



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

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February 21, 2014

**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 "Oversight of Passenger and Freight Rail Safety"

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**PURPOSE**

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Wednesday, February 26, 2014, at 2:00 p.m. in 2167 Rayburn House Office Building to receive testimony on issues related to passenger and freight rail safety. The Subcommittee will receive testimony from the government entities and stakeholders from industry and labor regarding their efforts to maintain safe railroad transportation.

**BACKGROUND**

The movement of people and product by railroad is generally safe. According to the Federal Railroad Administration (FRA), 2012 was the safest year on record.<sup>1</sup> Since 2003 total train accidents have declined by 43 percent, total derailments have declined by 41 percent, and total highway-rail grade crossing accidents have declined by 34 percent.<sup>2</sup> These statistics indicate that the safety of railroads is trending in the right direction, but several accidents over the past year have brought safety-related issues to the forefront. The industry and government are taking a number of steps to improve upon these statistics and make the industry safer.

Generally, FRA is the federal agency charged with ensuring the safe movement of people and goods by rail. In addition to its headquarters in Washington, D.C., FRA maintains eight regional offices throughout the country. The agency has jurisdiction over all freight, commuter, and passenger rail transportation, but not over the safety of urban mass transit rail systems. FRA promulgates regulations, notices safety advisories, and issues emergency orders to ensure, among

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<sup>1</sup> *National Rail Policy: Examining Goals, Objectives, and Responsibilities: Hearing before the H. Comm. on Transp. and Infrastructure, Subcomm. on R.R.s, Pipelines, and Hazardous Materials*, 113<sup>th</sup> Cong. 2 (2013) (written statement of Hon. Joseph C. Szabo, Adm'r Fed. R.R. Adm.).

<sup>2</sup> *Id.*

other things, that railroads and equipment are operated and maintained in a safe manner. FRA closely monitors data and trends to identify, reduce, and eliminate risks.

To enforce these safety regulations, FRA employs approximately 470 inspectors, who specialize in one of five inspection disciplines: (1) operating practices; (2) track; (3) hazardous materials; (4) signal and train control; and (5) motive power. Moreover, some states, in partnership with FRA, employ approximately 170 state inspectors, while railroads employ, or contract for, their own safety inspectors to monitor compliance with equipment, track, and operational safety regulations. FRA inspectors monitor compliance with federal safety standards through routine inspections focusing on direct observations of train components, related equipment, and railroad property, including track and signal systems, and through examining railroads' own inspection and maintenance records. If railroads do not comply with safety regulations or when serious problems are identified, FRA may cite violations and take enforcement actions.

For example, after several incidents on the Metropolitan Transportation Authority (MTA) properties, FRA issued a letter to MTA supporting a safety stand-down and recommending implementation of a confidential close call reporting system. Then, on December 6, 2013, FRA issued an emergency order, requiring Metro-North Commuter Railroad (Metro-North) (one of the MTA properties) take certain actions to control passenger train speeds in specific locations and make staffing changes to ensure compliance with speed reductions in certain track locations.<sup>3</sup> By December 9, 2013, Metro-North had a plan to implement actions to ensure it complied with FRA's emergency order by the end of the year.<sup>4</sup>

When it comes to the safety of transporting hazardous materials, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for ensuring that, regardless of mode, hazardous materials are transported in a way that minimizes risks to life and property. Specifically, PHMSA administers nationwide safety programs designed to protect the public and the environment from the risks associated with the commercial transportation of hazardous materials by air, rail, vessel, highway, and pipeline. Under its hazardous materials safety program, PHMSA oversees the safe and secure shipment of nearly 1.4 million daily movements of hazardous materials, such as explosive, flammable, corrosive, and radioactive materials. These materials include such common products as paints, fuels, fertilizers, alcohols, chlorine, fireworks, crude oil, and batteries that are essential to the general public and local economies. In total, about 3 billion tons of hazardous material moves each year in the United States.

To carry out its mission, PHMSA promulgates the hazardous materials regulations (HMR).<sup>5</sup> By statute, a material or group or class of material is considered hazardous if the Secretary determines that transporting that material in commerce in a particular amount or form may pose an unreasonable risk to health and safety or property.<sup>6</sup> Unlike other agencies within the

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<sup>3</sup> Emergency Order Establishing Requirements for Controlling Passenger Train Speeds and Staffing Locomotive Cabs on Metro-North Commuter R.R. Co., 78 Fed. Reg. 75442 (ordered Dec. 11, 2013).

<sup>4</sup> Letter from Robert C. Lauby, Assoc. Adm'r for R.R. Safety, Fed. R.R. Adm., to Howard Permut, President, Metro-No. Commuter R.R. Co. (Dec. 9, 2013).

<sup>5</sup> See 49 C.F.R. parts 171-180

<sup>6</sup> See 49 U.S.C. 5103(a).

the U.S. Department of Transportation (DOT) whose regulations apply to a specific transportation mode, such as rail, motor carrier, and aviation, the HMR apply to the product itself. The HMR categorize hazardous materials into nine classes, and set forth transportation requirements for packaging, marking and labeling, shipping papers, loading, placarding, and segregation. PHMSA shares its enforcement responsibility for the HMR with the other modal administrations within DOT, including FRA for the safety of transporting hazardous materials by rail.

