cases, would be a fire department. Those who are trained at the Awareness level "would take no further action beyond notifying the authorities of the release."

Operations level training is intended for the first arriving public safety officer. This training is for workers "who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release." Such responders do not have specialized hazardous materials mitigation skills. Rather "their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures."

Any fair reading of these straightforward regulations would conclude that Operations level training is the minimum level intended for fire fighters. Providing Awareness level training to fire fighters is not merely inadequate, it is completely off-topic. There is little point in training fire fighters to learn when and how to call the fire department.

Unfortunately, the number of fire fighters receiving Awareness level training, at the expense of Operations level training, is growing. This is especially true in rural fire departments, which may be less well-funded. Because Awareness level training requires fewer hours than Operations level, it is less expensive to provide. In many cases, those providing fire fighters with Awareness level training argue that it is "better than nothing." Without exception, it is not. Fire fighters trained to the Awareness level are frankly unqualified to do anything more than call for help. They may not even know how to determine what the on-scene hazard is, much less "contain the release, keep it from spreading, and prevent exposures." By providing fire fighters with Awareness level training, we run the risk of engendering complacency – of thinking that because the fire fighters have been trained – albeit at an inferior level – we will be protected in a hazmat incident. Nothing could be further from the truth.

Congress has begun to address the inadequacy of hazardous materials training among fire fighters. In MAP-21, Congress required that all training delivered to fire fighters via PHMSA's Hazardous Materials Emergency Preparedness (HMEP) grant program must be at the Operations level or greater. While a positive step in the right direction, training provided via HMEP represents only a tiny fraction of the training received by fire fighters nationwide. Congress should explore ways to encourage states and localities to provide all fire fighters with Operations level training, rather than Awareness level training, regardless of the funding source.

In addition to providing training to fire fighters at the appropriate training level, we must also ensure that training is provided in a manner that engenders real learning. Under the HMEP grant program, the IAFF has received an annual grant to train instructors to deliver hazardous materials training to

emergency responders nationwide, in communities of all sizes. We believe that our training provides the best model for training fire fighters to respond safely and effectively to real-world hazmat incidents.

The IAFF takes its mandate to train first responders extremely seriously, employing a full-time, dedicated staff to administer our training programs. We provide training to all responders whose duty potentially includes hazmat response, including both professional and volunteer fire fighters, free of charge. This grant has enabled the IAFF to significantly increase training rates in the first responder community, training over 3000 instructors who have gone on to provide training to nearly 70,000 emergency responders. We have also recently, due to amendments in MAP-21, begun direct delivery training in addition to administering our train-the-trainer program, allowing us to deliver training in communities which would otherwise have been unable to afford bringing in an instructor.

The IAFF's unique training model avails responders with real-world training in hazardous materials response that few institutions can match, delivered in person in a fire fighter's own community by instructors who are both certified fire instructors and certified hazmat responders. We believe personal, on-site training is superior to web-based education or fixed, remote site instruction. Web-based education, while useful for learning, is not conducive to knowing how to apply such knowledge in the real world. Additionally, by requiring fire fighters to travel to the site of training, fixed site instruction may prove prohibitively expensive for many departments.

Because the instructors trained through the IAFF's HMEP program deliver training directly to responders in their own communities, instructors are able to tailor their presentations to address the unique concerns or challenges facing a particular community, such as a railway or other specific hazardous materials shipping route.

The IAFF model also utilizes highly trained expert fire fighter instructors to actually teach its course. Consequently, because of shared experiences, there is an inherent trust between teacher and student.

Independent evaluations of IAFF training have found its programs to be cost-effective, providing significant hands-on training for a low cost per contact hour, and evaluations have found instruction to be highly effective, with students reporting high post-course confidence and achieving high post-quiz scores. Generally, students entered the course not knowing much of the content, learned a great deal, managed to maintain respectable levels of information retention (as measured by a follow up test), perceived the course material to be useful for their work, promised to take actions reflective of the knowledge gained in the course, and then largely carried through. Trainees rated the course very positively. All of this is indicative of a well-designed and well-taught course with content appropriate for the audience and relevant to its needs and job requirements.

Simply put, the IAFF provides exemplary hazardous materials training at a time when first responders need highly effective, appropriate training more than ever. We encourage the committee to continue funding this valuable program, and to use it as a model when considering expanding training opportunities for fire fighters.

Improving Hazmat ID tools

In addition to improving emergency responder training, the Department of Transportation has an important role to play in making it easier for responders to identify hazardous materials. Accurate, timely information is key to any successful emergency response, and it is especially critical on a hazmat call. Without the ability to quickly and accurately identify hazardous cargo and numerous critical details about such cargo, fire fighters may lack the information necessary for a safe and proper response.

Fire fighters currently rely on two simple but effective tools to identify hazardous materials during transportation: placards and shipping papers. These simple tools have generally proven successful in their ability to relay information to first responders because they are highly recognizable and easy to understand, two important criteria in the high-stress and chaotic scene of a hazardous materials incident. Despite their life-saving importance, placards and shipping papers also have serious limitations – they may be damaged, hidden or unreachable during an incident. A fire enveloping a tractor-trailer, for instance, may destroy physical shipping papers, and the smoke and soot from the fire may obscure a placard from sight. And, although the information they provide is crucial, it is limited in scope.

New technologies can help first responders better identify hazardous materials and better inform such individuals on how to best respond to an emergency involving such materials.

The Paperless Hazard Communications Pilot Program (HM-ACCESS), established by MAP-21, represents a significant step forward in the development of advanced identification tools. The program, intended to examine the performance, safety and security impacts, and associated benefits and costs, of using electronic systems for communicating hazardous materials shipping paper information, has the potential to advance tools which would significantly enhance the response to a hazmat incident. Providing first responders with access to updated e-shipping papers will help such responders identify hazardous substances during a hazmat incident without putting personnel at risk. An electronic system also has the potential to enhance a department's response by providing details shipping papers might lack, such as comprehensive first aid information.

As PHMSA continues to develop HM-ACCESS, we believe the program's success will depend upon meeting several key criteria. First, it is crucial to ensure that first responders have ready access to e-shipping information. In the chaos of a hazmat incident, responders do not have the luxury of time. Whatever systems are developed must guarantee that first responders can access information on-demand, twenty-four hours a day, and that such information will be accurate and up-to-date.

Second, HM-ACCESS must conduct pilot tests in all forms of transportation: road, rail, air and sea. Although recent road and rail incidents have garnered national attention, hazmat incidents are not limited to any one or two particular modes of transportation. As a nation, we should not accept the vulnerabilities created through and the risk presented by an incomplete system.

Lastly, we encourage PHMSA to consult with first responders at every step of the system's development. As the intended end-users of such a system, fire fighters recognize the practical, real-world implications of the system's design, function, and limitations. And PHMSA must ensure they consult with rank-and-

file users, not just management, as it is the rank-and-file fire fighter who will likely utilize the system on the ground.

Even with the aid of emerging technology, placards and shipping papers will remain essential tools for fire fighters on the scene of an incident for the foreseeable future. In the world of hazardous materials, redundancy and simplicity of information is not simply convenient, it can be life-saving. For example, the mobile electronic equipment necessary to retrieve electronic shipping information may be prohibitively expensive for some fire departments, particularly those in rural areas. Additionally, spotty wireless reception may preclude some responders from receiving electronic information at the scene of an incident. In such cases, physical, on-site information must be available for first responders to conduct a proper response. It is therefore crucial that new identification tools supplement, rather than replace, current requirements for placarding and shipping papers.

Conclusion

On behalf of the International Association of Fire Fighters, I appreciate the opportunity to share with you our views on how to best improve our nation's hazardous materials response capabilities. By committing additional resources for emergency responder training, improving such training to ensure that first responders may respond to incidents effectively, and enhancing hazardous materials identification tools, we will be better able to guarantee that our nation's transportation network remains a safe and efficient mode for private travel and public commerce. To the extent that the IAFF can assist the Subcommittee in achieving this vision, I am happy to offer our expertise and pledge to work closely with you and your staffs.

Again, I'd like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.

STATEMENT OF THE

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C

April 2, 2014

"EXAMINING ISSUES FOR HAZARDOUS MATERIALS
REAUTHORIZATION"

Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4033

STATEMENT OF THE

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

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"EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION"

The Air Line Pilots Association, International (ALPA), representing nearly 50,000 passenger and all-cargo airline pilots at 31 airlines in the U.S. and Canada, has long advocated for safer air transport requirements for lithium-ion and lithium-metal batteries. Current provisions in the hazardous materials regulations (HMR's) governing the transport of lithium batteries by air are inadequate to protect crewmembers, passengers, cargo and the travelling public.

