

JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
116TH CONGRESS
February 2019

I.	INTRODUCTION.....	2
II.	RAIL ECONOMIC REGULATION.....	2
	A. ELEMENTS OF RAIL ECONOMIC REGULATION.....	2
	1. Intercarrier Transactions	2
	2. Construction, Abandonment, and Discontinuance.....	3
	3. Rates and Practices	3
	B. SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2015 ...	4
	C. ACTIVITIES IN THE 115 TH CONGRESS.....	4
III.	AMTRAK.....	4
	A. HISTORY AND BACKGROUND.....	4
	B. PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008.....	5
	C. NORTHEAST CORRIDOR COMMISSION.....	6
	D. PASSENGER RAIL REFORM AND INVESTMENT ACT OF 2015.....	6
	E. AMTRAK INSPECTOR GENERAL.....	7
	F. ACTIVITIES IN THE 115 TH CONGRESS.....	7
IV.	FEDERAL RAIL INFRASTRUCTURE PROGRAMS	7
	A. RAILROAD REHABILITATION AND IMPROVEMENT FINANCING	7
	B. INTERCITY PASSENGER RAIL CAPITAL GRANTS, HIGH-SPEED RAIL CORRIDOR GRANTS, AND CONGESTION RELIEF GRANTS	8
	C. ACTIVITIES IN THE 115 TH CONGRESS.....	9
V.	THE FEDERAL RAIL SAFETY PROGRAM.....	9
	A. RAIL SAFETY JURISDICTION.....	9
	B. RAIL SAFETY LEGISLATION.....	10
	C. ACTIVITIES IN THE 115 TH CONGRESS.....	10
VI.	RAIL RETIREMENT, UNEMPLOYMENT, AND LABOR LAW	11
	A. RAILROAD RETIREMENT	11
	B. RAILROAD UNEMPLOYMENT	12
	C. RAILROAD RETIREMENT BOARD INSPECTOR GENERAL.....	12
	D. RAILWAY LABOR ACT.....	13
	E. FEDERAL EMPLOYERS' LIABILITY ACT.....	13
VII.	PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.....	13
	A. OVERVIEW.....	13
	B. PIPELINE SAFETY PROGRAM.....	14
	C. HAZARDOUS MATERIALS TRANSPORTATION SAFETY PROGRAM.....	15
	D. PHMSA FUNDING	16
	E. ACTIVITIES IN THE 115 TH CONGRESS	16

I. INTRODUCTION

The Subcommittee on Railroads, Pipelines, and Hazardous Materials exercises jurisdiction over the programs and activities of two U.S. Department of Transportation (DOT) modal administrations, the Federal Railroad Administration (FRA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA). The jurisdiction of the Subcommittee includes all federal laws and programs regulating railroad transportation, including railroad safety, rail infrastructure programs, economic regulation, railroad labor laws, and the non-revenue aspects of the federal railroad retirement and railroad unemployment systems. The jurisdiction of the Subcommittee also includes all federal laws and programs regulating the safety of gas and liquid pipelines and the safety of transporting material and freight that has been classified as hazardous, regardless of the mode of transportation. Agencies and other establishments outside the DOT whose rail-related activities fall within the Subcommittee jurisdiction include:

- Surface Transportation Board (STB)
- Amtrak
- Amtrak Inspector General
- Northeast Corridor Commission (NEC Commission)
- Railroad Retirement Board (RRB)
- Railroad Retirement Board Inspector General (RRB IG)
- National Railroad Retirement Investment Trust
- National Mediation Board (NMB)

II. RAIL ECONOMIC REGULATION

A. ELEMENTS OF RAIL ECONOMIC REGULATION

The economic regulation of railroads is administered by the STB, which is a five-member independent agency. The STB members are appointed by the President with the advice and consent of the Senate, serving staggered five-year terms. The responsibilities of the Interstate Commerce Commission (ICC) for economic regulation of rail carriers, already substantially reduced by the *Staggers Rail Act of 1980* (P.L. 96-448), were further reduced by the *ICC Termination Act of 1995* (ICCTA) (P.L. 104-88), which abolished the ICC and established the STB. ICCTA authorized funding for the STB for an initial period of three fiscal years. That authorization expired in 1998. Congress reauthorized the STB in the *Surface Transportation Board Reauthorization Act of 2015* through fiscal year 2020 (P.L. 114-110).

