

AMENDING TITLE 49, UNITED STATES CODE, TO MODIFY REQUIREMENTS
RELATING TO THE AVAILABILITY OF PIPELINE SAFETY REGULATORY
DOCUMENTS, AND FOR OTHER PURPOSES

JULY 16, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2576]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 2576) to amend title 49, United States
Code, to modify requirements relating to the availability of pipeline
safety regulatory documents, and for other purposes, having consid-
ered the same, report favorably thereon without amendment and
recommend that the bill do pass.

CONTENTS

	Page
Purpose of Legislation	2
Background and Need for Legislation	2
Hearings	3
Legislative History and Consideration	3
Committee Votes	3
Committee Oversight Findings	3
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Cost Estimate	4
Performance Goals and Objectives	4
Advisory of Earmarks	4
Duplication of Federal Programs	4
Disclosure of Directed Rule Makings	5
Federal Mandate Statement	5
Preemption Clarification	5
Advisory Committee Statement	5
Applicability of Legislative Branch	5
Section-by-Section Analysis of Legislation	5
Changes in Existing Law Made by the Bill, as Reported	5

PURPOSE OF LEGISLATION

H.R. 2576 amends title 49, United States Code, to modify requirements relating to the availability of pipeline safety regulatory documents. The bill corrects an unintended consequence of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.

BACKGROUND AND NEED FOR LEGISLATION

For many years, government agencies have used standards and other materials published by standards development organizations (SDOs) as one means of satisfying regulatory objectives. In 1982, the Office of Management and Budget (OMB) promulgated OMB Circular A-119, which required federal agencies to use privately developed voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. The use of such standards, whenever practicable and appropriate, was intended to achieve the following goals: (1) eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (2) provide incentives and opportunities to establish standards that serve national needs; (3) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (4) further the policy of reliance upon the private sector to supply government needs for goods and services.

In 1996, Congress passed the National Technology Transfer and Advancement Act, codifying the requirements contained in the OMB Circular into law. Therefore, by law, federal agencies are required to use such voluntary consensus standards, instead of expending resources to create their own, unless use of such standards would be inconsistent with applicable law or otherwise impractical. Oftentimes, instead of reprinting the standards into the federal regulations, agencies simply reference the voluntary consensus standards by name, a practice more commonly known as “incorporation by reference.” SDOs maintain that the practice of incorporation by reference has a number of benefits, including dramatically reducing costs to the government of developing its own standards, preventing duplicative and conflicting government-imposed standards, and allowing agencies to use standards that are already recognized and accepted in the United States and around the world, which result in a public-private partnership that enhances public safety and health while saving government agencies and taxpayers money. Many safety advocates, universities, researchers, and state and local communities, however, have raised concerns about the lack of transparency and openness in reviewing the voluntary consensus standards, particularly when incorporated into federal safety regulations.

In 2011, the bipartisan Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pipeline Safety Act) became law. In an effort to ensure public access to pipeline standards, section 24 of the Pipeline Safety Act included a provision, codified at section 60102(p) of title 49, United States Code, that requires the Pipeline and Hazardous Materials Safety Administration (PHMSA) to make

any document, or portion thereof, incorporated by reference into PHMSA regulations or guidance publicly available, free of charge, on an internet website. Acting in good faith, the intent was to ensure transparency and openness in government regulation, but an unintended consequence arose with regard to some SDOs whose business model could be jeopardized by allowing internet access to its standards. H.R. 2576 will ensure that the provisions of the Pipeline Safety Act support broader public availability of voluntary consensus standards and related information to the general public for non-commercial purposes—consistent with existing law and regulations—while also maintaining the invaluable public-private partnership between the private sector and government agencies. H.R. 2576 provides PHMSA with the flexibility necessary to continue to work with SDOs to improve regulatory outcomes and ensure that materials incorporated by reference are made available to the public.

HEARINGS

No hearings were held on H.R. 2576.

LEGISLATIVE HISTORY AND CONSIDERATION

On June 28, 2013, Representatives Bill Shuster, Jeff Denham, Nick Rahall, and Corrine Brown introduced H.R. 2576 to ensure the protection of intellectual property and copyrights of standard development organizations while providing public access to documents incorporated by reference into pipeline safety regulations. On July 10, 2013, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no record votes taken in connection with consideration of H.R. 2576.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2576 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2013.

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2576, a bill to amend title 49, United States Code, to modify requirements relating to the availability of pipeline safety regulatory documents, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf, Director).

Enclosure.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide PHMSA greater flexibility in providing public access to documents incorporated by reference into pipeline safety regulations.

ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 2576 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that enacting H.R. 2576 does not specifically direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 2576 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1. Availability of pipeline safety regulatory documents

H.R. 2576 strikes the phrase “on an internet Web site” from section 60102(p) of title 49, United States Code, which will help protect copyright and intellectual property concerns, while granting PHMSA the flexibility necessary to ensure compliance with the law. It also extends the deadline for implementation from one year after the date of enactment to three years after the date of enactment, and reduces the number of documents to which the provision applies by striking “guidelines” from section 60102(p).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE VIII—PIPELINES

* * * * *

CHAPTER 601—SAFETY

* * * * *

§ 60102. Purpose and general authority

(a) * * *

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(p) **LIMITATION ON INCORPORATION OF DOCUMENTS BY REFERENCE.**—Beginning **[1 year]** *3 years* after the date of enactment of this subsection, the Secretary may not issue **[guidance or]** a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge**[, on an Internet Web site]**.

* * * * *

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2877
Minority (202) 225-3641

July 11, 2013

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster,

I write concerning H.R. 2576, a bill to amend title 49, United States Code, to modify requirements relating to the availability of pipeline safety regulatory documents, and for other purposes, which was ordered to be reported out of your Committee on July 10, 2013. I wanted to notify you that the Committee on Energy and Commerce will forgo action on H.R. 2576 so that it may proceed expeditiously to the House floor for consideration.

This is being done with the understanding that the Committee on Energy and Commerce is not waiving any of its jurisdiction, and the Committee will not in any way be prejudiced with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding, and ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during consideration of H.R. 2576 on the House floor.

Sincerely,



Fred Upton
Chairman



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

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

July 11, 2013

Christopher P. Brennan, Staff Director

James H. Zito, Executive Staff Director

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R. 2576, a bill to amend title 49, United States Code, to modify requirements relating to the availability of pipeline safety regulatory documents, and for other purposes, which was ordered to be reported out of the Committee on Transportation and Infrastructure on July 10, 2013. I appreciate your willingness to support expediting floor consideration of this legislation.

I acknowledge that by forgoing action on this legislation, the Committee on Energy and Commerce is not waiving any of its jurisdiction and will not in any way be prejudiced with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I appreciate your cooperation regarding this legislation and I will include our letters on H.R. 2576 in the *Congressional Record* during floor consideration of this bill.

Sincerely,

Bill Shuster
Chairman

cc: The Honorable John Boehner
The Honorable Nick J. Rahall, II
The Honorable Henry A. Waxman
Mr. Thomas J. Wickham, Jr., Parliamentarian