We have previously appeared before this Subcommittee to discuss the transportation of lithium batteries on aircraft and have cited numerous incidents wherein lithium batteries, carried either in the cabin of passenger aircraft or shipped as air cargo, were involved in fires aboard aircraft. Unfortunately, the situation has not improved; fires involving lithium batteries on airplanes continue to occur, destroying property and tragically, may have contributed to the death of two pilots flying for a U.S. all-cargo company in 2010.

Last year, the International Civil Aviation Organization (ICAO) adopted new rules—which it calls "technical instructions"—pertaining to the transportation and carriage of lithium batteries on aircraft. All U.S. stakeholders have voiced unanimous agreement that the United States government should follow these new rules, which place important and needed restrictions on the carriage of lithium batteries as cargo on aircraft. Adoption of the rules by the U.S. is needed to create a single set of regulatory criteria for the transportation of lithium batteries and increase safety margins.

The Pipeline and Hazardous Materials Safety Administration (PHMSA), the agency that is responsible for issuance and oversight of the HMR's in the United States, issued on January 11,

2010 a notice of proposed rulemaking (NPRM) as Docket No. PHMSA-2009-0095 (HM-224F), *Hazardous Materials, Transportation of Lithium Batteries*. Although it has been more than four years since the comment period closed on that NPRM, PHMSA has still not issued a final rule. Instead, the agency has engaged in delay tactics by publishing two supplementary NPRMs requesting additional information. In one of those requests, PHMSA incredibly asked whether the agency should permit shippers and carriers to choose between compliance with outdated HMR's or the new ICAO technical instructions when transporting lithium batteries domestically by air.

We have asked the Administrator of PHMSA, the Secretary of Transportation, and the Office of Management and Budget (OMB) to promptly complete their EO 12866 regulatory review of the HM-224F implement it as a final rule (see attached letters to DOT and PHMSA). To date we have not had any response and a final rule has not been published. It is worth noting that on January 10, 2014, a consortium of 24 trade associations, companies and other interested organizations sent a similar request to OMB.

In the face of a known safety risk like that posed by lithium batteries transported as cargo on airliners, we find PHMSA's actions both inexplicable and disturbing. We recommend that PHMSA immediately publish the proposed HM-224F as a final rule so that hazardous materials shippers, freight forwarders and airlines will be required to follow a single set of criteria in international and domestic air transportation of lithium batteries as cargo on passenger and all-cargo aircraft.

Summary

The U.S. aviation industry has traditionally led the world in aviation safety, but it is presently lagging as relates to the safe shipment of lithium batteries. In order to close this gap, we encourage Congress to urge PHMSA to:

(1) Immediately harmonize with the 2013-2014 Edition of the ICAO Technical Instructions for lithium battery shipments by air, and

(2) In cooperation with the Federal Aviation Administration, adopt the regulations stipulated in the NPRM HM-224F

We urge the Subcommittee to invoke its oversight authority to impress upon DOT the urgency of implementing the final rule on lithium battery transport by air. Thank you for providing ALPA the opportunity to comment on this important safety matter.

Attachments

AIR LINE PILOTS ASSOCIATION INTERNATIONAL

THE WORLD'S LARGEST PILOTS UNION • WWW.ALPA.ORG

535 Herndon Parkway • PO Box 1169 • Herndon, VA 20172-1169 • 703-689-2270 • 888-FLY-ALPA

September 24, 2013

Mr. Magdy El-Sibaie
Associate Administrator, Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation

Comments Submitted Electronically to: Magdy.el-sibaie@dot.gov

Subject: Docket No. PHMSA-2009-0095 (HM-224F), *Hazardous Materials, Transportation of Lithium Batteries*; Request for Final Rule

Dear Mr. El-Sibaie:

The Air Line Pilots Association, International (ALPA), representing the safety interests of more than 50,000 airline pilots flying for 33 airlines in the United States and Canada, again urges the Pipeline and Hazardous Materials Safety Administration (PHMSA) to publish a final rule regarding the subject docket.

Since the issuance of the 2009 Notice of Proposed Rulemaking (NPRM), several notable events have transpired:

- A UPS B-747-400F carrying over 80,000 lithium batteries, which were not included on the pilot notification form, fueled an auto-ignited, onboard fire which led to the loss of the aircraft and its two crewmembers at Dubai International Airport on September 3, 2010.
- The International Civil Aviation Organization's (ICAO's) Dangerous Goods Panel (DGP), with PHMSA's full participation, developed new provisions in the Technical Instructions (TI's) regarding carriage of hazardous materials in February 2012. ALPA participated in the development of these rules via its membership in the International Federation of Airline Pilots' Associations (IFALPA).
- Rather than adopt these new provisions, PHMSA issued an additional NPRM in April 2012 soliciting comments on the consequences of harmonizing with ICAO's new rules.
- In January 2013, PHMSA issued a third NPRM soliciting comments on whether shippers and carriers should be allowed to choose between compliance with the existing U.S. hazardous materials regulations or ICAO standards.
- Congress passed the *FAA Modernization and Reform Act of 2012* (the Act) that permits the Secretary of Transportation to enact regulations more stringent than ICAO's if it is demonstrated that lithium batteries were contributory to an onboard fire.

Despite these activities, PHMSA has not yet published any new rules, nor, in particular, has it announced that it will harmonize with the ICAO TI's. As a result, current regulations permit shipping large numbers of consumer batteries in a single package; they allow any number of

battery packages on the airplane, and, they do not conform to ICAO's treatment of these batteries as fully regulated dangerous goods regardless of the quantity carried, among other variances.

Section 828(b)(2) of the Act specifies that the Secretary of Transportation may issue rulemaking that will exceed the recommended transportation standards published in the ICAO TI's upon receipt of a "credible report with respect to a safety incident from a national or international governmental regulatory or investigating body that demonstrates that the presence of lithium metal cells or batteries or lithium ion cells or batteries on an aircraft, whether transported separately or packed with or contained in equipment, in accordance with the requirements of the ICAO Technical Instructions, has *substantially contributed to the initiation or propagation of an onboard fire* (emphasis added)."

A credible report as required by the "Act" has been issued. Attached is a report by the General Civil Aviation Authority (GCAA) of the United Arab Emirates published July 2013 concerning the aforementioned UPS freighter accident in Dubai. This report confirms that the "contents of a cargo pallet, which included lithium batteries, auto-ignited, causing a large and sustained cargo fire." The report states that heat from the fire, among other things, "resulted in the system/component failure or malfunction of the truss assemblies and control cables" and led to the "abrupt failure of the captain's oxygen supply and the incapacitation of the captain."

The GCAA makes a specific recommendation to PHMSA identified as Safety Recommendation (SR) 29, with which ALPA fully agrees:

> GCAA recommends that PHMSA standardise (sic) the battery packaging regulation to be in harmony with the ICAO Technical Instructions [TI]. The requirement is the complete harmonization of the U.S. HMR with the ICAO TI's for the Safe Transport of Dangerous Good by Air regarding lithium batteries.

The U.S. aviation industry has traditionally led the world in its safety programs, but we now find ourselves lagging behind the international standard for the shipment of lithium batteries. In order to close this gap, we again strongly recommend that PHMSA (1) immediately harmonize with the 2013-2014 Edition of the ICAO *Technical Instructions* for lithium battery shipments by air and (2) in cooperation with the Federal Aviation Administration, adopt the regulations stipulated in the NPRM HM-224F.

Sincerely,

Sean P. Cassidy

Captain Sean Cassidy, First Vice President &
National Safety Coordinator

Attachment

cc: Charles Betts, Division Director, Standards and Rulemaking

SEC. 828. AIR TRANSPORTATION OF LITHIUM CELLS AND BATTERIES.

(a) IN GENERAL.—The Secretary of Transportation, including a designee of the Secretary, may not issue or enforce any regulation or other requirement regarding the transportation by aircraft of lithium metal cells or batteries or lithium ion cells or batteries, whether transported separately or packed with or contained in equipment, if the requirement is more stringent than the requirements of the ICAO Technical Instructions.