1. Intercarrier Transactions

The STB must approve mergers or acquisitions of control of one or more railroads by another railroad. In general, decisions to approve, disapprove, or modify proposed major transactions are based on a "public interest" standard. This standard encompasses an evaluation of the effect of the transaction on competition (regionally and nationally), rail service, and railroad employees. The STB approval may be conditioned on substantial modifications of the transaction as proposed by the applicant. Obtaining the STB's approval for a merger or acquisition is a regulatory permission to merge; it is not a guarantee that the merger will actually occur, and consequently, such

approval may be granted to more than one applicant. Mandatory labor protection (salary protection or severance) of up to six years of pay is required to be paid to employees affected by a merger or acquisition between the large Class I railroads. For transactions involving the smaller Class II or Class III carriers, lower levels of protection apply.

The STB is also responsible for overseeing and approving transactions involving the transfer of ownership of rail lines or trackage rights from one railroad to another. It also must approve sales of rail lines by a railroad to a non-carrier corporation. Certain types of labor protection may apply, depending upon the type of transaction and the size of the participating railroads.

2. Construction, Abandonment, and Discontinuance

An entity or individual may not provide rail transportation as part of the interstate network without STB authorization. The STB must approve an application to construct a new rail line unless it finds that the proposal would be "inconsistent with the public convenience and necessity." While the statutory presumption is in favor of new construction, the STB has broad authority to modify the proposal or place conditions on its approval.

For a railroad to remove a particular line from the rail network and cease providing rail service on that line, the STB approval must be obtained through an abandonment proceeding. Similarly, if a railroad wishes to only discontinue service, but not abandon the line completely, it must receive the STB approval. The agency is required to evaluate proposed abandonments and discontinuances under a "public convenience and necessity" standard. Mandatory labor protection applies to employees adversely affected by an approved abandonment. The STB also administers the Rails-to-Trails provisions of the *National Trails System Act* (P.L. 90-543), which establish procedures for preserving abandoned rail rights-of-way for possible future rail use through interim trail use.

3. Rates and Practices

Since the enactment of the *Staggers Rail Act of 1980*, railroads have been allowed to enter into voluntary rate contracts with shippers to provide service on specific terms and conditions. With very limited exceptions (primarily applicable to the transportation of agricultural commodities), contract rates are not subject to STB jurisdiction and do not require equal treatment of other shippers as common carrier rates do.

Since the *ICC Termination Act of 1995*, common carrier rates are not required to be embodied in centrally filed written tariffs. Instead, rail carriers still have a common carrier obligation to quote rates and provide service on reasonable request, but the rates themselves may be made available in any generally accessible form (including electronic posting) approved by the STB. Carriers also must maintain reasonable connections with adjacent rail carriers' networks to allow the free flow of rail traffic. When a route involves more than one carrier, the carriers may participate in a joint rate to collect a single combined price from the shipper for the transportation being provided.

Rate reasonableness is also the regulatory responsibility of the STB, but only for common carrier rates that exceed a minimum jurisdictional threshold of 180 percent of revenue to variable cost, and where the carrier is found to have market dominance over the traffic at issue. A shipper seeking to challenge such a rate may do so by filing an administrative complaint with the STB. The

complainant may seek relief under the agency's full rate procedures for large disputes, or may seek relief under simplified and expedited procedures for smaller disputes.

B. SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2015

The *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114-110) reauthorized the STB for the first time since the agency was created in 1995. The Act established the STB as a wholly independent federal agency; expanded the STB's membership from three to five members; gave the STB authority to investigate issues of national or regional significance on its own initiative; and reauthorized the agency through fiscal year 2020. The Act also directed the STB to modify its voluntary arbitration process, and made other changes to improve the STB's efficiency and responsiveness.

C. ACTIVITIES IN THE 115TH CONGRESS

Hearings:

- Hearing titled, "Oversight of the Surface Transportation Board Reauthorization Act of 2015" (April 17, 2018), to review progress on implementation of the 2015 Act.

Legislation:

- The Committee considered, and the House and Senate passed, H.R. 4921, "*STB Information Security Improvement Act*," which was subsequently enacted as Public Law 115-269.

III. AMTRAK

A. HISTORY AND BACKGROUND

Amtrak was created by the *Rail Passenger Service Act of 1970* (P.L. 91-518) to assume responsibility for the passenger rail services of U.S. private sector railroads. Amtrak was established as a corporation under the laws of the District of Columbia. Its preferred voting stock is owned solely by the federal government (through the DOT). To provide equipment for initial Amtrak operations, the private railroads were required to contribute passenger rolling stock, and in return received (at the individual railroad's option) either common non-voting stock in Amtrak or a federal tax credit.

