



**WRITTEN STATEMENT OF  
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**BEFORE THE  
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP  
UNITED STATES SENATE**

**HOW SMALL BUSINESSES BENEFIT FROM SMART RAIL SHIPPING  
REGULATIONS  
NEW ORLEANS, LA**

**November 16, 2018**

Senator Kennedy, thank you for the opportunity to testify today on the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) efforts to advance the safety of rail tank cars carrying hazardous materials. I would also like to thank you for your leadership in bringing attention to the need to advance the nation’s rail safety efforts. As you know, tragic high-profile train accidents involving hazardous materials, such as those that occurred in Lac-Mégantic, Quebec, Canada (2013); Graniteville, South Carolina (2005); and Minot, North Dakota (2002), underscore how important it is to be ever vigilant in protecting local communities and the environment as it relates to the safety of our nation’s railroad system. The U.S. Department of Transportation (DOT) and PHMSA work thoroughly to bolster compliance with federal hazardous materials laws and regulations to minimize accidents and impacts to people, communities, and the environment.

Safety is the number one priority for U.S. Secretary of Transportation Elaine L. Chao, PHMSA Administrator “Skip” Elliott and our modal partners across the Department. In

particular, PHMSA’s mission is to work to protect the American people and the environment from the risks of hazardous materials transportation by all modes, including rail, highway, waterways, air, and pipeline.

PHMSA achieves its safety mission by establishing a national policy of setting forth standards and a comprehensive enforcement regime. PHMSA also advances education, as well as research and development efforts, all with aim to prevent incidents and enhance safety. Additionally, PHMSA provides funding and training to prepare first responders to reduce consequences in the event that an incident does occur. PHMSA’s ultimate goal is to pursue all avenues to reduce risk toward zero deaths, zero injuries, and to minimize environmental and property damage, and transportation disruptions.

This testimony will provide a summary of PHMSA’s hazardous materials safety program and its role in advancing rail safety. It will also discuss ways in which PHMSA is attempting to modernize standards and reduce regulatory burdens on small businesses. And finally, it will provide an update on PHMSA’s efforts to finalize standards for rail cars that carry hazardous materials with toxic inhalation hazards and share with you how PHMSA is working to build consensus among stakeholders in the regulated industry.

## **I. STATUTORY AUTHORITY AND PHMSA’S RESPONSIBILITIES IN DEVELOPING HAZARDOUS MATERIALS REGULATIONS**

Federal hazardous materials transportation law authorizes the Secretary of Transportation to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The Secretary has delegated this authority to PHMSA, which is responsible for administering a safety and enforcement program that minimizes the inherent transportation risks to life, property, and the environment inherent in transportation in commerce. Each year, the collective efforts of PHMSA and other DOT modal administrations facilitate the safe and secure transit of more than 2.5 billion tons of hazardous materials, valued at more than \$2 trillion.

## **II. COMPREHENSIVE APPROACH TO PREVENT AND MITIGATE RAIL HAZARDOUS MATERIALS ACCIDENTS AND INCIDENTS**

Regulations governing the transport of hazardous materials include operational requirements that are applicable to each mode of transportation. To achieve safety, PHMSA sets standards to ensure that hazardous materials are properly classified, appropriately packaged or safely contained in vessels, such as rail tank cars, and finally, that the risks are properly communicated to transportation workers and emergency responders through markings, labels, placards, and shipping documents. This approach is designed to prevent hazardous materials releases in the course of rail transportation, and to mitigate damages in the unlikely event of a release. With specific regard to rail safety, PHMSA and the Federal Railroad Administration (FRA) take a system-wide, comprehensive approach for addressing the risks posed by the bulk transport of hazardous materials by rail. This includes working closely together when considering regulatory changes.

## **III. PHMSA CONSIDERS IMPACTS ON BUSINESSES WHEN DETERMINING REGULATIONS**

When considering rules and regulations, PHMSA carefully weighs safety benefits against the economic impact to businesses and consumers. PHMSA discharges its responsibilities in accordance with principles of good government by embracing a regulatory philosophy that promotes transparency, stakeholder engagement, and regulatory restraint. The Department's Regulatory Reform Task Force plays a significant role in helping PHMSA to assess the efficacy of existing regulations, guided by three principles: (1) to reduce the regulatory burden on the public without compromising safety; (2) to streamline permitting; and lastly (3) to enable innovation.