(b) EXCEPTIONS.—

(1) PASSENGER CARRYING AIRCRAFT.—Notwithstanding subsection (a), the Secretary may enforce the prohibition on transporting primary (non-rechargeable) lithium batteries and cells aboard passenger carrying aircraft set forth in special provision A100 under section 172.102(c)(2) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(2) CREDIBLE REPORTS.—Notwithstanding subsection (a), if the Secretary obtains a credible report with respect to a safety incident from a national or international governmental regulatory or investigating body that demonstrates that the presence of lithium metal cells or batteries or lithium ion cells or batteries on an aircraft, whether transported separately or packed with or contained in equipment, in accordance with the requirements of the ICAO Technical Instructions, has substantially contributed to the initiation or propagation of an onboard fire, the Secretary—

(A) may issue and enforce an emergency regulation, more stringent than the requirements of the ICAO Technical Instructions, that governs the transportation by aircraft of such cells or batteries, if that regulation—

(i) addresses solely deficiencies referenced in the report; and

(ii) is effective for not more than 1 year; and

(B) may adopt and enforce a permanent regulation, more stringent than the requirements of the ICAO Technical Instructions, that governs the transportation by aircraft of such cells or batteries, if—

(i) the Secretary bases the regulation upon substantial credible evidence that the otherwise permissible presence of such cells or batteries would substantially contribute to the initiation or propagation of an onboard fire;

(ii) the regulation addresses solely the deficiencies in existing regulations; and

(iii) the regulation imposes the least disruptive and least expensive variation from existing requirements while adequately addressing identified deficiencies.

(c) ICAO TECHNICAL INSTRUCTIONS DEFINED.—In this section, the term "ICAO Technical Instructions" means the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (as amended, including amendments adopted after the date of enactment of this Act).

Cover page only - full report is 322 pages

AAIS Case Reference: 13/2010

AIR ACCIDENT INVESTIGATION SECTOR

FINAL

AIR ACCIDENT INVESTIGATION REPORT

Uncontained Cargo Fire Leading to Loss of Control
Inflight and Uncontrolled Descent Into Terrain

Boeing 747-44AF
N571UP
Dubai
United Arab Emirates
03 September 2010

General Civil Aviation Authority
of the
United Arab Emirates

Accident Investigation Sector
General Civil Aviation Authority
United Arab Emirates

PRESIDENT'S DEPARTMENT
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
THE WORLD'S LARGEST PILOTS UNION • WWW.ALPA.ORG
1625 Massachusetts Avenue, N.W. • Washington, D.C. 20036 • 888-FLY-ALPA (1-888-359-2572) • FAX 202-797-4007

February 18, 2014

The Honorable Anthony Foxx
Secretary of Transportation
U. S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

Subject: Docket No. PHMSA-2009-0095 (HM-224F), *Hazardous Materials, Transportation of Lithium Batteries*; Request for Final Rule

Dear Secretary Foxx:

On behalf of 50,000 airline pilots represented by the Air Line Pilots Association, International (ALPA), I write to urge you to immediately issue a final rule to harmonize the regulation of the air transport of lithium batteries with international standards. This regulation is long past due and the longer it stalls the further the U.S. positions itself behind the international aviation community on important protocols related to safely transporting lithium batteries by air.

On September 24, 2013 ALPA sent a letter (copy attached) to PHMSA urging the agency to publish a final rule regarding the subject docket. Since then, the Rechargeable Battery Association (PRBA) has also weighed in with full support of ALPA's position of harmonizing the DOT's Hazardous Materials Regulations (HMRs) with the 2013-2014 Edition of the ICAO *Technical Instructions (*ICAO TIs). By letter of January 10, 2014 (copy attached), PRBA, as part of a coalition of 23 other trade groups, manufacturers, and transportation companies, urged the Office of Management and Budget to promptly complete its EO 12866 regulatory review of the subject rule and send it to PHMSA for implementation.

All interested parties have now unanimously asked PHMSA to harmonize the HMRs with the current 2013-2014 ICAO TIs and create a single set of regulatory criteria for the transportation of lithium batteries via air. Harmonizing the HMR with ICAO rules will unquestionably increase safety margins as we explained in our letter last September. Accordingly, we again strongly recommend that PHMSA immediately issue HM-224F as a final rule to harmonize the HMRs with the ICAO TIs for lithium battery shipments by air.

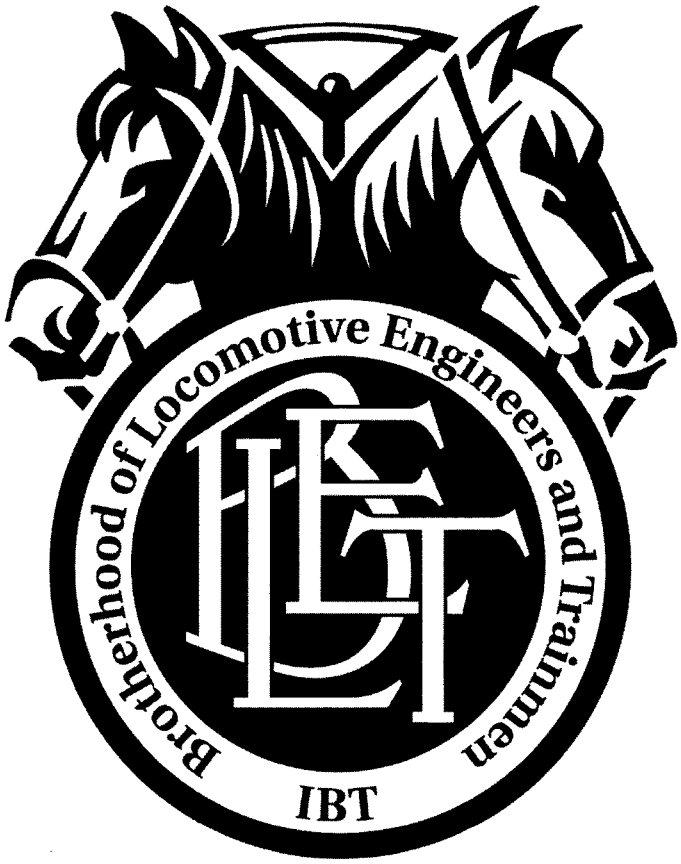
We appreciate your consideration of this urgent safety matter and look forward to your earliest reply.

Sincerely,

Captain Lee Moak
President

Attachments

cc: Cynthia L. Quarterman, Administrator, PHMSA
Magdy El-Sibaie, Associate Administrator, Office of Hazardous Materials Safety, PHMSA



Statement of John P. Tolman
Vice President & National Legislative Representative, Brotherhood of Locomotive Engineers and Trainmen
Before the House Committee on Transportation & Infrastructure: Railroads, Pipelines and Hazardous Materials Subcommittee

Chairman Denham, Ranking Member Brown, and members of the Subcommittee, thank you for the opportunity to enter comments into the record of today's proceedings on the behalf of the Brotherhood of Locomotive Engineers and Trainmen.

The reauthorization of hazardous materials programs within the Department of Transportation raises many issues of concern for labor, and specifically for the men and women that work on our nation's railroads, who are involved in moving these materials. Railroad workers are on the front lines of the industry. The crew members on every train have served as the industry's eyes and ears, and also as the first responders to any accident or incident on our nation's railroads. As crew size has decreased over the decades, the importance of technological advancements have increased; however, nothing can replace the need for humans in the cab of locomotives as technology, no matter how advanced will fail., As we have seen in recent months, specifically in the Lac-Megantic, Quebec, tragedy, having two members on every train crew is a critically important means of ensuring the safety of our industry.

Recent accidents have raised the issues regarding the safety of hazardous materials transport by rail. The BLET has been dealing with this issue nearly since our founding 151 years ago, and at the turn of the 20th century, Congress first examined the issue of hazardous materials transportation after a series of accidents brought the issue to light. On May 30, 1908, Congress enacted the Transportation of Explosives and Other Dangerous Articles Act ("An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles"). The Act charged the Interstate Commerce Commission (ICC) with formulating binding regulations "in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport." The Act specifically required the marking of every package containing explosives "or other dangerous articles" and prohibited false or deceptive markings, descriptions, or declarations, and "Regulations for the Transportation of Explosives" were promulgated by the ICC on July 1, 1908. These regulation required cars of explosives to be placed near the center of the train, and at least 16 cars from the engine and 10 cars from the caboose, when the length of train would permit

Since that time, the hazardous materials regulations have been changed and adapted in an acknowledgement of both technological changes in railroading and based on the hazardous commodities being hauled. A re-examination of these regulations is currently taking place in the Rail Safety Advisory Committee as the result of the Federal Railroad Administration's Emergency Order 28. It is time to reauthorize the Act to further ensure that hazardous materials transport adapts to address the future..