Federal law also specifies Amtrak's corporate structure, including its stock issuances and the position of chief executive officer. By statute, Amtrak's board of directors now consists of 10 members: the Secretary of Transportation (Secretary), eight appointees selected by the President with the advice and consent of the Senate, and the President of Amtrak who serves as a non-voting member.

The legislation that created Amtrak, and amendments that were made to the statute in the *Passenger Rail Investment and Improvement Act of 2008* (PRIIA 2008) (P.L. 110-432), requires Amtrak to operate a national rail passenger transportation system, subject to its discontinuance authority under

49 U.S.C. 24706. Outside the Northeast Corridor (NEC) (Washington, D.C.-New York-Boston), Amtrak operates almost entirely on tracks owned by the freight railroads. Current law grants Amtrak compulsory access to the tracks and facilities of such railroads, and establishes the “incremental cost” of allowing passenger operations as the standard for compensating the freight railroads for the use of their infrastructure. In the event of disputes over access or compensation between Amtrak and the freight railroads or states, the STB is required to decide the conditions of access or the level of compensation.

Amtrak receives funding from 18 states and other entities for financial support of 29 short-distance routes (less than 750 miles). Section 209 of the PRIIA 2008 required Amtrak and its state partners to jointly develop a cost-sharing methodology to equitably charge states for state-supported intercity passenger rail service. The PRIIA 209 methodology became effective in October 2013. Continued operation of these state-supported routes is subject to annual operating agreements and state legislative appropriations according to Section 209. Fueled by Amtrak's partnership with its state partners, state-supported routes carried nearly 15 million passengers in fiscal year 2017, an increase of 2.1 percent over fiscal year 2016 levels.

In fiscal year 2017, Amtrak also carried 12 million passengers on Acela Express and Northeast Regional service trains on the NEC, its highest ridership year ever. The NEC itself was part of the estate of the bankrupt Penn Central Railroad; it then became part of the property of its federally established successor, Conrail. However, the *Railroad Revitalization and Regulatory Reform Act of 1976* (4R Act) (P.L. 94-210) required Conrail to transfer ownership of the NEC to Amtrak. In that transaction, Conrail retained a permanent exclusive easement to operate freight rail traffic on the NEC. About 90 percent of the trains operating on the NEC are commuter trains belonging to public sector commuter authorities. The compensation paid by commuters to Amtrak for use of NEC facilities is established by a standardized formula developed by the NEC Commission. As with disputes over compensation off of the NEC, the STB is required to adjudicate such disputes between commuter authorities that use the NEC and Amtrak.

Amtrak also operates 15 long-distance trains on a national network of routes ranging in length from 750 to 2,438 miles. These trains provide service at nearly half of the stations in the Amtrak system and are the only Amtrak trains in 23 of the 46 states in the network. In fiscal year 2017, all long-distance routes combined carried 4.6 million passengers, and Amtrak also achieved a new record for cost recovery, covering 94.7 percent of its operating costs with ticket sales and other revenues.

B. PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

The *Passenger Rail Investment and Improvement Act of 2008* (PRIIA 2008) (P.L. 110-432) reauthorized Amtrak for fiscal years 2008 to 2013. A number of improvements to Amtrak management were incorporated in the PRIIA 2008 authorization, including:

- Requiring Amtrak to establish an improved financial accounting system;
- Requiring Amtrak to prepare and submit to Congress a transparent five-year financial plan on which the annual budget and business plan for each fiscal year would be based;
- Requiring the development, in cooperation with host freight rail lines, of a standard set of metrics by which to measure Amtrak's performance and service quality;

- Requiring the development of a performance improvement plan for Amtrak's long-distance routes;
- Establishing the NEC Commission, as discussed below;
- Requiring the development of a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation;
- Requiring the development and implementation of a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the states and Amtrak associated with state-supported routes;
- Establishing passenger train on-time performance standards and procedures for awarding damages and relief for the failure of freight or passenger trains to abide by such standards; and
- Requiring the development and implementation of improved Amtrak onboard services such as food and beverage service.

C. NORTHEAST CORRIDOR COMMISSION

The NEC is a valuable transportation asset to the region and nation as a whole. It is also one of the world's most complicated railroad corridors, with roughly 150 daily Amtrak trains and nearly 1,800 daily commuter and freight trains. The NEC Commission was created to implement a long-term, regional investment strategy for the NEC; advance near-term improvement projects; coordinate regional planning and communication; and educate stakeholders and the public about the NEC's investment needs and role in economic growth and development. The Commission was also tasked with developing a formula for determining and allocating costs, revenues, and compensation for NEC commuter rail passenger transportation. It is made up of members from each of the NEC states (including the District of Columbia), Amtrak, and the DOT, along with non-voting members from the freight railroads that use the NEC.