Consistent with existing law and the Administration's priorities, the agency seeks to tailor its regulations to impose the least burden on society while achieving its regulatory objectives. PHMSA's economic assessments follow the best practices as outlined by the Office of

Management and Budget. Each regulation is also accompanied by a regulatory flexibility assessment, which considers the rule's impact on small businesses and explores ways regulatory burdens could be reduced, as required by the Regulatory Flexibility Act. PHMSA provides the American public, including small businesses, the opportunity to review and comment on rules through notice-and-comment procedures, and works closely with the Small Business Administration's Office of Advocacy to address disproportionate impacts on small entities in an effort to reduce their regulatory burden. Additionally, PHMSA's Hazardous Materials Safety Assistance Team (HMSAT) conducts face-to-face outreach throughout the country to ensure accessibility and transparency to small businesses and other stakeholders.

#### **IV. CURRENT EFFORTS TO FINALIZE STANDARDS ON TIH**

PHMSA works closely with multiple DOT operating administrations to ensure consistency in administering hazardous materials transportation safety programs across all modes. We are currently actively working with our counterparts at FRA to address many issues relevant to the safe transportation of hazmat by rail, including the transportation of materials that pose a toxic inhalation hazard (TIH). These TIH materials, which include essential products, such as anhydrous ammonia and chlorine, are vital not only to our nation's infrastructure, but also to our health and safety since our water and food supplies depend on their safe movement. PHMSA recognizes its critical role as an agency that must ensure the safety of a vast transportation network that supports our economy and our national way of life.

As an example of our close collaboration with FRA and our industry stakeholders, PHMSA has reviewed, analyzed, and accepted several petitions for consideration in upcoming rulemakings that address the safe transportation of materials that are toxic when inhaled. These petitions cover a range of issues, including: finalizing specifications codified in 2009 to provide certainty to industry regarding tank car design and construction standards; extending the authorized service life for tank cars that meet improved standards from 20 to 50 years; and determining an appropriate timeline for phasing out rail tank cars that do not meet the final standard. PHMSA appreciates the wealth of expertise that the shippers and carriers provide to the regulatory process, as well as their continued commitment to build consensus on necessary safety standards.

We are pleased to note that the Association of American Railroads (AAR) and several associations representing TIH shippers, including the American Chemistry Council (ACC), the Chlorine Institute (CI), and the Fertilizer Institute (TFI), have reached a general consensus with respect to one of the more challenging determinations proposing to develop a timeline for compliance with the final TIH tank car standard. On June 19, 2018, AAR, ACC, CI, and TFI, submitted joint comments to PHMSA advocating for a mutually agreed-upon phase out date of December 31, 2027. On September 6, 2018, leadership of each of these organizations came together to meet with PHMSA's senior leadership team to affirm their support for this new approach. These organizations jointly urged PHMSA to accelerate the timeframe for completing rules to provide certainty for the strategic investment decisions that stakeholders must make to advance safety. This collaborative effort by our industry partners has greatly facilitated our efforts to finalize a draft rule that can be issued for public notice and comment and finalized as expeditiously as possible.

Looking ahead, we know that additional challenges remain as we work together with all stakeholders to build on our existing safety framework. In addition, we must work together to facilitate the adoption of innovative technologies and solutions to advance safe transportation for the benefit of the public. We remain confident that our shared goals of safely delivering vital commodities throughout our nation will help overcome these challenges and we look forward to working with all concerned.

## **V. CLOSING REMARKS**

In closing, DOT and PHMSA are committed to improving the safety of the transportation of hazardous materials across all modes. It is important that DOT provide certainty to the regulated community to facilitate the transportation of hazardous materials, which are vital to our national economy and to the local economies of the State of Louisiana and the Port of New Orleans. Furthermore, hazardous materials shippers and carriers are integral partners for improving transportation safety and their collaboration with PHMSA is essential if we are to meet our

shared goal of zero incidents. With strong commitment, leadership, and robust stakeholder collaboration, we can ultimately achieve this goal.

We look forward to continuing to work with Congress to strengthen hazardous materials rail safety policy. Together, we can protect America's people and its environment by advancing the safe transportation of hazardous materials. The hardworking staff of PHMSA is dedicated and committed to fulfilling our safety responsibility to the American people. Thank you again for the opportunity to testify today. I would be pleased to answer any questions you may have.