Interested Parties for Hazardous Materials Transportation

Presentation

by

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on behalf of

Interested Parties for Hazardous Materials Transportation

on

“HMEP Grants from Registrants’ Perspective”

to the

2017 Hazardous Materials Grant Conference

August 15, 2017

Good morning.

I am Paul Rankin, and I serve as Chair of the Interested Parties for Hazardous Materials Transportation, or “IP”, coalition. I greatly appreciate this first-time opportunity to speak in this venue.

For those of you who may not be familiar with the IPs, please allow me to introduce the organization.

The IPs is a voluntary-run coalition of 46 organizations that share an interest in legislative and regulatory issues related to domestic and international hazmat transportation safety and security. Participants in the group include associations representing hazmat shippers, carriers, packaging manufacturers, and other related organizations. Interestingly, the Commercial Vehicle Safety Alliance (CVSA) also participates. CVSA, as many of you know, is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives.

The IPs are now in their 21st year of continuous operation. We claim a proud legacy of work we have done on Capitol Hill and with the various federal agencies that deal with hazmat transportation safety and security issues. Foremost among the federal agencies with whom we work is, of course, the Department of Transportation (DOT). There, we work most closely with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and, more specifically, the Office of Hazardous Materials Safety (OHMS).

The hazmat issues we engage on sometimes spill over to other federal departments such as the Department of Homeland Security or the Occupational Safety and Health Administration; or, various DOT modal administrations such as FMCSA, FRA and FAA. However, we are not involved in pipeline matters, although as you know and will hear from later in this conference, the Office of Pipeline Safety oversees a fee-supported grants program much larger than those administered by OHMS.

I am certain that those of you who you who have been associated with the program for a long time have noticed significant changes to the program. In fact, some of you may have even advocated for or against these changes.

Regardless of your views, I expect you would agree that, overall, the changes made over the years have improved the program in many ways. I can say with certainty that that the IPs think the grants programs have improved significantly since those early years.

I have been asked to talk about the HMEP program from the perspective of the program’s “registrants”. But, the IP’s advocacy for the HMEP program and changes thereto has not been from the perspective of registrants. In fact, we have always believed that PHMSA should know who they are regulating to be effective. A limited registration requirement is, therefore, an appropriate and effective way to build and maintain this knowledge base. Our perspective is from the point of view of program financier.

This year marks the 25th year that hazmat shippers and carriers have paid fees to support the HMEP program and the “HMIT” [*Hazardous Materials Instructor Training*] program. Over the intervening years, these fee collections total in the hundreds of millions of dollars, and are now also used to support OHMS’s “SPST” [*Supplemental Public Sector Training*], and most recently, the “Alert” [*Assistance for Local Emergency Response Training*] programs.

Interestingly, industry engagement in the development of the grants program goes back 28 years to the lead up to the 1990 amendments to the Hazardous Materials Transportation Act (HMTA). I invite you to take a walk with me down memory lane to understand some of the concerns hazmat fee-payers have had with the OHMS grants that factor in to the program changes you are living with today.

HMTUSA (1990)

In 1989, I chaired a precursor industry coalition that worked with Congress to craft the 1990 amendments which authorized the HMEP program.

Not surprisingly, at that time, the hazmat industry was not in support of a first-time fee-based hazmat program. History has shown that such fees do not go down; they often go up; and they almost never go away.

Our initial objections were these:

(1) DOT and, by extension, industry registrants, were being tasked to be the tax collector for EPA. As part of the Superfund Amendments and Reauthorization Act of 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). This action took place following the chemical facility tragedy in Bhopal India. EPCRA required each state to appoint a State Emergency Response Commission (SERC) and each SERC to divide their states into Emergency Planning Districts and to name a Local Emergency Planning Committee (LEPC) for each district. These congressional requirements were an unfunded mandate. While the Bhopal tragedy was not transportation-related, the hazmat transportation industry was being asked to fund local planning activities mandated as a consequence of this horrific event. We were not enamored with this idea.

2) The hazmat industry is not homogeneous. The hazmat industry includes companies of every size one can imagine, from very small family businesses to multi-billion-dollar corporations; firms operating locally and firms that are international in scope; all handling vastly different types and quantities of hazmat; some producing and shipping hazmat; some providing packaging for these materials; and, others carrying it via truck, rail, train, boat or barge. If the government was going to assess fees, we wanted to know what factors would be used to ensure that all payers were contributing their fair share.