D. PASSENGER RAIL REFORM AND INVESTMENT ACT OF 2015

The *Passenger Rail Reform and Investment Act of 2015* (PRRIA 2015) was included as Title XI of the *Fixing America's Surface Transportation Act of 2015*, and reauthorized Amtrak, Amtrak's Office of the Inspector General, and the NEC Commission through fiscal year 2020. It also authorized a new grant program for federal-state partnerships to bring the NEC back to a state-of-good-repair. PRRIA 2015 changed the authorization structure of Amtrak by providing funding by service – the NEC and the National Network – rather than providing separate grants for operating and capital/debt service activities. Funds may be transferred between accounts upon notification to the Amtrak Board of Directors. The Act also reformed Amtrak's operations, budgeting, and planning processes to reflect the lines-of-business approach, including the allocation of costs and revenues to each account, and provided new procedures for Amtrak to follow when preparing and submitting a request for federal grants.

PRRIA 2015 also required Amtrak's accounting to be more transparent. Amtrak must provide detailed information to states on the costs of the routes for which the state provides financial support. Further, Amtrak is required to complete detailed five-year capital and financial plans, with annual explanations of its prior year performance relative to the plan. PRRIA 2015 also established a State-Supported Route Advisory Committee to promote mutual cooperation and planning pertaining to the rail operations of Amtrak and related activities of trains operated by Amtrak on state-supported routes, which account for nearly half of Amtrak's total ridership. PRRIA

2015 also provided reforms to Amtrak's food and beverage service, including greater use of local food and beverage, and created more opportunities for private-sector participation in station development, right-of-way leveraging, and operations.

E. AMTRAK INSPECTOR GENERAL

The Amtrak Inspector General (Amtrak IG) was reauthorized by PRRIA 2015 for fiscal years 2016 through 2020. The Amtrak IG's mission is to conduct and supervise independent and objective audits, inspections, evaluations, and investigations relating to Amtrak's programs and operations. The original authorizing statute for the Amtrak IG was the *Inspector General Act of 1978* (IG Act) (P.L. 95-452), which is permanent law. The IG Act requires all federal IGs to:

- Conduct and supervise audits and investigations relating to programs and operations;
- Provide leadership and coordination and recommend policies for programs and operations designed to promote economy, efficiency, and effectiveness;
- Prevent and detect fraud and abuse; and
- Provide the head of the establishment and Congress information about problems and deficiencies in programs and operations and the need for corrective action.

Because the IG Act does not specify how an Inspector General's Office will be funded, the Amtrak IG was funded as a subgrantee of Amtrak prior to the enactment of PRIIA 2008. To ensure the independence of the Amtrak IG, PRIIA 2008 and PRRIA 2015 established a separate funding authorization for the Amtrak IG (which is treated for budgetary purposes as an independent federal agency). It also expanded the Amtrak IG's authority to be more consistent with other federal IGs.

F. ACTIVITIES IN THE 115th CONGRESS

Hearings:

- Hearing titled, "Building a 21st Century Infrastructure for America: Challenges and Opportunities for Intercity Passenger Rail Service" (June 22, 2017), which examined the President's fiscal year 2018 budget request and the level of investment in passenger rail.
- Hearing titled "Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives" (October 4, 2017), which provided the views of the railroad industry's stakeholders regarding infrastructure in the 21st Century.

IV. FEDERAL RAIL INFRASTRUCTURE PROGRAMS

A. RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

The Railroad Rehabilitation and Improvement Financing program (RRIF) was established by the *Transportation Equity Act for the 21st Century* (TEA-21) (P.L. 105-178) and amended by the *Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users* (SAFETEA-LU) (P.L. 109-59) and PRRIA 2015. Under this program, the Administrator of FRA is authorized to provide direct

loans and loan guarantees up to \$35 billion. Up to \$7 billion is reserved for projects benefiting short line (Class II and III) freight railroads. RRIF loan funds may be used to:

- Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track components of track, bridges, yards, buildings and shops, and costs related to these activities, including pre-construction costs;
- Develop or establish new intermodal or railroad facilities;
- Refinance outstanding debt incurred for the purposes listed above;
- Reimburse planning and design expenses relating to such purposes; or
- Finance certain economic development, and related infrastructure.

