



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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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 “Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline, and Hazardous Materials Safety Regulation and Opportunities for Reform”

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials, will meet on Wednesday, April 26, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building, to hold a hearing on “Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline, and Hazardous Materials Safety Regulation and Opportunities for Reform”. The Subcommittee will hear testimony from a Class I railroad;¹ the association representing short line and regional railroads; representatives of the natural gas and hazardous liquid pipeline industries; an industry association representing shippers and transporters of hazardous materials; and a representative of rail labor.

BACKGROUND

The safe and efficient movement of people and goods is the top priority for Congress and all transportation stakeholders. Rail, pipeline, and hazardous material transportation safety are overseen by the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

FRA was created by the *Department of Transportation Act of 1966* (P.L. 89-670). However, rail safety regulation began nearly a century earlier when statutes governing specific aspects of railroad equipment were enacted and regulatory authority was vested in the Interstate Commerce Commission. Today, FRA 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, the safety of rail infrastructure, equipment, railroad employees and passengers, and communities through which railroads travel. FRA

¹ U.S. Class I railroads are line haul freight carriers with operating revenues of \$453 million or more in 2016; the operating threshold is adjusted annually for inflation by the Surface Transportation Board (STB). There are currently seven Class I railroads operating in the United States.

currently employs approximately 365 rail inspectors and has an operating budget of \$199 million and an additional \$50 million for rail safety grants.

PHMSA was created by the *Norman Y. Mineta Research and Special Programs Improvement Act of 2004* (P.L. 108-426). Previously, the Department of Transportation's (DOT's) Research and Special Programs Administration handled pipeline and hazardous materials safety. PHMSA has jurisdiction over the transportation of hazardous materials, regardless of mode, and oversees the safety of the Nation's 2.6 million miles of gas and hazardous liquid pipelines, which account for the transportation of 64 percent of the energy commodities consumed in the United States.

PHMSA currently has about 100 federal pipeline safety inspectors, supplemented by approximately 300 state pipeline safety inspectors. In fiscal year 2016, the hazardous materials safety program received \$55.6 million from general revenues, and about \$28 million in hazmat registration fees paid by shippers and transporters used to issue emergency preparedness grants to states. The pipeline safety program was funded at \$146.6 million, of which \$124.5 million was derived from the Pipeline Safety Fund, funded by user fees on pipeline operators, and \$22.1 million was derived from the Oil Spill Liability Trust Fund.

Railroad Safety Regulation and Safety Trends

Since 1980, the rate of freight train accidents and incidents per million train-miles has fallen 88.2 percent, and the rate of intercity and commuter rail passenger accidents and incidents per million passenger train-miles has declined 61 percent. Railroad employee on-duty fatalities, injuries, and illnesses have declined 91.7 percent. The freight railroads attribute their safety improvements in part to the *Staggers Rail Act of 1980* (*Staggers*), which partially deregulated the industry and restored the industry to financial health. Since *Staggers* was enacted, the freight railroads have invested \$600 billion in their systems. Rail labor also attributes lower accident and incident rates and the decline in railroad employee on-duty fatalities to increased safety regulation.

FRA's general regulatory authority under 49 USC §20103 directs the agency, as necessary, to regulate and issue orders for every area of railroad safety. FRA has used the authority to issue regulations prescribing specific intervals for inspection of track, locomotives, rolling stock, and brakes, as well as standards for train inspections. There are comprehensive track gauge and safety appliance standards; operating rules; workplace safety regulations; locomotive and freight car safety standards; hours of service regulations; and signal systems rules, among others.

Railroad safety regulations have grown significantly since 2000. A number of the regulations are the result of Congressional mandates enacted after serious rail accidents often upon the recommendation of the National Transportation Safety Board (NTSB). For example, Congress mandated the installation of Positive Train Control (PTC) systems² on certain railroad

² PTC technologies automatically stop or slow a train before certain accidents caused by human error occur, including train-to-train collisions, derailments caused by excessive speed, and movement of a train through a track switch left in the wrong position. The deadline for PTC implementation has been extended to December 31, 2018.

lines following a deadly train collision in the Chatsworth district of Los Angeles, California, and a number of train derailments in South Carolina and Texas that caused the release of hazardous material, although PTC had been on the NTSB's most wanted list of safety improvements since 1990. In other instances, FRA has acted on its own initiative or upon petition by a regulated entity. For example, FRA and PHMSA jointly issued regulations to address safety concerns associated with the transportation of crude oil by train, following crashes in North Dakota, Alabama, and Virginia, and a catastrophic accident in Lac Megantic, Quebec, in which 47 people were killed when a runaway train derailed in the center of town.