The current car placement regulations do not necessarily take into account either the nature of the commodities or current methods of railroad operations. The regulations mandate that, when mixed with other types of freight railroad cars, hazardous materials must be six cars from the locomotive. However, railroads often run trains too short to permit this from happening or run trains known as "unit trains," where the hazardous material is required to have one car of separation between the material in question and the locomotive. This is problematic not just in derailments, but also locomotive fires that can quickly spread and expose a hazardous material car to a source of ignition or fire. Labor organizations have raised the issue of car placement in

the Hazardous Materials Working Group of the Rail Safety Advisory Committee, but the issue has not been addressed. . Another simple thing which could reduce the risk, is to limit the size of the unit trains to 50 cars or less, this could reduce the hazards, a 50 car train is easier to handle verses the longer trains and stopping distance is reduced.

In the absence of changes to car placement regulations, the DOT must act to implement regulations for updating tank car design in order to ensure the safest possible mode of transport for hazardous materials, including crude oil shipments. There are far too many older, less safe cars continuing to transverse our rail lines and communities. While we applaud the voluntary decisions by the railroads, particularly the recent announcement by BNSF, to phase out the older tank cars, there are still approximately 80,000 of these still in use, and with the significant manufacturing backlog, these cars will still be in use over the next several years. According to the Railway Supply Institute, an order for a new tank car placed today would be filled by late 2015 or early 2016 at the earliest unless a premium was paid for earlier delivery.

These changes would help to save lives; however, preventing hazardous materials releases in the first place should be the goal of our railroad regulatory scheme, and one of the best ways to ensure this is to prevent collisions between trains and derailments. Over the years, rail labor has actively worked on both technological and operational changes to the industry that would improve its safety.

One of the best technological means to ensure the safe transportation of hazardous materials is the installation of positive train control as envisioned under the regulations promulgated after the enactment of the Rail Safety Improvement Act. This technology has been in existence in some form for more than 40 years, and to put it plainly, it will save lives. It must be implemented without further delay. Rail labor has also advocated for several alternatives that, in the absence of PTC, would improve safety in the industry. We have repeatedly pointed out the dangers posed by non-signaled "dark territory," which comprises about 40% of the route miles in the nation. The NTSB has also urged that railroads install switch position detectors in dark territory, following horrific accidents that claimed many lives, caused mass numbers of injuries, and led to hundreds of billions of dollars in economic loss. Such technology has been affordable and available off the shelf for many years, but it has not been widely implemented. The technologies must be implemented in order to make our industry safer.

While technology has a valuable place in the industry, we must also examine the operations of the industry and make changes to end fatigue among railroad employees. This can be done by providing railroad operating employees with predictable schedules, calling windows and train line ups that are accurate so that they can plan their sleep accordingly. The majority of the nation's engineers in freight service, including those hauling hazardous materials, work unscheduled jobs without predictability in reporting time and "on call" 24/7, 365 days a year, receiving as little as an hour and half notice to report to work a twelve hour shift. The NTSB has cited fatigue in numerous accidents and incidents that have resulted in the release of hazardous materials one of the best ways to prevent this fatigue would be to provide railroad workers with predictable schedules resulting from regulations based on scientifically validated models.

Even if all of these issues are handled through improved regulations, railroad workers will continue to need ever-changing and advancing training in the handling of hazardous materials and what to do if there is a hazardous materials release. Railroad workers are the first responders to any railroad accident or incident, including those involving hazardous materials. However, they often lack the training to know what to do in the event of an accident. As we saw with the accident in Graniteville, S.C., where one crew member lived and one died, training is truly a life or death necessity in our industry. Knowing whether to walk up- or down-wind, and which way that is, can make all the difference in the world, but the railroads continue to have a less-is-more approach to training rail employees on hazardous materials response. The railroads have said openly that they do not want the employees to do anything other than "run away." Congress mandated in the Rail Safety Improvement Act six years ago that rail carriers "provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of a release." Rail carriers have responded with esoteric excuses of failed cost-benefit analysis that would not justify complying with the law.

The railroad employees working in the loading and hauling of hazardous materials are professionals, and as such deserve operating environments, technology and training, as befitting the level of skill and professionalism they exhibit each and every day. The reauthorization of our nation's hazardous materials transportation programs allows for another opportunity to ensure that the transport of hazmat by rail is done in the safest possible manner, and we thank you for allowing us to include these comments in the record of this hearing and look forward to providing you with our thoughts on this issue as the reauthorization moves through the legislative process.

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

WRITTEN COMMENTS FOR THE RECORD

SUBMITTED BY

THE

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES
AND HAZARDOUS MATERIALS

ON

"EXAMINING ISSUES FOR
THE HAZARDOUS MATERIALS REAUTHORIZATION"

APRIL 2, 2014

6303 Ivy Lane Suite 310 Greenbelt, MD 20770-6319
Phone: 301-830-6143 Fax: 301-830-6144 www.cvsa.org

On behalf of the Commercial Vehicle Safety Alliance (CVSA), I submit the following comments for the record. CVSA is an international organization representing state, provincial, and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems. Every state in the United States, all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members. The ultimate objective of CVSA is to save lives.

Nowhere is the safe, secure, uniform transport of goods more important than when that cargo qualifies as hazardous materials. Priority should be placed on ensuring that the agencies responsible for overseeing the transport of hazardous materials are adequately funded and trained. It is critical that research continues into methods to improve transport and enhance safety and that those enforcing the Hazardous Materials Regulations (HMRs) have access to the latest information. Furthermore, the State agencies tasked with enforcing the HMRs must be empowered to enforce federal regulations, while complying with additional State-level regulations.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized a pilot cooperative research program focused on hazardous materials transportation, the Hazardous Materials Cooperative Research Program (HMCRP). In 2012, the program was reauthorized as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21); however, the bill did not include funding authorizations for fiscal years 2013 and 2014. As such, once projects begun under SAFETEA-LU have been completed, the Transportation Research Board (TRB), contracted to conduct research under the program, will discontinue the HMCRP. Allowing this program to sunset would be a mistake. The HMCRP is a successful program, providing much needed research and guidance on the safe transportation of hazardous materials. For example, as part of the HMCRP, research was done on the use of electronic shipping papers for hazardous materials transportation. There are a number of hazardous materials research needs that have not yet been met. For example, the relationship between tank volume and gross vehicle weight rating, or GVWR, and how those two variable affect vehicle stability and dynamics needs to be studied, to inform the definition of a 'tank vehicle'. A strong research program ensures that industry and the agencies responsible for overseeing hazardous materials safety have the tools and information they need to develop and implement strategies and programs that work. Funding the HMCRP at the SAFETEA-LU level of $1.25 million per fiscal year will help ensure that vital this research continues. CVSA supports restoring funding to the Hazardous Materials Cooperative Research Program.

CVSA supports the incorporation by reference of technical standards developed by non-government organizations. When those in industry develop standards that can be used by government it is appropriate to do so, eliminating costly, duplicative efforts and the possibility of competing standards that are similar but not identical. However, if care is not taken in how that incorporation by reference is designed, it could result in materials not being accessible by government and enforcement. Entities may develop the standards and then charge prohibitive fees in order to access them, making them, in effect, inaccessible for State and federal government officials. If government and enforcement personnel are expected to enforce and understand the regulations and the terms and standards used within them, they have to have access to those materials, including any associated training and related training materials. This is critical for any standards, but even more so for

those in the hazardous materials arena, for obvious reasons. If there is regulation that references a privately developed standard, that standard should be made available to those tasked with enforcing the regulation at no charge. To address this, CVSA recommends that the U.S. Department of Transportation require access (including electronic access) for enforcement and government purposes, at no charge, to materials, such as technical standards developed by non-governmental organizations, incorporated by reference into regulation.