(3) We were also concerned that many states already assessed hazmat fees. If a federal hazmat fee was to be collected, industry believed that state fees should be factored into the federal allocation formula so that distributions would be based on “need”.

(4) We saw little value or fairness in the HMIT program. Private sector hazmat employers were and are already obligated to train their hazmat employees. Using some of the fees collected from those required to train their employees for the benefit of a few employers to cover or reduce their training costs seemed patently unfair.

(5) We opposed the proposed initial funding level of $100 million annually. Several Members of Congress wanted to model the HMEP grants program after EPA’s “LUST” [leaking underground storage tank] program and thought the $100 million annual funding level to be quite reasonable.

While the 1990 amendments did not drop EPA’s EPCRA programs from eligibility for HMEP grants, Congress:

* directed the Secretary to consider “need” when issuing HMEP training grants, including whether grantees were already assessing fees on the transportation of hazardous materials,
* required the fees to be “equitable”;
* directed the Secretary to consider the diverse nature of the hazmat registrant community when setting the amount of fees to be paid;
* limited the amount of fees that could be used for the HMIT program to $250,000 per year; and importantly,
* limited the total amount of money available for HMEP grants to $12.8 million.

Hazardous Materials Transportation Authorization Act of 1994

When Congress took up HMTA reauthorization in 1994, over $21 million had been collected by OHMS since the grants programs were established. Industry believed it had not seen a reasonable return on its investment, nor could we obtain clear information about how the money was being used.

Industry wasn’t the only stakeholder questioning the accomplishments of the programs. The International Association of Fire Fighters (IAFF) said that no training grant funds were trickling down to them.

In response, Congress created the Supplemental Public-Sector Training grants, gave OHMS authority to request information from states about the hazmat fees they impose, and directed the agency to issue a report on the allocation and uses of training grants.

The report was delivered a year late and, to the disappointment of fee-payers, the findings were anecdotal and aspirational. Fee-payers wanted retrospective accounting, including a list of who the ultimate grantees were. We also were interested in outcomes. For example, if grant application envisioned training 100 emergency responders, we wanted to know how many responders had actually been trained and where these responders were serving. IPs also asked for this information to be provided annually and to include disclosures by grantees receiving planning funds.

SAFTEA-LU (2005)

Before the IPs had another opportunity to ask Congress to strengthen reporting requirements, the horrific terrorist attacks of 9/11 occurred. 9/11 showed the need for properly trained responders. In response, Congress greatly increased funding to FEMA [*Federal Emergency Management Administration*] for the training of emergency responders. So, when Congress turned again to HMTA reauthorization legislation in 2005, the IPs recommended transferring the OHMS grants to FEMA to save administrative costs and to better leverage funds for training needs. The perennial need to train emergency responders was reaffirmed during the aftermath of hurricanes Katerina and Rita later that year.

Also, Congressional opinion about the adequacy of resources available to the grants programs was colored by OHMS’s failure to adjust fees, as required by statute, to ensure that the amount being collected did not result in unspent balances. By 2003, OHMS had collected over $22 million in carryover funds. These revenues were the result of excess collections given the $12.8 million HMEP and other grant program caps on fund distributions. That year, the IPs sued DOT to adjust the fees downward; DOT settled by agreeing to lower fees.

The 2005 amendments increased the annual amount that the Secretary could distribute for HMEP grants from $12.8 million to $21.8 million. In doing so, Congress recognized the relative greater importance of training to planning needs and provided discretionary authority to the Secretary to reallocate some or all of the new funds set aside for planning to training grants.

The spending cap for the HMIT grants had been raised to $3 million in the 1994 amendments and another $1 million was added at this time. The SPST remained at $1 million per year. The increases to the grant programs were not intended to raise fees, but to better match the funds that were being collected to the grants awarded. To mitigate against new fee increases that could again lead to an over-collection, Congress also lowered the cap of the amount OHMS could set for a registration fee from $5,000 to $3,000. Congress also directed that the Secretary submit, and make available to the public, information on the allocation and uses of the all of the OHMS training and the planning grant programs.

MAP-21 (2012)

When Congress next considered amendments to the HMTA in MAP-21, OHMS had still not used the “flex” authority it had been granted to move more grant funding from planning to training emergency responders, nor had the Secretary exercised his discretion to require states to report on the assessment and allocation of hazmat transportation fees they collect.

