



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

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

April 10, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on “Oversight of Ongoing Rail, Pipeline, and Hazmat Rulemakings”

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Tuesday, April 14, 2015 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony from the Federal Railroad Administration, the Pipeline and Hazardous Materials Safety Administration, and the National Transportation Safety Board on matters relating to current railroad, pipeline, and hazardous material rulemakings.

BACKGROUND

The safe and efficient movement of people and goods is the top priority of all transportation stakeholders. Nonetheless, as our transportation system continues to expand and become more complex, industry and regulators must remain vigilant in maintaining safety. Federal agencies must develop, implement, and oversee rules and regulations to help keep the movement of people and goods flowing safely and efficiently.

The Federal Railroad Administration (FRA) is the federal agency charged with ensuring the safe movement of people and goods by rail. The agency has jurisdiction over all freight, commuter, and intercity passenger rail transportation. FRA promulgates regulations, notices safety advisories, and issues emergency orders to ensure, among other things, that railroads and equipment are operated and maintained in a safe manner. FRA closely monitors data and trends to identify, reduce, and eliminate risks.

When it comes to the safety of transporting hazardous materials, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for protecting against the risks to life, property, and the environment that are inherent in the transportation of hazardous material, regardless of mode. PHMSA is also the agency within the Department of

Transportation (DOT) responsible for providing adequate protection against risks to life and property posed by oil and gas pipelines and pipeline facilities.

The National Transportation Safety Board (NTSB) is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation – railroad, highway, marine, and pipeline. The NTSB determines the probable cause of the accidents and issues safety recommendations aimed at preventing future accidents. In addition, the NTSB carries out special studies concerning transportation safety and coordinates the resources of the federal government and other organizations to provide assistance to victims and their family members impacted by major transportation disasters.

Since its inception, the NTSB has investigated more than 132,000 aviation accidents and thousands of surface transportation accidents. Although the NTSB has no authority to regulate the transportation industry, the NTSB has issued over 13,000 safety recommendations to more than 2,500 recipients that have served as the basis for many congressional mandates.

Rulemaking Process

The federal government creates or modifies rules and regulations through a rulemaking process guided by the Administrative Procedure Act (APA), codified in title 5, United States Code. The process involves notice in the *Federal Register* and the opportunity for public comment in a docket maintained by the regulating agency. In addition to complying with the APA, a federal agency must also publicize regulations and rules in compliance with other statutory mandates and its own rules and policies.

The process typically begins with identifying a need for regulatory action usually as a result of a public petition, internal review, casualty investigation, change in an international treaty, or an act of Congress. Then, the agency forms a rulemaking team. The rulemaking team creates a detailed and comprehensive work plan, which summarizes and defines the rulemaking project and ensures the availability of proper resources. The rulemaking team typically drafts a Notice of Proposed Rulemaking (NPRM) for publication in the *Federal Register*. Prior to publication in the *Federal Register*, the NPRM must be cleared through internal offices, and externally through the Office of Management and Budget (OMB). However, depending on the subject matter, the process may begin with an Advanced Notice of Proposed Rulemaking (ANPRM), published in the *Federal Register*, to receive input from the public on the topic to aid in developing the NPRM. If rulemakings are deemed significant or economically-significant, agencies are also required to publish Regulatory Impact Analysis (RIA) that provide a detailed cost and benefit analysis for the proposed rule.

The agencies accept public comments in response to an NPRM for 90 days. The rulemaking team reviews the public comments and develops responses in accordance with APA requirements. The rulemaking team posts all *Federal Register* documents, including NPRMs, public notices, economic and environmental analyses, studies and other references, and public comments to a public docket accessible via the www.Regulations.gov website.

After considering public comments, the rulemaking team typically drafts a final rule for publication in the *Federal Register*. The final rule must contain: (1) the regulatory text; (2) a concise general statement of the rule's basis and purpose; and (3) a discussion of the public comments and the agency's responses. Prior to publication in the *Federal Register*, the final rule must be cleared in a manner similar to the NPRM clearance process described above.