Direct loans may fund up to 100 percent of a railroad project with repayment periods of up to 35 years after the date of substantial completion of the project at interest rates equal to the cost of borrowing to the government. Eligible borrowers include railroads, state and local governments, government-sponsored authorities and corporations, joint ventures that include at least one railroad, and limited option freight shippers who intend to construct a new rail connection between a plant or facility and a railroad. Of the \$35 billion in loan authority authorized under the RRIF program, the DOT has executed only about \$5.4 billion in loans as of October 2018. According to the DOT, \$29.6 billion is currently available in credit authority. PRRIA 2015 also made several improvements to the RRIF program. The Act streamlined the approval process, authorized the Secretary to enter into master credit agreements, and made it easier to develop partnerships that combine RRIF loans with other types of financing, including private financing. The Act also established several options for applicants to establish creditworthiness for purposes of determining the amount of credit risk premium, and required the Secretary to pay back the credit risk premium, with interest, to a borrower that has repaid its RRIF loan.

B. INTERCITY PASSENGER RAIL CAPITAL GRANTS, HIGH-SPEED RAIL CORRIDOR GRANTS, AND CONGESTION RELIEF GRANTS

Three new capital grant programs were authorized in PRIIA 2008: capital investment grants to support intercity passenger rail service, codified at section 24402 of title 49, United States Code, high-speed rail corridor development grants, codified at section 26106 of title 49, United States Code, and congestion relief grants to reduce congestion or facilitate ridership growth in heavily traveled rail corridors, codified at section 24105 of title 49, United States Code. The intercity passenger rail capital grants were authorized at a total of \$1.9 billion over five years (fiscal years 2009 to 2013); the high-speed rail grants were authorized at a total of \$1.5 billion over five years (fiscal years 2009 to 2013); and the congestion relief grants were authorized at a total of \$325 million over four years (fiscal years 2010 to 2013). The combined programs were appropriated a total of \$10.5 billion in the *American Recovery and Reinvestment Act* (ARRA) (P.L. 111-5) and the Appropriations Acts for fiscal years 2009 (P.L. 111-8) and 2010 (P.L. 111-117) exceeded the authorized funding levels under PRIIA 2008. A total of \$400 million was subsequently rescinded in fiscal year 2011. In these Appropriations Acts, funding was provided in a consolidated program called “High-Speed and Intercity Passenger Rail” (HSIPR) grants.

PRRIA 2015 restructured and consolidated the grant programs administered by the FRA to include: Consolidated Rail Infrastructure and Safety Improvement Grants, authorizing grants for passenger and freight rail projects that improve safety, reliability or efficiency; Federal Partnership

for State of Good Repair Grants, authorizing capital grants to reduce the state of good repair backlog for assets used to provide intercity passenger rail service; and, Restoration and Enhancement Grants, authorizing operating assistance grants to initiate, restore, or enhance intercity passenger rail service. PRRIA 2015 authorized a total of \$2.2 billion for these programs for fiscal years 2016 through 2020.

C. ACTIVITIES IN THE 115th CONGRESS

Hearings:

- Hearing titled, “Building a 21st Century Infrastructure for America: Rail Stakeholders’ Perspectives” (October 4, 2017), which was part of a series the Committee held to hear stakeholders’ views on the infrastructure needs across the modes.
- Field hearing titled, “Continued Oversight of the California High Speed Rail Project” (August 9, 2018), which examined the status of the project and use of federal funding.

V. THE FEDERAL RAIL SAFETY PROGRAM

A. RAIL SAFETY JURISDICTION

The FRA is the component of the DOT responsible for administering federal railroad safety laws. The broad safety authority of the FRA encompasses railroad safety practices, equipment, and reporting. The FRA is also responsible for inspecting railroad operations for compliance with federal safety requirements. Federal rail safety statutes are found in subtitle V of title 49, United States Code. In addition, the FRA administers a number of railroad development programs, such as the high-speed rail research and development program, the rail infrastructure programs, and federal oversight of Amtrak, which are discussed separately in this document.

Federal regulation of railroad safety practices began in the late 19th century, when statutes governing specific aspects of railroad equipment were enacted and regulatory authority was vested in the ICC. When the DOT was created in 1966, all safety responsibilities of the ICC were transferred to the DOT. In 1970, the *Federal Railroad Safety Act* (Title II of P.L. 91-458) was enacted, giving the DOT comprehensive authority over rail carriers’ safety practices and equipment.