When dealing with dangerous materials traveling through their jurisdiction, States should not be limited in their authority to ensure that shipments moving through are 100 percent safe. Transportation of the more dangerous shipments, such as Highway Route Controlled Quantities (HRCQ) quantities of Class 7 material, is more heavily regulated, in part due to the hazard and security risks they pose. Motor carriers who transport HRCQ shipments of Radioactive Class 7 materials must apply for a FMCSA Safety Permit as specified in 49 CFR 385.403. In order to maintain that permit, all HRCQ shipments are subject to the *North American Standard Out-of-Service Criteria* and *Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials*. In addition to this point of origin inspection, many states require that these shipments be inspected en route, as the shipment passes into their State. This is often required as part of a State law or requirement from the Governor. While it is not common, the status of a shipment could change during transport and many States prefer to confirm that a shipment is safe before permitting it to pass through. States downstream of the original point of origin inspection should not be prohibited from conducting this verification, through a North American Standard Level VI Inspection. CVSA opposes any language prohibiting or limiting a State's authority to conduct en route inspections of Level VI shipments.

Finally, 49 USC § 5125 includes language providing for a Federal preemption over State laws and standards. However, the chapter also includes a ban on preempting non-federal enforcement standards, subsection (h). CVSA is supportive of this language and would oppose any efforts to have the language removed from Title 49. Contrary to what many assume, the States do not enforce Federal regulations. Instead, the States adopt Federal regulations into their own state codes, by reference or through legislative action. If the ban on preempting non-federal standards in subsection (h) were removed, the impact to the states would be an enormous burden. Each of the States has its own laws, regulatory process and requirements and the administrative burden of making the language, fine schedules and processes identical would be enormous. In order to operate efficiently, States need the flexibility to incorporate Federal standards through their individual processes. Preemption of State agencies to apply enforcement of the motor carrier and hazardous materials regulations would severely impact safety on the public roadways. CVSA opposes language eliminating 49 USC § 5125(h), the ban on preempting non-federal enforcement standards.

About CVSA:

CVSA is an international not-for-profit organization comprising local, state, provincial, territorial, and federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. Its mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement, industry and policy makers. The Alliance actively monitors, evaluates, and identifies solutions to potentially unsafe transportation processes and procedures related to driver and vehicle safety requirements most often associated with commercial motor vehicle crashes. In addition, CVSA has several hundred associate members who are committed to helping the Alliance achieve its goals; uniformity, compatibility and reciprocity of commercial vehicle inspections, and enforcement activities throughout North America by individuals dedicated to highway safety and security. For more on CVSA, visit www.cvsa.org.

IME
institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

April 9, 2014

The Honorable Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
U.S. House of Representatives
Washington, DC 20515

The Honorable Corrine Brown
Ranking Member
Subcommittee on Railroads, Pipelines, and Hazardous Materials
U.S. House of Representatives
Washington, DC 20515

"Examining Issues for Hazardous Materials Reauthorization"

Dear Chairman Denham and Ranking Member Brown:

On behalf of the members of the Institute of Makers of Explosives (IME)[1], I am submitting a statement for the record on the Subcommittee hearing you held April 2, 2014 to look at issues regarding reauthorization of the Hazardous Materials Transportation Act (HMTA).

Interest of IME

IME is the safety and security association of the commercial explosives industry. Commercial explosives underpin the economy. They are essential to energy production, construction, demolition, and the manufacture of metal/mineral products. Explosives are transported and used in every state. Additionally, our products are distributed worldwide, while some explosives must be imported because they are not manufactured in the United States. Our industry has maintained an exceptional safety record for decades. According to the Hazardous Materials Information System, no deaths have been attributed to commercial explosives since the Department of Transportation began collecting data in the 1970s. Our ability to continue to transport and distribute these products and to receive precursor chemicals safely and securely is critical to this industry.

HMTA Reauthorization Issues

IME is a participant in the Interested Parties for Hazardous Materials Transportation (Interested Parties). The Interested Parties have submitted to the Subcommittee a comprehensive list of recommended amendments to the HMTA. While IME supports all of these recommendations, we would like to highlight priorities to the explosives industry.

- Reform of the Hazardous Materials Safety Permit (HMSP)

[1] IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME does not sponsor trade shows or other marketing events.

1120 Nineteenth Street, NW, Suite 310, Washington, DC 20036, USA (202) 429-9280, FAX (202) 293-2420

At some point, virtually all explosives are transported by truck. Among these explosives are products classed as Division 1.1, 1.2, 1.3 and 1.5 materials, which with other select hazardous materials, may only be transported by motor carriers holding a "hazardous materials safety permit" (HMSP) issued by FMCSA. According to program data, carriers of explosives make up the largest segment, roughly half, of the universe of HMSP holders. Despite the safety record of our industry, we have members who struggle when it comes to maintaining their HMSP qualification.

Since the HMSP program's inception in 2005, we have urged FMCSA to relook at this program and make needed reforms. The crux of program's deficiencies can be laid on the requirement that the permit holder maintain OOS thresholds in the top 30 percent of the national average. Reliance on OOS rates to determine fitness is inherently unfair. Selection criteria for roadside inspections is not random (nor should it be given limited resources), which is to say that carriers do not have equal opportunity to amass "clean" inspections. Not all OOS violations are crash-causal, and some are inherently biased by personal judgment. Further, the methodology used to determine "significant" inspection data lacks statistical confidence. We do not object to a public policy requiring that motor carriers transporting hazmats be held to higher safety standards. However, we do object to the bias and uncertainty that the current HMSP program breeds, especially when the program has shown no nexus to safety enhancement.

FMCSA estimated that implementing the HMSP program would prevent seven hazmat truck-related crashes per year. The agency stated that the safety benefits derived from the projected crash reductions would be "large because of the number of conventional crashes that may be prevented." This has not proved to be the case. The data generated after the nine years of the HMSP and during the nine years immediately preceding the implementation of the HMSP shows that HMSP holders are historically among the safest carriers on the road and that the program has had little impact on safety:

HMSP Material	1996-2004		2005-2013		All Hazmat Highway Incidents			
					1996-2004		2005-2013	
	Crashes	Fatalities	Crashes	Fatalities	Crashes	Fatalities	Crashes	Fatalities
Explosives (25 kg. 1.1, 1.2, 1.3 & placarded 1.5)	39	0	29	0				
RAM (HRCQ*)	17	0	19	0				
TIH	59	**1	71	**2				
Methane	4	0	4	0				
TOTAL	**119**	**1**	**123**	**2**	**2,755**	**89**	**2,827**	**91**

Data from the Hazardous Materials Information System, 3/7/2014.
* It may be that none of these crashes are highway route controlled quantities (HRCQ). From the data in HMIS, it was possible to eliminate some incidents that were clearly not HRCQ. Where there was doubt the incident was counted.
** Anhydrous ammonia (AA) intended for agricultural use.

For HMSP holders, this safety record highlights the need for an immediate reconsideration of the disqualifying standards that are threatening their livelihoods. Keep in mind that the vast

majority of carriers subject to the HMSP are not long-haul, freight-all-kinds carriers. They serve niche markets that rely on local, often rural delivery, and require specialized equipment. As such, these carriers do not frequent routes with inspection stations. Once these carriers get into trouble based on the non-random, often subjective OOS calls by inspectors, it is virtually impossible for these carriers to accrue sufficient "good" inspections to overcome the "bad." For example, it is not uncommon for an HMSP holder to average 15 or fewer inspections in a year, but only inspection data from the 12 months prior to the expiration of the holder's permit is counted, and only holders with at least three inspections are considered "statistically significant" for purposes of the OOS disqualifications. If two of the inspections in this timeframe result in an OOS, the carrier would need 28 "clean" inspections to requalify. The later into the 12-month qualification period that the second OOS occurs, the more unlikely it is that a carrier could recover. Consider that two similarly situated carriers each receive two OOS inspections, then one of the two obtains a third "clean" inspection. The carrier that received the clean inspection would lose its permit, the other would continue operating. Or consider that on any given day two similarly situated carriers could be "underwater" due to their current mix of OOS and clean inspections. However, because one carrier's HMSP expires that day, that carrier loses its permit, while the other continues to operate. Based on a snapshot of the status of HMSP holders on December 31, 2013, 26 carriers were underwater and would have lost their permits if the permits expired that day, about 13 percent would have been disqualified if they had one more bad inspection, and 16.4 percent of holders had received no inspection of any kind in 24 months, demonstrating the difficulty of getting inspections where HMSP holders operate.

