

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

**BEFORE THE  
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE,  
SAFETY, AND SECURITY  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
U.S. SENATE**

**SURFACE TRANSPORTATION REAUTHORIZATION: EXAMINING THE SAFETY AND  
EFFECTIVENESS OF OUR TRANSPORTATION SYSTEMS**

**June 3, 2014**

## **Introduction**

Chairman Blumenthal, Ranking Member Blunt, 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 the Hazardous Materials Transportation Safety provisions of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) and the Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America (GROW AMERICA) Act, which would provide important tools to further improve the safe transportation of hazardous materials.

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. MAP-21 provides PHMSA with important new tools to improve the safety of transporting hazardous materials and the GROW AMERICA Act will build on the successes of MAP-21 and further support our agency's safety initiatives. With the positive outcomes already achieved through MAP-21 and the improvements that the GROW AMERICA Act will provide, PHMSA will be strategically positioned to meet its safety goals and improve the safety of our nation's transportation system.

## **MAP-21 Overview**

MAP-21 authorized or mandated numerous rulemakings, reports, and programmatic changes to enhance 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 minimum 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. PHMSA adopted these changes in an April 17, 2013 final rule.<sup>1</sup> PHMSA believes clear and appropriate civil penalties can improve transportation safety by acting as a deterrent for those violating the regulations. As I will discuss later, GROW AMERICA builds upon the MAP-21 enhancement to the civil penalties program.

### ***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 package in accordance with the Hazardous Materials Regulations (HMR). PHMSA published a final rule<sup>2</sup> 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 a 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)<sup>3</sup> 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.

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<sup>1</sup> See 78 Fed. Reg. 22798 <http://www.gpo.gov/fdsys/pkg/FR-2013-04-17/pdf/2013-08981.pdf>

<sup>2</sup> See 78 Fed. Reg. 60755 <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23894.pdf>

<sup>3</sup> See 78 Fed. Reg. 58501 <https://federalregister.gov/a/2013-22952>

### ***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. MAP-21 mandates a final rule by October 2014. Stakeholders have expressed an interest and feedback in resolving SP and approval processing concerns through rulemaking and suggested several alternatives. 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.<sup>4</sup> PHMSA's NPRM is currently under review.

### ***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. PHMSA anticipates future analysis and review will be more streamlined due to the reduced volume of SPs to be evaluated.

## **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. The program is funded by registration fees collected from hazardous materials shippers and carriers who offer for transportation or transport certain hazmat in intrastate, interstate, or foreign commerce in accordance with 49 CFR Part 107, Subpart G. These fees fund training and planning grants, monitoring and technical assistance, curriculum development, and staffing costs. Registration fees also fund the publication and distribution of the Emergency Response Guidebook (ERG). The HM Grants Program is comprised of three types of grants:

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<sup>4</sup> 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.

<b>Hazardous Materials Grants Program</b>		
<b>Grant</b>	<b>Summary</b>	<b>Value</b>
Hazardous Materials Emergency Preparedness (HMEP) Grant	The purpose of this grant program is to increase State, Territorial, Tribal, and local effectiveness in safely and efficiently handling hazardous materials accidents and incidents, enhance implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), and encourage a comprehensive approach to emergency training and planning by incorporating the unique challenges of responses to transportation situations.	\$21.8 million
Hazardous Materials Instructor Training (HMIT) Grant	The HMIT Grant program is a competitive program by which instructors are trained to deliver hazardous materials training to hazmat employees. Funding for the program is made available to non-profit organizations that demonstrate: 1) expertise in conducting a training program for hazmat employees and 2) the ability to reach and involve, in a training program, a target population of hazmat employees.	\$4 million
Supplemental Public Sector Training (SPST) Grant	These grants serve the purpose of aiding national non-profit organizations with training instructors to conduct hazardous materials response training programs for individuals with a statutory responsibility to respond to hazardous materials accidents and incidents.	\$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 with 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.<sup>5</sup> PHMSA expects to publish the 30-day *Federal Register* Notice in June 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. Upon the completion of the pilot program, a report to Congress is due by October 2014. Here, the PRA is also applicable, so PHMSA must receive approval to collect the necessary information. 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.<sup>6</sup> PHMSA published the 30-day *Federal Register* Notice on November 25, 2013.<sup>7</sup> In preparation for PRA approval, PHMSA hosted a roundtable discussion with law enforcement and the emergency response community on March 13, 2014.

<sup>5</sup> See 78 Fed. Reg. 72972 <http://www.gpo.gov/fdsys/pkg/FR-2013-12-04/pdf/2013-29015.pdf>

<sup>6</sup> See 78 FR 43263 <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-17363.pdf>

<sup>7</sup> See 78 FR 70399 <http://www.federalregister.com/Browse/Document/usa/na/fr/2013/11/25/2013-28168>

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. PHMSA has 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 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 after 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 its 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 NFPA standards.

PHMSA is increasing its outreach 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 HMEP and SPST grantees to certify during the application process that they will use the grant funding to train to the NFPA standards.

### ***Hazardous Material Enforcement Training***

MAP-21 mandated that by April 2014, PHMSA develop uniform performance standards for training hazardous materials inspectors and investigators on: (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. The legislation also provided several options for how these standards are presented, including: (1) guidelines; (2) best practices and standards; or (3) standard protocols to coordinate efforts among Federal, State, and local jurisdictions. PHMSA, in collaboration with its modal partners, developed the standards, and the agencies have implemented them. Additionally, PHMSA is evaluating the effectiveness of the standards in coordination with other modal administrations.

### ***Hazardous Material Technical Assessment, Research and Development, and Analysis Program***

MAP-21 authorized PHMSA to develop and implement a hazardous material technical assessment, research and development, and analysis program. On January 17, 2014, PHMSA hosted a research and development forum to discuss the program with regulated entities and its modal partners, and to 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. PHMSA will post the comments and responses to the research and development website.