Prior to 1988, the FRA had no jurisdiction over railroad employees— only the carriers themselves. As a result of the 1987 Chase, Maryland, Conrail-Amtrak collision (caused by a drug-impaired engineer), Congress amended the safety laws through the *Rail Safety Improvement Act of 1988* (P.L. 100-342) to give the FRA direct jurisdiction over railroad employees in safety-sensitive positions. The 1988 legislation also required the FRA to adopt and implement a system of engineer certification or licensing. Previously, all aspects of engineer training and qualification (including physical standards) had been left solely to the rail carriers.

In addition to the federal safety regulatory and inspection program, the FRA administers a safety research and development program. The goal of the research and development program is to provide science and technology support for rail safety rulemaking and enforcement and to stimulate

technological advances. The FRA owns the Transportation Technology Center (TTC) near Pueblo, Colorado, where much of the research and development activities take place. The TTC is operated by Transportation Technology Center, Inc., a wholly-owned subsidiary of the Association of American Railroads, under a long-term contract.

B. RAIL SAFETY LEGISLATION

In October 2008, the *Rail Safety Improvement Act of 2008* (RSIA) (P.L. 110-432) was enacted and was the first rail safety reauthorization bill since the expiration of the authorization for FRA's safety activities at the end of fiscal year 1998. One of the most significant provisions of the RSIA was a mandate for railroads to implement Positive Train Control (PTC) systems by December 31, 2015, on rail routes carrying passengers or certain poisonous or toxic-by-inhalation hazardous materials. Another provision amended the hours of service laws for railroad employees, limiting time on duty or other mandatory service to 276 hours per month, with a cap of 12 consecutive hours on duty and minimum off-duty time of 10 consecutive hours. Whistleblower protections were strengthened, and a National Transportation Safety Board (NTSB) program was established to help victims of rail passenger accidents that involve Amtrak or high-speed rail passenger carriers and result in a major loss of life. Funding for the FRA rail safety programs was authorized under RSIA for fiscal years 2009 to 2013.

In October 2015, the *Positive Train Control Enforcement and Implementation Act of 2015*, enacted as part of the *Surface Transportation Extension Act of 2015* (P.L. 114-73), extended the deadline for installation of PTC to December 31, 2018. At the discretion of the Secretary, the deadline may be extended for individual railroads for up to two additional years. The Act requires each railroad carrier to report annually to the DOT on its progress toward implementing PTC systems. PRRIA 2015 made available \$199 million from the Mass Transit Account of the Highway Trust Fund for discretionary grants to public transit agencies and state and local governments to assist them with the costs of installing PTC.

PRRIA 2015 also contained provisions to improve freight and passenger rail safety, efficiency, and reliability. The Act included several provisions to improve safety at highway-rail grade crossings, including a requirement that all states develop highway-rail grade crossing safety action plans. The Act emphasized the safety of intercity passenger and commuter rail operations, with requirements that carriers develop action plans to ensure compliance with speed limits on curves and in bridges and tunnels; that the Secretary evaluate track inspection regulations on high-density commuter railroad lines; and that audio and image recording devices be installed in passenger train locomotives. PRRIA 2015 also included several new requirements to strengthen the safety of transporting flammable liquids, including crude oil and ethanol, by rail (see Hazardous Materials Transportation Safety Program).

C. ACTIVITIES IN THE 115th CONGRESS

Hearings:

- Roundtable titled, "Emerging Railroad Technologies" (March 17, 2017), which examined new technologies in the rail industry that could promote safety, reliability, and efficiency.

- Hearing titled, “Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline, and Hazardous Materials Safety Regulation and Opportunities for Reform” (April 26, 2017), which reviewed regulatory reform efforts across the Subcommittee’s jurisdiction.
- Hearing titled, “Oversight of Positive Train Control Implementation in the United States” (February 12, 2018), which examined the status of railroads’ implementation of PTC.
- Hearing titled, “The State of Positive Train Control Implementation in the United States” (September 13, 2018), which was a follow-up hearing to the February 12, 2018, hearing for the Committee to receive updates on the status of PTC implementation.

Legislation:

The Committee marked up and reported, and the House passed, H.R. 4925, *FRA Safety Data Improvement Act*.

VI. RAIL RETIREMENT, UNEMPLOYMENT, AND LABOR LAW

A. RAILROAD RETIREMENT

Railroad workers are not covered by the Social Security Act. Instead, a unique railroad retirement system applies to railroad employees. While the Committee on Transportation and Infrastructure has jurisdiction over all benefit aspects of the program, revenue aspects fall under the jurisdiction of the Committee on Ways and Means.

During the 1930s, when Social Security legislation was being debated, railroad workers sought a program unique to the railroad industry that would take into account railroad work performed before 1937, when the *Railroad Retirement Act* (RRA) was enacted, and that would begin paying benefits immediately.