These specialized carriers do not have the option to carry non-HMSP freight while working to requalify for a permit. The irony is that, when these carriers get into jeopardy, FMCSA does not routinely suspend or revoke the HMSP; rather carriers are allowed to operate until it is time to apply for renewal. The regulations allow for appeals when permits are suspended or revoked, but not if the carrier is applying for renewal. Under no circumstance may holders apply for a waiver of the OOS disqualification irrespective of their overall operational safety records.

Although FMCSA accepted a petition for rulemaking from IME and other affected industry associations to reform the HMSP disqualification standards, "the agency ... determined that this rulemaking should not be initiated until the CSA Safety Fitness Determination (SFD) final rule is published, as it will be used as the basis for initiating this rule." Given FMCSA's recognition that the current program has deficiencies, expecting HMSP holders to soldier on in the face of continuing adverse impacts is unjustified.

Led by this Subcommittee during consideration of surface transportation legislation in 2012, Congress tried to spur agency action by requiring an assessment of the program's deficiencies no later than October 1, 2013 and by directing that rulemaking to reform the HMSP program be initiated within the following fiscal year.[2] The assessment, delivered over five months late, documented the exceptional safety record of HMSP holders and laid out options to reform the

[2] MAP-21, Section 33014.

program, including a process to request agency review of a carrier's safety management controls prior to denial of a HMSP. However, FMCSA stated that it was still studying options and that efforts to reform the program "remain contingent upon completion of other FMCSA priorities and the availability of dedicated resources." **The uncertainty of when FMCSA will be able to carry out the HMSP rulemaking coupled with the urgency for some action based on acknowledged program deficiencies compel us to ask the Subcommittee to amend the HMTA. The amendment should either require the agency to finalize reforms by interim final rule, or terminate the program because no safety case can to made to justify the agency's commitment of resources to this system of oversight. One of these two actions should be taken no later than 90 days post enactment, in short, by the tenth anniversary of this program.** Every day that FMCSA fails to act, relatively good carriers are at risk of losing their HMSP and, as explained, being put out of business based on limited data anomalies.

- User Fees for Special Permits and Approvals

As part of PHMSA's FY 2015 budget request, it has re-proposed for the fourth consecutive year a "user fee" to be paid by applicants for special permits and approvals that would offset over 23 percent of the agency's budget request. Based on the PHMSA's 2013 workload, the fees, which range from $700 to $3,000/application, will generate nearly $19.8 million, 65 percent more than the $12 offset requested. Yet, PHMSA discloses that it needs less than $9.7 million to administer the special permits and approvals program and other agency tasks and responsibilities.[3] Explosives may not be self-classified. By regulation, manufacturers are required to request a classification approval from PHMSA for each product based on UN-mandated tests performed at DOT-approved labs. Since explosives manufacturers have no choice but to seek approvals, the user "fee" is really a "tax" on our industry. Explosive manufacturers, including fireworks, hold over 75 percent of all approvals. Based on FY 2013's workload, $11.4 million would be generated from this activity alone. Yet, the government, not private companies, is the largest holder of approvals and special permits, and the government will pay no fees. PHMSA has testified that its administrative costs "will progressively increase [including costs of] increasingly stringent monitoring of a company's fitness."[4] The need for stringent monitoring is questionable since no fatalities have been attributed to hazardous materials moved under special permit or approval since DOT began keeping statistics. In fact, costs to run the program should decrease as the agency incorporates proven special permits into the hazardous materials regulations (HMR) as required by law.[5] In our view, imposing a user fee (or tax) cannot be accomplished without express authority from the authorizing committees of Congress. **We commend this Subcommittee for rejecting this request in prior years, and urge the addition of positive language in the HMTA to bar user fees for special permits and approvals.**

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[3] FY 2015 PHMSA Budget Justification, page 64.
[4] Statement of Cynthia Quarterman, PHMSA, to the House Transportation & Infrastructure Committee, April 2, 2014.
[5] MAP-21, Section 33012.

- Research & Development

Congress provides three-year monies to support a hazmat research and development (R&D) function within PHMSA, with a mission to study and evaluate emerging hazardous materials safety issues and technologies. We have asked for more accountability and transparency into the process PHMSA uses to select projects and deliverables for funding. This year, for the first time, PHMSA held a forum to present research projects the agency is evaluating for FY 2012-2014 funding to be spent in FY 2015.[6] While PHMSA should be commended for this initiative, we were disappointed that a project we thought had been rejected in the FY 2011-2013 cycle was still being considered for funding in the FY 2012-2014 cycle. This year and last PHMSA has proposed research to "harden vehicles carrying ammonium nitrate (AN) against tire fires."[7] PHMSA stated that this research is justified by the accidental detonation of AN in 2013 at an agricultural retail facility – a non-transportation tragedy. While the root cause(s) of the event has yet to be determined, it is abundantly clear that the facility did not comply with basic safety standards for the safe storage and handling of AN. PHMSA's exploitation of this event as a justification for truck hardening research cannot be supported by decades of data demonstrating the enviable safety record earned year after year by those transporting AN.[8] In response to our objections, R&D staff suggested that the research be broadened to also include the hardening of vehicles carrying commercial explosives. Again, PHMSA's own incident data begs the question of what problem PHMSA is trying to solve with the focus on truck fires involving products manufactured and used by the explosives industry.[9] With the termination of the Hazardous Materials Cooperative Research Program as a highway trust fund program, we supported congressional action to augment PHMSA's R&D program.[10] However, current law gives PHMSA discretion as to whether it will work with stakeholders to identify research projects. **Given our experience and concern that some research projects are not risk-based and the selection process less than transparent, we ask the Subcommittee to require PHMSA to work cooperatively with stakeholders by changing the "may" to "shall" in 49 U.S.C. 5118(b).**

- Grants Programs (GP)

PHMSA operates three GPs – HMEP, HMIT, and SPST – funded by fees assessed on the hazardous materials community. We have long looked for evidence of program accomplishment and question the agency's claims about achievements ascribed to these programs. In 2005, Congress directed the agency to annually provide a detailed accounting of

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[6] FY 2015 PHMSA Budget Justification, pages 65-66.

[7] The explosives industry consumes 75 percent of the AN used in the United States. It constitutes 90 percent of explosives by weight. There is no viable alternative for this material in today's explosives industry.

[8] Since 1973 when DOT began keeping hazardous materials incident records, 139 truck incident reports involving Division 5.1 materials and fire have been recorded. Of these, four involved AN, but none resulted in a fatality or any injuries attributable to the AN. During the same period, 11,407 Division 5.1 incidents from all causes were recorded. Only 408 involved AN. Again, no fatalities were attributed to the product.

[9] Since 1973, 33 truck incident reports involving Class 1 materials and fire were filed. Of these, one fatality was reported, but the explosives product was a military, not a commercial, explosive. When DOT's data is queried for Class 1 trucking incidents from all causes, 567 were recorded. Five resulted in 11 fatalities. Again, none of these five incidents involved commercial explosives. By way of contrast, DOT's data shows 325 incident reports involving trucks carrying hazardous materials and fire with at least one fatality. Of these, 38 records report multiple fatalities.

[10] MAP-21, Section 33007.

all grant expenditures.[11] In the intervening eight years, the agency has released only one such report, and that report did not provide the retrospective accounting necessary to determine if grant recipients were using funds appropriately.[12] The lack of GP transparency and accountability prompted an audit by the Office of Inspector General. The audit found systemic mismanagement and misuse of grant funds.[13] In response, PHMSA has produced an action plan to ensure better management controls. PHMSA is requesting $1.6 million to raise awareness of its grants programs.[14] Before funds are expended to continue the same mix of programs, we think PHMSA should relook at how it can leverage the funds to best improve hazmat transportation safety.