Due to the increase in crude production in North America from formations like the Bakken and Canada's oil sands, the movement of crude by railroad has increased from 9,500 carloads a year in 2008 to approximately 400,000 carloads in 2013.<sup>7</sup> This increase in production has been a boon for the American economy and for the industries and workers involved; however, the more oil moved by rail, the more likely spills and accidents may occur. So, even though 99.9977 percent of hazardous material carloads reach their destination without release,<sup>8</sup> when accidents do occur they can be high profile.

In March 2013, FRA and PHMSA began planning *Operation Classification*, which was launched in August 2013 to investigate how shippers and carriers are classifying and testing crude oil. The joint effort is primarily targeted at shipments from the Bakken and consists of unannounced spot inspections, data collection, and sampling as well as verifying compliance with federal safety regulations. On November 20, 2013, FRA and PHMSA jointly issued a notice of safety advisory.<sup>9</sup> The notice reinforced the importance of the proper characterization, classification, and selection of a hazardous materials packing group and reminded offerors of hazardous materials by rail and rail carriers of the importance of updated safety and security plans for hazardous materials in packing groups I and II that conform to hazardous materials regulations.

Under its rulemaking authority, on September 6, 2013, PHMSA issued an advanced notice of proposed rulemaking (ANPRM) addressing several petitions for rulemaking and recommendations of the National Transportation Safety Board (NTSB) regarding the design of Department of Transportation Specification 111 tank cars (DOT-111) used for transporting crude oil and other hazardous and non-hazardous materials.<sup>10</sup> PHMSA extended the comment period for the ANPRM to December 5, 2013, and is currently considering the comments filed in the docket. Among the petitions addressed in the ANPRM was one filed by the Association of American Railroads (AAR) on behalf of the AAR's Tank Car Committee, which includes a number of stakeholders affected by changes to tank car standards. The AAR petition, filed March

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<sup>7</sup> Edward R. Hamberger and Andrew J. Black, "Freight Rail and Pipelines Deliver Energy for America," The Hill, Congress Blog, November 5, 2013, <http://thehill.com/blogs/congress-blog/energy-environment/189187-freight-railand-pipelines-deliver-energy-for-america>.

<sup>8</sup> Association of American Railroads and American Shortline and Regional Railroad Association, Comment on Docket No. PHMSA—2012—0082: Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation, 2 (filed Nov. 14, 2013).

<sup>9</sup> Notice of Safety Advisory, Safety and Security Plans for Class 3 Hazardous Materials Transported by Rail, 78 Fed. Reg. 69745 (noticed Nov. 29, 2013).

<sup>10</sup> Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation, 78 Fed. Reg. 54849 (proposed Sept. 6, 2013) (to be codified at 49 C.F.R. pts. 171-180).

9, 2011, proposed new standards for DOT-111s that AAR adopted as an industry-wide standard for all new-build DOT-111s (petition cars).<sup>11</sup>

More recently, in January 2014, Secretary Foxx and members of the railroad and oil industries met to discuss how they could work together to improve the safety of crude by rail. The industry and government entities are continuing to work on voluntary measures to improve operations and share information regarding the increase in crude oil transportation, including that from the Bakken.

### Positive Train Control (PTC)

Affecting both passenger and freight rail is the PTC mandate required by Section 104 of the Railroad Safety Improvement Act,<sup>12</sup> which must be in place by December 31, 2015. In 2012, Class I railroads operated 60,000 miles of track, which potentially requires the installation of PTC under the law. The intercity passenger and commuter railroads account for an additional estimated 8,400 miles of track required to be equipped with PTC.

Most railroads have reported to the Committee that they will not be able to meet the 2015 deadline due to technological difficulties, lack of spectrum and radio, difficulties with FRA's interpretation of the law, and financial constraints. FRA estimates the total cost for implementation in excess of \$10 billion. A new challenge has also arisen with the permitting of towers by the Federal Communications Commission (FCC). This permitting process requires a comprehensive historic preservation review by FCC, including review by tribal nations, which could take well-beyond the 2015 implementation deadline. While FCC has proposed certain measures to review the PTC permits, stakeholders have expressed concern with the proposed process and their ability to comply with it and the 2015 deadline.

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<sup>11</sup> Assoc. of Am. R.R.s, Petition for Rulemaking: Tank Car Standards for DOT Class 111 Tank Cars used for Packing Group I and II Materials (filed Mar. 9, 2011).

<sup>12</sup> Pub. L. No. 110-432, Div. A.

**INVITED WITNESSES**

The Honorable Joseph Szabo  
Administrator  
Federal Railroad Administration

The Honorable Cynthia L. Quarterman  
Administrator  
Pipeline and Hazardous Materials Safety Administration

The Honorable Robert L. Sumwalt  
Member  
National Transportation Safety Board

Mr. Edward R. Hamberger  
President and Chief Executive Officer  
Association of American Railroads

Jack N. Gerard  
President and Chief Executive Officer  
American Petroleum Institute

Mr. Michael Melaniphy  
President  
American Public Transportation Association

Mr. John Tolman  
Vice President & National Legislative Representative  
Brotherhood of Locomotive Engineers and Trainmen