In 1946, the RRA was amended to provide survivor benefits and to establish an occupational disability program for employees who cannot perform their “regular railroad” job due to injury. In 1951, the Act was amended again to provide for spousal benefits.

The *Railroad Retirement Act of 1974* (P.L. 93-445) substantially restructured the railroad retirement program. The Act set up a two-tiered system where “Tier I” benefits are almost identical to Social Security benefits, and “Tier II” benefits represent a federal government-administered industrywide pension plan. In addition, the 1974 Act provided for the phase-out of “dual benefits” for employees who were eligible for benefits under both the Social Security System and the Railroad Retirement System. However, employees eligible for dual benefits prior to 1974 were grandfathered and the federal government continued to pay these benefits out of general revenues. A series of laws passed in the 1980s was aimed at ensuring the financial solvency of the railroad retirement trust fund by substantially increasing payroll taxes and by placing retirement benefits on the same footing as Social Security benefits for federal tax purposes.

The Railroad Retirement System is funded through a payroll tax paid by railroad employers and employees. Currently, both employers and employees pay a 7.65 percent payroll tax for Tier I, while for Tier II, employees pay a 4.9 percent payroll tax and employers pay a 13.1 percent tax. In fiscal year 2015, a total of \$12.3 billion was paid in retirement, survivor, and disability benefits to about 558,000 annuitants.

The Railroad Retirement System is administered by the Railroad Retirement Board (RRB), a three-member independent agency whose members are appointed by the President for staggered five year terms and are subject to Senate confirmation. By law, one of the members is selected based on the recommendations of rail labor, one is based on the recommendations of rail management, and the chairman is chosen to represent the public interest. The Board's headquarters are in Chicago, Illinois, and there are numerous field offices throughout the country. The Board has approximately 850 employees and an annual budget for administration of about \$111 million.

Separate from the RRB, however, is the National Railroad Retirement Investment Trust (NRRIT), which was established by the *Railroad Retirement and Survivors' Improvement Act of 2001* (P.L. 107-90). NRRIT is charged with the sole mission of managing and investing railroad retirement assets in a diversified investment portfolio in the same manner as those of private sector retirement plans. NRRIT is a tax-exempt entity independent from the federal government. Its Board is made up of seven trustees, with three selected by railroad labor unions, three selected by railroad companies, and one independent trustee selected by the other six trustees. Administrative expenses of the trust are paid out of the trust's assets. NRRIT must submit an annual management report to Congress on its operations, including a statement of financial position, statement of cash flows, a statement on internal accounting and administrative control systems, the independent auditor's report, and any other information necessary to inform Congress about its operations and financial condition. It is permanently authorized.

B. RAILROAD UNEMPLOYMENT

The RRB also administers the Railroad Unemployment Insurance (RUI) system, which provides unemployment and sickness benefits to railroad workers who do not benefit from the standard state-federal unemployment compensation system. The RUI system is supported by payroll taxes on rail carriers. However, RUI taxes are not fixed by statute, as are retirement taxes, but since 1988 have instead been "experience-rated," so that each railroad's annual premiums reflect its actual unemployment claims experience from the prior year. During fiscal year 2015, a total of \$83 million was paid to unemployment and sickness claimants.

C. RAILROAD RETIREMENT BOARD INSPECTOR GENERAL

The RRB IG plays a role in overseeing the activities of the RRB. The *Railroad Retirement Solvency Act of 1983* (P.L. 98-76) amended the RRA to provide for an Office of Inspector General (OIG) at the RRB. The RRB IG is a Presidential appointee, with Senate confirmation, who serves independently to the RRB Board Members and Congress. Like other federal IGs, the RRB IG is charged with promoting economy, efficiency, and effectiveness in all of RRB's programs and operations. To carry out this mission, the RRB IG conducts audits, evaluations, management reviews, and inspections to ensure efficiency, economy, and effectiveness within the RRB. The RRB IG also identifies and investigates cases of fraud and abuse, working closely with federal prosecutors to make the appropriate referrals for criminal or civil prosecution.

D. RAILWAY LABOR ACT

The *Railway Labor Act* (P.L. 69-257) and enacted in 1926 governs labor relations in the railroad and airline industries, and only those industries. The Subcommittee has jurisdiction over those aspects of the Act that apply to the railroad industry.

The National Mediation Board (NMB) is the independent Federal agency responsible for administering the Railway Labor Act. The NMB consists of three members who are appointed by the President for three-year terms and are confirmed by the Senate. Not more than two of the members may be from the same political party. The chairman is selected among members on a rotating annual basis. The NMB has approximately 52 employees and an annual budget of about \$8 million.