The final rule includes an effective date which is typically 90 days after publication of the final rule in the *Federal Register*. The regulatory process is completed as of the effective date. However, once the rulemaking is effective, its implementation may be delayed by legal action.

Department of Transportation Rules

The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011

The Pipeline Safety, Regulatory Certainty, and Job Created Act of 2011 (2011 Act) (P.L. 112-90) was enacted on January 3, 2012; it is set to expire at the end of Fiscal Year 2015. The Act included 48 congressional mandates for PHMSA, the most consequential of which PHMSA has failed to implement. Of the 48 mandates, only 23 are complete. PHMSA reports it combined all of the hazardous liquid requirements in the 2011 Act into one rulemaking that is at OMB; the gas rulemaking is still in the Office of the Secretary. The outstanding rulemakings include:

Automatic and Remote-Controlled Shut-Off Valves for New Transmission Pipelines: Section 4 of the 2011 Act directs the Secretary, if appropriate, to require by regulation the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible on transmission pipeline facilities constructed or entirely replaced after the date on which the Secretary issues the final rule.

Maximum Allowable Operating Pressure: Section 23 of the 2011 Act directs the Secretary to require each pipeline owner or operator of an interstate and intrastate gas transmission pipeline in high consequence areas (HCA) (populations of 50,000 or more, environmentally-sensitive areas, and commercially navigable waterways) or within close proximity of homes, buildings, or an area that is frequently occupied to: (1) verify the physical and operational standards of each pipeline segment; (2) identify and submit documentation to the Secretary on the maximum allowable operating pressure (MAOP) of each pipeline segment; and, report any exceedances of MAOP within five days of when the exceedance occurs. The Act also requires the Secretary to issue regulations for testing the material strength of previously untested gas transmission pipelines in HCAs. PHMSA has issued three advisory bulletins to industry on establishing and reporting of MAOP and verification of records. A rulemaking is still under consideration.

Integrity Management: Current law requires owners or operators of a gas and hazardous liquid pipelines to develop and implement written integrity management programs to ensure the integrity of their pipelines in HCAs and to reduce risk of injuries and property damage from pipeline failures. These programs must include procedures and processes to identify HCAs, determine likely threats to a pipeline within a HCA, evaluate the physical integrity of a pipe within a HCA, and repair or remediate any pipeline defects found.

Section 5 of the 2011 Act required the Secretary to transmit a report to Congress evaluating (1) whether gas and hazardous liquid pipeline integrity management programs should be expanded beyond HCAs; and (2) with respect to gas transmission pipeline facilities, whether applying integrity management program requirements to additional areas would mitigate the need for class location requirements. The Secretary was required to issue final regulations, if the Secretary found in the report that integrity management requirements should be expanded beyond HCAs. Though the deadline was January 3, 2014, the report has not been completed.

Leak Detection: Section 8 of the 2011 Act required the Secretary to transmit a report to Congress on leak detection systems utilized by operators of hazardous liquid pipelines and transportation-related flow lines to detect ruptures and small leaks. In conducting the study, the Secretary must analyze the technical limitations of current leak detection systems and consider the practicability of requiring technical, operational, and economically feasible leak detection standards for operators.

The Secretary found that it was practicable to establish such standards, and therefore the Administration plans to issue final regulations to require operators to use leak detection systems where practicable and establish standards for the capability of such systems to detect leaks. PHMSA reports a rule is currently under agency review.

DOT “High-Hazard Flammable Train” Rule

The DOT Specification 111 tank car (DOT-111) is a non-pressurized tanks car and the most common tank car in the railroad industry, used to transport commodities from vegetable oil to crude oil. In 2011, the railroad industry petitioned PHMSA for improved tank car standards.

On September 8, 2013, PHMSA published an ANPRM seeking public comment on the 2011 petition, among other tank-car related petitions.