All of the grant programs support hazmat safety training for responders or hazmat employees, and we are looking for opportunities to expand training opportunities within the three grant programs. The best opportunity for achieving this objective lies with the HMEP program. This program provides $8.15 million annually to fund an EPA program for community-based planning for chemical emergencies – the SERC/LEPC emergency planning process required by EPCRA – a program widely-recognized as dysfunctional. Historically, EPA has paid no attention, and internal assessments show that the program suffers from mismanagement to neglect. In recognition of the marginal value to DOT of funding an EPA program, federal hazardous materials transportation law was amended in 2005 to allow PHMSA the ability to move planning funds to the training account. Regrettably, PHMSA has never exercised this authority. One of the outcomes of the tragic agricultural retail facility accident mentioned above has been a commitment by EPA to revitalize the SERC/LEPC program. In its FY 2015 budget submission, $12 million is requested to support this program. This gives Congress an opportunity to realign grant program priorities. **We believe that Congress should terminate the §5116(a) – planning – part of the HMEP. This is EPA's responsibility, and the agency has taken action to support its program. Additionally, Congress should streamline its two "instructor" training programs by collapsing them into one and increase the authorization of appropriations for the instructor training program to $5 million (the combined current allocation for these two programs). Finally, Congress should ensure that the new instructor training program be open to all non-profit organizations that train firefighters, those to enforce the HMR (state police) and/or HM employees.** Efforts were made in MAP-21 to broaden eligibility for these instructor training funds,[15] but still worthy entities, like COHMED, TRANSCAER, and the Security and Emergency Response Training Center in Pueblo, CO, would not qualify. Training needs are never satisfied especially when 69 percent of firefighters in the United States are volunteers. We support efforts to expand training opportunities within the HMTA grant programs.

Conclusion

The HMTA requires that PHMSA's regulations be risk-based. The agency, in turn, measures the success of its hazmat safety program by the number of transportation-related deaths and

[11] 49 U.S.C. 5116(k).
[12] http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Report_to_Congress_HMEP_Grants_Program_2005_2006.pdf
[13] OIG, DOT, AV-2012-040, January 12, 2012.
[14] The new outreach efforts are intended to assist grantees to incorporate planning and training activities that qualify for grants. FY 2015 PHMSA Budget Justification, pages 67.
[15] MAP-21, Sections 33004 and 33016.

"serious injuries" (i.e., hospitalizations) attributed to the hazardous materials. Data shows the relative safety of hazmat transportation compared to other causes of death. We think this record is reason to celebrate the success of hazmat regulations and industry best practices. At the same time, the next iteration of surface transportation law provides opportunities to address vexing issues and to improve hazmat safety. We ask the Subcommittee to ensure that by a date certain long-overdue reforms be made to the HMSP program. We urge the addition of positive language in the HMTA to bar user fees for special permits and approvals. We request additional oversight of PHMSA's hazmat R&D and grants programs. Finally, we encourage the Subcommittee to hand off to EPA responsibility for its EPCRA programs and to enhance training opportunities for emergency responders and hazmat workers.

We appreciate the Subcommittee's attention to our perspective and recommendations.

Respectfully,

Cynthia Hilton

Cynthia Hilton
Executive Vice President

The International Brotherhood of Teamsters

Testimony for the Record

Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines, and Hazardous Materials

On "Examining Issues for Hazardous Materials Reauthorization"

April 2, 2014

Prepared by:
LaMont Byrd, Director
Safety and Health Department

On behalf of the 1.4 million members of the Teamsters Union, including 300,000 members who work with hazardous materials, we are submitting comments for the record in response to the April 2, 2014 hearing of the Subcommittee on Railroads, Pipelines, and Hazardous Materials entitled "Examining Issues for Hazardous Materials Reauthorization." The International Brotherhood of Teamsters represents workers in all aspects of Hazardous Materials transport including: tank truck drivers who transport bulk shipments of hazardous materials in quantities of up to 10,000 gallons; drivers and dock workers in the freight industry; drivers and warehouse workers in the hazardous waste transport industry; solid waste drivers; drivers and workers in the building and construction materials industry; airline pilots; and members who are employed in the public sector, including law enforcement and emergency medical personnel, who are responsible for responding to traffic accidents that could involve the release of a hazardous substance.

As legislators are considering provisions for Hazardous Materials Reauthorization, we ask the consideration of the following issues which are important to Teamsters who work with hazardous materials on a daily basis. First, funding for grants that help provide operations level hazardous materials training should be increased. Second, while background checks are necessary to ensure that dangerous chemicals and products do not end up in the wrong hands, we find the current process duplicative and lacking redress for disqualification based on offenses with no link to national security -- this should be remedied. Third, the Occupational Safety and Health Administration (OSHA) should retain jurisdiction over the loading and unloading of hazardous materials to protect workers. Fourth, we are concerned about the issuance of special permits and support restricting the number of special permits that are allowed. Fifth, the

Teamsters remain concerned about the safety of tank trucks' external bottom lines (wetlines).While the recent GAO report on cargo tank trucks raised several issues about the collection and accuracy of data by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration on the subject of wetline incidents, the Teamsters Union opposes industry's effort to ever prevent a rulemaking from being issued.

Training for Hazardous Materials Employees and Emergency Responders

It is critical that hazardous materials workers be provided with comprehensive worker safety and security training to enable these workers to protect themselves from the hazards that are inherent in handling, loading, and unloading hazardous materials. Likewise, it is essential that emergency responders, who may be called to the scene of a hazardous substance release, should receive a level of training that allows them to protect themselves, nearby persons, property, and the environment. Therefore, the Teamsters Union supports Operations Level Training for emergency responders. The Union with the assistance of our training centers, and funding from several sources, developed a comprehensive hazardous materials / hazardous waste training program for our members and other transportation workers. This program is discussed in greater detail below. As we have worked with many of our members who are regularly involved in loading, unloading, handling, and transporting hazardous materials as part of their normal work responsibilities, it is clear that many employers are providing training that may technically comply with the minimal training requirements as set forth by the DOT. However, the training does not provide the workers with the necessary information and understanding to enable them to protect themselves, their coworkers, and the environment from the dangers associated with working with hazardous materials. Our members report that the training provided by their

employers may consist simply of providing the workers with handout materials or a short video that they must review on their own time with no opportunity for questions and answers. In addition, the training may be generic so as to not address the site-specific needs of workers to avoid hazards in a particular workplace. We think that many employers, faced with a downturn in the economy are opting to either eliminate training programs or do the absolute minimum with respect to providing hazardous materials safety training. Often times, management's position is that the workers should feel fortunate to have a job.

The IBT provides hazardous materials training to our members and other workers through the Safety and Health Department's Worker Training Program in conjunction with Teamster Training centers that are located throughout the United States. The target audience for training provided through this program includes truck drivers in tank haul and freight operations, dock workers, construction workers, and warehouse workers. We also occasionally train airport workers, rail workers, and management representatives. The training is funded by training grants that the IBT receives from the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA), National Institute of Environmental Health Sciences (NIEHS), and from cent-per-hour contributions that are obtained through collective bargaining with employers that are signatory to joint labor – management training trusts.

The DOT PHMSA awarded the IBT a grant to conduct a Hazardous Materials Instructor Training (train-the-trainer) program for hazardous materials employees. This training is conducted by IBT Master Trainers (Mentors) who were familiarized with the program's goals and objectives, curricula, and administrative procedures prior to commencing the train-the-

trainer sessions. To successfully complete the train-the-trainer course, aspiring trainers must complete a pre-requisite 8-hour course to familiarize the participants with the hazardous materials regulations and requirements. The trainers must then successfully complete a 48-hour Train-the-Trainer course that is classroom based and subsequently teach at least one 8-hour basic course while being monitored and evaluated by Mentors and IBT Worker Training Program staff. The target audience for the 8-hour basic course is typically rank-and-file co-workers of the new instructor, supervisors, or other management personnel, and the course is normally held at either a local union hall or at a site provided by a hazardous materials employer.

The response that the program has received from the new instructors and from employers who have either participated in the program or allowed their hourly hazmat employees to be trained in the program has been very positive. Individuals who received training through our program report they had experienced one or more of the following: Secured a job that involved workplace safety and health; had their job responsibilities increase as a result of receiving the training; Joined a workplace safety and health committee; answered questions that co-workers had relative to hazardous materials; responded to hazardous materials releases; and helped to prevent a workplace accident. Based on our experience providing this training, the program is successful in that it provides workers with additional safety and health knowledge, and it adds value in the workplace as trained workers have greater safety and health awareness and can consequently, work more safely.

The NIEHS funded program is primarily focused on training workers who are responsible for remediating hazardous waste sites, transporting hazardous waste and hazardous materials to

disposal sites, and responding to emergency releases of hazardous materials. This program includes a 4-hour hazardous materials transportation course that is conducted as a module in a comprehensive 40-hour course that complies with the training requirements for the OSHA HAZWOPER Standard and DOT hazardous materials regulations and an 8-hour safety and security course for drivers who transport hazardous materials and other products to and from ports.