To address this lack of action, Congress directed the Secretary to collect state hazmat fee information biennially and removed the arbitrary set asides in the HMEP between planning and training grants. Given the decades old October 17, 1988 statutory deadline for LEPCs to complete preparation of emergency plans under EPCRA, the feeling was that these needs should be diminishing. At the same time, turnover in the emergency response community continued to elevate training as the primary objective of the OHMS grants.

While OHMS began to issue reports on the grants programs as required in 2005, they were not released annually, and still did not include the level of retrospective accounting that fee-payers requested. Therefore, Congress included in the 2012 amendments a directive to the Secretary to include in the annual reports detailed information specific to each grantee on the amount and purpose of each expenditure, the number of persons trained, the efficacy of such planning and training programs, and recommendations for improving the programs.

FAST (2015)

The event that most influenced the 2015 – and most recent – amendments to the HMTA was the tragic 2013 rail incident that occurred in Lac-Mégantic, Canada, when an unattended 74-car freight train carrying Bakken crude oil rolled down grade and derailed in the town, resulting in fire and the explosion of multiple tank cars.

In response, Congress authorized what is known as the ALERT (*Assistance for Local Emergency Response Training)* grants. These grants are provided to non-profit organizations to train emergency responders to respond to incidents that involve shipments of crude oil, ethanol, and other flammable liquids by rail. OHMS is authorized to use money recovered from prior year HMEP grant awards to fund the ALERT grant. Millions of dollars in HMEP recoveries have been used for this purpose.

The fact that OHMS was, on average, recovering about $5 million each year from HMEP grantees was a real concern to us and should be a concern to everyone involved in these programs. We appreciate there are many reasons for recoveries – grantees over-estimate their ability to perform, priorities change, and the like – but the reality is that recoveries represent a missed opportunity to improve emergency responder capabilities in America.

To address this situation, Congress did away with the requirement that grants be held to a fiscal year cycle, allowing OHMS and grantees more time to identify under-performing grants, to reallocate funds to grantees willing and able to use the funds, and to deliver the outcomes fee-payers are looking for.

Perhaps the most significant change made in the 2015 amendments to the HMEP grants was Congress’s decision to turn over the Secretary’s discretion to choose whether to allocate funds to training or for planning assistance to states. Congress took this step because, once again, OHMS did not begin to shift HMEP funds from planning to training needs as expected. Frankly, it is our view that the discretion to allocate funds should have always rested with the states. States (and Indian Tribes) are better positioned to determine if funds should be used to train emergency responders and for planning assistance. For this reason, the IPs fully supported this transfer of authority.

Finally, Congress also used the 2015 amendments to allow non-union training organizations to be eligible to compete for HMIT funds and to create the “Community Safety Grants” at industry request. The Community Safety Grant is open to nonprofit organizations that can train state and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids. It is not supported by hazmat fees.

Looking Ahead

So where are we today? Despite industry’s somewhat contentious relationship with the grants programs over the years, generally the programs have evolved to a place where fee-payers see opportunities to work together with you. The IPs have come to accept the grants that are used for training emergency responders. Indeed, the IPs would encourage states to opt to use all funds for this purpose.

Going forward, we have the following goals in mind:

* We want to see annual reports on OHMS’s fee-supported grants programs. This goal is not meant to prevent states and other grant recipients from using available money; rather, it is the logical extension of our view that these monies, which are paid by U.S. companies, should be spent specifically for and only on training related directly to hazardous materials transportation safety.
* We believe that HMEP grants should be allocated based upon demonstrated need for assistance to training emergency responders.
* We still believe that hazmat transportation fees should not be spent in support of LEPC planning. Congress should work with EPA to determine the future of the LEPC program.
* We believe that grantees should have written Standard Operating Procedures. We believe SOPs will help ensure the accountability and transparency desired by fee-payers and will reduce recoveries.
* Lastly, given the recent statutory changes that allow PHMSA to reprogram unused grant money and the elimination of limits on the number of times grants may be issued in a single fiscal year, we believe there will be pressure to raise fees. We likely will not support this effort, should it be proposed.

Conclusion

I want to thank all of you here today for allowing me to present the perspective of the IPs on the HMEP and other OHMS fee-funded grant programs. Nothing is as constant as change. And, I would be remiss if I didn’t end with a shout out for Aaron Mitchell and Lisa O’Donnell. They have set a high bar for public service. We applaud them for their superb job administering these programs and we thank them for their efforts to improve programmatic transparency and to ensure that all grant money is used appropriately and wisely.

Thank you.