On July 23, 2014, PHMSA, in coordination with FRA, issued an NPRM on “Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains” or unit trains of 20 or more tank carloads of flammable liquids. The NPRM proposed all new tank cars be equipped with jackets, thermal protection, and full-height head shields, then provided three options for public comment. Option 1 would provide for tank and head shell thickness of 9/16 inch, enhanced rollover protection, thermal resistance, and electronically controlled pneumatic brakes (ECP). Option 2 would provide for tank and head shell thickness of 9/16 inch and thermal resistance, but maintain existing rollover protection and distributed power braking or end-of-train devices. Option 3 would provide for tank and head shell thickness of 7/16 inch and thermal resistance, and maintain existing rollover protection and distributed power braking or end-of-train devices.

The NPRM also included proposals to retrofit or retire existing tank cars based on the Packing Group (PG) of the materials, PG ranges from I to III, with PG I the greater risk and PG III the lowest risk.

The NPRM proposes options for speed restrictions for trains not meeting the new standards: (1) 40 mph in all areas; (2) 40 mph in high threat urban areas; (3) 40 mph in all areas

with 100,000 people; or (4) 30 mph in all areas. The rule also proposes the railroads conduct routing analyses to consider 27 safety factors in deciding how to route high hazard flammable trains, and notify State Emergency Response Commissions of expected movements of 1 million gallons of Bakken crude.

PHMSA's website reports a final rule will be issued on May 12, 2015.

Moving Ahead for Progress in the 21st Century Act (MAP-21)

The Hazardous Materials Transportation Safety Act of 2012, which was included in MAP-21, 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 49 U.S.C. § 5101-28, "Transportation of Hazardous Material." Of the 24 reforms required in MAP-21, 11 are complete, nine are late and four are on-going. The Committee will continue to explore DOT's progress in implementing the reforms, requirements, and programs established under MAP-21, some of 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, section 33012 directs the Secretary to conduct a review and analysis of any permits that have been in continuous effect for a 10-year period to determine which permits can be adopted into the Hazardous Materials Regulations (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 review the implementation of the hazardous material safety permit program. It directs the Secretary to consider factors, including the list of hazardous materials requiring a safety permit, the criteria used by PHMSA to determine whether a hazardous material 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* the justification for why a rulemaking is not necessary. The Secretary submitted the report on March 11, 2014 detailing six actions to improve the program and rule making structure, but was late on the deadline.

Wetlines: Wetlines are product piping located beneath a cargo tank, which are used for bottom loading of gasoline or other petroleum products. A 9,000-gallon cargo tank may contain five separate compartments, allowing more than one product to be transported. Each compartment has its own wetline. Wetlines are designed to break off if struck by an object or another vehicle,

rather than compromise the integrity of the cargo tank shell and risk losing the contents of the entire container or compartment. An additional benefit of wetlines is that drivers and loaders do not have to climb on top of the tanker as often, resulting in fewer deaths or injuries from slips and falls.

Wetlines may remain filled with flammable product after loading or unloading. Five-compartment tank wetlines typically contain 30-50 gallons of the flammable liquid. In the event that another vehicle strikes the side of a trailer, the impact would likely detach unprotected wetlines and release their contents.

On January 27, 2011, PHMSA issued a NPRM to prohibit the use of wetlines. Section 33015 of MAP-21, prohibited the Secretary from issuing a rulemaking on wetlines until the Government Accountability Office (GAO) evaluated the issue. The study was completed in September 2013, and found that PHMSA's data could not be used to reliably identify risks from incidents involving collisions and spills from tank trucks' wetlines because the risks 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.

WITNESS LIST

Sarah Feinberg
Acting Administrator
Federal Railroad Administration

Timothy P. Butters
Acting Administrator
Pipeline and Hazardous Materials Safety Administration

Christopher A. Hart
Chairman
National Transportation Safety Board