FRA's approach to regulation of the rail industry has most often been to prescribe how a particular goal must be met rather than setting out the desired outcome and giving the industry the flexibility to determine how to reach the goal. However, FRA implemented the bridge management program mandated by Congress in 2008 as a performance-based rule that gave the railroads a significant amount of compliance flexibility in developing their bridge management programs. One of the issues the hearing will explore is the use of performance-based and prescriptive regulations.

The *Passenger Rail Reform and Investment Act of 2015* enacted as part of the *Fixing America's Surface Transportation Act of 2015* (FAST Act), contained provisions to improve freight and passenger rail safety. The FAST Act includes several provisions to improve safety at highway-rail grade crossings, and emphasizes the safety of intercity passenger and commuter rail operations.

Pipeline Safety Regulation and Safety Trends

Over the past 10 years, the total number of pipeline incidents has increased from 611 in 2007, resulting in 15 fatalities and 46 injuries, to 635 in 2016, resulting in 17 fatalities and 82 injuries. The number of serious incidents – those resulting in a fatality or injury requiring in-patient hospitalization – fell from 42 in 2007 to 37 in 2016 but the number of injuries and fatalities resulting from the incidents rose.

PHMSA's general regulatory authority (49 USC §60102) directs the agency to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation; to issue minimum standards for pipeline transportation and pipeline facilities; requires the standards to be practicable, designed to meet the need for gas pipeline safety, or safety transporting hazardous liquids, and protecting the environment, and directs PHMSA to consider, based on a risk assessment, a standard's benefits and costs.

PHMSA's regulatory framework promotes pipeline safety through exclusive federal authority for regulation of interstate pipelines and facilities. States may impose additional standards for intrastate pipelines and facilities if they are compatible with the minimum federal standards. PHMSA's pipeline safety functions include developing, issuing, and enforcing regulations for the safe transportation of natural gas (including associated liquefied natural gas

facilities), and hazardous liquids by pipeline. In fulfilling its mission, PHMSA has employed a mix of performance-based and prescriptive regulations.

The pipeline safety program was most recently reauthorized for four years by the *Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016* (PIPES Act) (P.L. 114-183). The PIPES Act sets minimum federal safety standards for underground gas storage facilities, as a result of the 2016 methane leak in Aliso Canyon, California, establishes revised safety standards for liquefied natural gas facilities, and increases inspection requirements for certain underwater oil pipelines. The PIPES Act also focuses on making PHMSA a more data-driven regulator that works closely with states and stakeholders to achieve common safety goals, as well as to ensure that PHMSA is completing its required mandates from the *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011* (P.L. 112-90).

PHMSA has failed to implement the *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011* Act, which contained a number of Congressional safety mandates stemming from the July 2010 Enbridge crude oil spill in Kalamazoo, Michigan, and the September 2010 PG&E natural gas explosion in San Bruno, California.

Like railroad safety regulations, pipeline safety regulations have grown significantly since 2000, often in reaction to pipeline accidents.

Hazardous Materials Transportation Safety Regulations and Safety Trends

According to the Bureau of Transportation Statistics, the rate per million tons of hazardous materials incidents³ involving rail, highway, waterway, and air transportation has declined by 20.6 percent since 2002. The rate of fatalities and injuries has risen 5.4 percent over the same period.

The regulation of hazardous materials dates to the enactment of *The Hazardous Materials Transportation Act* in 1975. PHMSA has the authority to determine what materials are to be considered “hazardous” and subject to regulation. Hazardous material regulations apply to any person who transports, ships, causes to be transported or shipped, or who is involved in any way with the manufacture or testing of hazardous materials packaging or containers. Since 1997, hazardous materials regulations, with certain exceptions, have applied to intrastate transportation. In general, state and local laws and rules regarding most aspects of hazardous materials transportation must be substantively the same as federal law or they are preempted

The hazardous materials safety program was most recently reauthorized for five years as part of the FAST Act. The FAST Act includes a number of provisions to enhance safety, with a significant focus on the transportation of flammable liquids, including crude oil, by rail. The Act also requires Class I railroads to generate real-time emergency response information; requires PHMSA to withdraw a rulemaking on wetlines; and accelerates the administrative process for the review and approval or disapproval of special permits and approvals.

³ Reportable incidents include fatalities, injuries, reportable releases of a hazardous material, and certain other incidents, including the shutdown of a major transportation artery.

In 2016, PHMSA reorganized the agency to more effectively manage its dual responsibilities for hazmat transportation and pipeline safety, base its regulations on data and analytics, and become a more efficient regulator. However, the Subcommittee remains concerned about PHMSA's backlog of uncompleted Congressional mandates.

WITNESS LIST

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