The Teamsters Union provides Operations level training for emergency responders. Our training course is 16 hours rather than the 8 hours required by regulation. The primary training audience for this course includes hospital staff (nurses, house-keepers, drivers, physicians); fire fighters; police officers; and public health officers. Workers in these professions are likely to encounter hazardous materials releases or will provide care to individuals who were exposed to hazardous materials and may have contamination on their bodies or clothing.

Given the success of these programs, we would like to see the reauthorization include increased funding for grants that help provide training to employees that handle hazardous materials and first responders.

Finally, the Teamsters Union opposes any attempt to change the definition of "hazmat employer" as it relates to the responsibility for employee training. The intent of the statute is to make sure that those employers who "use" the employee be responsible for training. That includes workers who are hired as independent contractors. Changing the definition could allow those workers to escape the necessary training.

Hazmat License Endorsement

First, we support legislation not under this Committee's jurisdiction that requires the Attorney General to adopt procedures to ensure the accuracy and completeness of federal criminal background records exchanged for employment purposes. It is estimated that the FBI database used for these purposes is at best 50% accurate and/or complete. This legislation will require the Attorney General to ensure the maximum possible accuracy and completeness of records before releasing information to the employer; provide the individual an opportunity to receive a copy of the record before its release; investigate challenges and provide results; and notify the inquirer of a challenge and provide a copy of corrected records. This legislation is paramount to ensuring that criminal record checks do accurately reflect the potential security threat by a driver. Second, we support a review of current disqualifying offenses so that only those posing a real security threat be denied a credential. Third, we support eliminating redundant background checks and particularly support the distinction between security sensitive hazmat and hazmat that is not a security concern in issuing credentials. A fingerprint-based background check, such as the TWIC should be required of drivers that transport Security Sensitive Hazardous Materials while the name-based background check should be used for drivers seeking to obtain or renew hazardous materials endorsements to their commercial driver's licenses.

The Teamsters Union is very concerned with any "similar" standards used to determine the equivalency of background checks conducted of Mexican drivers for transport of hazardous materials into the United States. First, there is the issue of CDL equivalency between the two countries. The U.S. and Mexico signed a Memorandum of Understanding in the early 1990's

recognizing the Mexican truck driver license as equivalent to the U.S. CDL. However, the Motor Carrier Safety Improvement Act of 2003 (MCSIA) changed the CDL program, making serious violations occurring in a CDL holder's personal vehicle– including DUIs – count against the CDL record. There is no similar treatment of a Mexican truck driver. Therefore, a Mexican driver, who under U.S. law could face suspension or revocation of his license, can continue to drive in the U.S. In addition, we still, to this day, do not know what physical or medical requirements are required of Mexican truck drivers. These CDL issues should be resolved along with the background check equivalency problem. Apparently, drivers in Mexico would undergo checks of their criminal history while in the United States, but not checks of their criminal history in Mexico. This makes no sense whatsoever. It in no way can be construed as undergoing "similar" background checks as required by statute. And until the Mexican government can ensure that it has documented that Mexican drivers have not committed offenses in Mexico that would disqualify them from hauling hazardous materials in the United States, those loads should be handed off to U.S. drivers who meet the background check requirements.

OSHA Jurisdiction

The IBT is aware of previous industry efforts to eliminate OSHA authority to protect workers who load, unload, and handle hazardous materials as part of their job responsibilities. This is an extremely critical issue for the Union as we recommend that any such attempts by industry during this reauthorization process be rejected. OSHA is clearly best suited to protect the health and safety of workers who perform the previously mentioned work activities.

It should be noted that in 1994, Yellow Freight Systems (now Yellow-Roadway), our largest LTL carrier, which employed up to 40,000 Teamster members before the economic downturn, was involved in a case that went to the Occupational Safety and Health Review Commission regarding hazardous materials related citations, that OSHA issued to the carrier. In that case, OSHA concluded that the carrier did not comply with the standards concerning emergency response procedures for emergency releases of hazardous materials, including those related to providing personal protective equipment and training to employees who were involved in the response to such incidents. The carrier argued that OSHA did not have jurisdiction due to 4(b)(1) provisions pursuant to the Occupational Safety and Health Act of 1970, concerning preemption. However, the Commission ruled that OSHA did, in fact, have the authority to enforce its regulations and standards to regulate safety and health in the trucking industry.

This decision provided the Union with leverage and the carrier with the impetus to incorporate comprehensive language into the National Master Freight Agreement (NMFA), and other carriers that were signatory to the agreement concurred. Consequently, the IBT and the carriers that are signatory to the NMFA are bound by both regulatory requirements and contractual requirements to comply with the safety and health provisions regarding hazardous materials, as promulgated by both OSHA and the Department of Transportation.

A similar situation occurred involving our members who are employed at United Parcel Service (UPS). There were several incidents involving drivers and package handlers who encountered unlabeled or improperly labeled packages containing hazardous materials and consequently experienced serious injuries. Although the quantities of hazardous materials being

transported through the UPS system did not require placarding per DOT regulations, there were sufficient materials present to cause injuries to workers and in some instances, evacuation of work areas and facilities. OSHA cited the company for failure to comply with the hazardous materials handling and spill response requirements. The parties were able to resolve the citations by signing a settlement agreement that required UPS to implement a comprehensive hazardous materials handling and hazardous materials spill response procedures in their facilities. Again, the IBT worked with the employer to incorporate provisions within the settlement agreement into the National Master UPS Agreement that currently covers approximately 240,000 members. This language, in addition to rules enforced by OSHA, provides our members with needed protection during their hazardous materials loading, unloading, and transporting activities.

In 2010, OSHA cited one of our employers for failure to provide training and personal protective equipment to transportation workers who were involved in the handling and shipping of packages that contained mercury. During the transport process, packages were damaged and mercury spilled in the facility. Although OSHA determined that the hazardous materials workers involved experienced minimal exposures, and likely had no adverse health consequences, the incident could have been much worse and resulted in injuries or occupational illnesses to those exposed workers. Consequently, OSHA penalized the carrier for failure to comply with applicable rules governing training, personal protective equipment, and spill response.

Therefore, based on our experience working with OSHA concerning hazardous materials related issues, the agency has the experience, commitment, and track record to effectively protect transportation workers who are involved in the movement of hazardous materials. We would

unequivocally recommend to the Subcommittee that OSHA retain its jurisdiction to protect these workers, our members.

Special Permits

The Teamsters Union has always been concerned about the issuance of special permits, especially relating to the transport of hazardous materials. In many cases, special permits are routinely renewed or modified without adequate review. In some cases, these permits have been granted to umbrella groups for an entire specialized industry (party status), without examination of specific carriers involved. It is only common sense that the safety history of a carrier should be examined and a determination made that there is not a history of accidents or incidents that would preclude the carrier from initially receiving a permit or obtaining a renewal or modification. In 2011, we expressed these concerns in our testimony to the Subcommittee on Railroads, Pipelines, and Hazardous Materials. We are aware that in July of 2013, The Department of Transportation's Inspector General initiated an audit of the progress PHMSA has made in improving its special permitting process. We are awaiting the results of that audit in order to better inform our opinion on the current state of the PHMSA special permitting process.

External Product Piping (Wet Lines)

While we are always concerned with the safety of workers and the public, the Teamsters recommend that the Department of Transportation issue a final "wetlines" rule when PHMSA is able to properly collect and analyze accurate data.. The findings in the September 11, 2013 GAO report entitled "Improved Incident Data and Regulatory Analysis Would Better Inform Decisions about Safety Risks" suggest that wetlines incidents were not previously made distinct from other

reported hazardous materials incidents, and while staff at PHMSA reviewed report narratives to make determinations as to the cause of the incidents, inaccuracies ultimately remained in the final data reporting. This is not to say that wetline incidents have occurred and can be a problematic safety issue. Therefore, the Teamsters believe that there be no prohibition on any rulemaking on this subject, but that accurate data should continue to be collected to determine the extent to which a prohibition on tank truck external product piping of class 3 flammable liquids would benefit the safety of workers and the public.

The IBT commends this Committee's concern about the safety and security of the travelling public and hazardous materials workers. As the amount of hazardous materials being transported in our Nation's transportation supply chain increases, so does the risk to our safety and security. Enhancing the federal hazardous materials laws and reauthorizing the DOT's Hazardous Materials Safety Program are important steps that this Congress can take to protect hazardous materials workers, the general public, and the environment. We look forward to working with you on this important endeavor.

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