### ***Wetlines***

MAP-21 mandated that 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. MAP-21 also required that PHMSA not issue 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. This final report recommended that PHMSA re-evaluate its regulatory cost-benefit analysis to address uncertainty in the assumptions and data. PHMSA is committed to working with our stakeholders to discuss safe solutions to the risks posed by wetlines.

## **GROW AMERICA ACT OVERVIEW**

On April 29, 2014, Secretary Foxx sent a transportation bill, entitled the GROW AMERICA Act, to Congress for consideration. This proposal is a \$302 billion, four-year surface transportation reauthorization that provides increased and stable funding for our Nation's highways, bridges, transit, and rail systems.

The GROW AMERICA Act will also improve PHMSA's ability to oversee the safe transportation of hazardous materials. Below is an overview of the key hazardous materials safety provisions of the GROW AMERICA Act.

## **PHMSA Key Provisions of the GROW AMERICA Act to Improve the Safe Transportation of Hazardous Materials**

### ***Increases Authority to Stop Unsafe Conditions***

The GROW AMERICA Act will increase DOT's authority to stop unsafe conditions or practices that may cause an emergency situation involving a threat to life, personal injury, or harm to property or the environment. The Act will provide clear authority for PHMSA to issue Orders to industry in response to emergency situations without prior notice similar to the authority already available to the Federal Railroad Administration and the Federal Motor Carrier Safety Administration.

### ***Reduces Taxpayer Burden to Administer the Special Permit and Approvals Program***

The GROW AMERICA Act will authorize the Secretary to collect a reasonable fee for the administration of the special permits and approvals program. This fee will offset some of PHMSA's costs associated with the special permit and approvals process and transfer some of the costs of running the Special Permits and Approvals program from taxpayers to the program's applicants.

### ***Improves National Emergency and Disaster Response***

Hurricane Sandy is the most recent example of a common problem that impedes the transportation of hazardous materials during national emergencies: differing opinions between Federal, state, and local officials regarding the types of hazardous materials authorized to move in affected areas that can delay or prevent the delivery of critical shipments. The GROW AMERICA Act will remedy this problem by clarifying DOT's authority to facilitate the movement of essential hazardous material during a national emergency or disaster.

### ***Establishes Hazard Abatement Authority***

The GROW AMERICA Act will combat a growing problem of unscrupulous shippers abandoning hazardous materials in transit by providing DOT with the authority to hold a non-compliant shipper accountable for the remediation or disposal costs for the non-compliant shipment. This authority will build upon the improvements in hazardous materials enforcement and the civil penalties program that were implemented through MAP-21. Finally, this requirement will act as a deterrent to those who knowingly violate the hazardous materials regulations.

### ***Expands Inspection of Non-Domestic Entities***

There remain instances when a person outside the U.S. seeks to manufacture, requalify, or inspect DOT specification packaging or special permit cylinders or certify compliance with U.S. regulations. The GROW AMERICA Act grants broader inspection and investigation authority over non-domestic entities, extending authority to those seeking approval from PHMSA to perform these functions outside the U.S. Once approved, the applicant must allow hazmat investigators to inspect the applicant's process and procedures, while bearing the cost of the initial and subsequent inspections. This shift in procedure will place the cost of the inspection on the user, and not on U.S. taxpayers.

## Enhance Communities and Improve Safety

### *Enhances Registration Requirements*

The GROW AMERICA Act will expand the hazmat registration requirements to any entity that performs a regulated activity requiring training. This expanded registration requirement will provide more effective oversight of the hazardous materials program and provide a more accurate representation of the population composition of our stakeholders.

### *Improves the Effectiveness of the Hazardous Materials Emergency Preparedness Grant Program*

The GROW AMERICA Act will improve the Hazardous Materials Emergency Preparedness Grant Program and build upon the improvements in MAP-21. The GROW AMERICA Act will reform the grant program by making several changes to ensure greater accountability of grantees and maximize the impact of grant funds. This proposal includes amendments to improve the effectiveness of the grant program. Some highlights include but are not limited to:

- Reorganize the criteria and institute comparable requirements for all instructor training grants to ensure that all funds are effectively used to the fullest extent possible by hazardous materials employees and emergency responders;
- Broaden grants eligibility to increase competitiveness;
- Allow states to apply for grants for “planning and emergency response” to give grantees the flexibility to direct funds between eligible planning and emergency response activities according to need. This will enable states to more fully utilize grants;
- Eliminate the pass-through requirement to allow grantees to provide funding towards training and planning activities as they deem appropriate and to allow for more time to utilize HMEP awards;
- Allow PHMSA to provide supplemental grants to grantees with a proven need for supplemental emergency response funding; and
- Increase administrative cost allowance from 2 percent to 4 percent to permit better oversight and performance of the HMEP grants program.

### *Increases Penalties for Violations*

The GROW AMERICA Act strengthens PHMSA’s ability to ensure compliance by increasing the maximum amount that we can assess for a civil penalty, as well as provide us with the ability to address situations where a higher penalty is warranted. The Act will increase the maximum civil penalty amount from \$75,000 to \$250,000; or, for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property, from \$175,000 to \$500,000. As I previously stated, PHMSA believes clear and appropriate civil penalties can improve transportation safety by acting as a deterrent for those violating the regulations.

## Conclusion

Thank you for the opportunity to discuss PHMSA’s implementation of MAP-21 and the recently submitted GROW AMERICA Act. We very much appreciate your partnership as we work together to safeguard people, property, and the environment from hazardous materials



transportation risks. I truly believe that the GROW AMERICA Act is a logical and important step forward in improving hazardous materials transportation safety.