The NMB is responsible for mediating disputes over wages, hours, and working conditions for the 750 rail and air carriers and the approximately 795,000 employees in the two industries. When mediation efforts fail, the parties are encouraged to submit their disputes to binding arbitration. If the parties refuse arbitration, the NMB may certify to the President that an imminent strike may threaten an interruption of commerce. The President can then appoint an Emergency Board to make recommendations for resolution of the disputed issues. Generally, these reports form the basis of a settlement.

In the cases where the Presidential Emergency Boards do not produce a settlement, Congress has in the past enacted ad hoc legislation to require settlements. The last such legislative interventions occurred in 1991, 1992, and 1994.

E. FEDERAL EMPLOYERS' LIABILITY ACT

The *Federal Employers' Liability Act* (FELA) (P.L. 60-100) is a workers' compensation statute applicable only to the railroad industry. FELA was enacted in 1908, before state workers' compensation laws were widely adopted. FELA allows railroad workers the right to sue their employers for unlimited damages related to on-the-job injuries, including compensation for medical expenses, lost wages, disabilities, future earnings losses, and pain and suffering. To receive an award, the employee must prove negligence on the part of the employer. By the same token, if the employer can show negligence on the part of the employee, it's possible that no damages would be awarded. This fault-based liability system differs from the no-fault workers' compensation statutes applicable to other industries.

Although no administrative process for implementing FELA is prescribed by law, a standard procedure has developed over the years for most claims. Currently, about 70 percent of claims are handled without litigation and without employee legal representation.

VII. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

A. OVERVIEW

The PHMSA was created by the *Norman Y. Mineta Research and Special Programs Improvement Act of 2004* (P.L. 108-426). Prior to its enactment, the DOT's Research and Special Programs Administration handled pipeline and hazardous materials safety. PHMSA is charged with the safe

and secure movement of almost one million daily shipments of hazardous materials by all modes of transportation. The agency also oversees the Nation's 2.5 million miles of gas and hazardous liquid pipelines, which account for 63 percent of the energy commodities consumed in the United States.

PHMSA is headed by an Administrator, who is appointed by the President, with the advice and consent of the United States Senate. By law, the PHMSA must also have a Chief Safety Officer, who assists the Administrator and Deputy Administrator in establishing agency-wide safety and security policies, objectives, and priorities relating to the transportation of hazardous materials by all modes of transportation, including pipelines. The Chief Safety Officer is also responsible for developing and executing the agency strategic plan and performance plans for the accomplishment of PHMSA's goals.

B. PIPELINE SAFETY PROGRAM

Pipeline safety is governed by the *Natural Gas Pipeline Safety Act of 1968* (P.L. 90-481) and the *Hazardous Liquid Pipeline Safety Act of 1979* (P.L. 96-129), which have now been codified in subtitle VIII of title 49, United States Code. Chapters 601, 603, and 605 of title 49 were amended in 2002 and again in 2006. The Acts provide for the federal safety regulation of pipeline facilities used in the transportation of hazardous liquids and natural and other gases. The 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.

The 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. Regulatory programs are focused on ensuring safety in the design, construction, testing, operation, and maintenance of pipeline facilities, and in the siting, construction, operation, and maintenance of liquefied natural gas facilities. In support of these regulatory responsibilities, the PHMSA administers grants to aid states in conducting intrastate gas and hazardous liquid pipeline safety programs; monitors performance of those state agencies participating in the programs; collects, compiles, and analyzes pipeline safety and operating data; and conducts training programs through the Transportation Safety Institute for government and industry personnel in the application of the pipeline safety regulations. The PHMSA also conducts a pipeline safety technology program with an emphasis on applied research.

In 2012, Congress enacted the *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011* (Pipeline Safety Act) (P.L. 112-90), which reauthorized federal pipeline safety programs through fiscal year 2015. The Pipeline Safety Act adopted a number of provisions to enhance safety in pipeline transportation, including:

- Increasing maximum civil penalties for violations of pipeline safety rules and regulations;
- Requiring that states eliminate most exemptions to their "Call Before You Dig" programs in order to receive federal grants;
- Requiring the Secretary, if appropriate, to require the use of automatic or remotely-controlled shutoff valves, or equivalent technology, on newly constructed or entirely replaced transmission pipelines;

- Requiring the Secretary to evaluate and potentially require, based on that evaluation, expanding pipeline integrity management requirements beyond high consequence areas and installation of leak detection systems;
- Establishing enhanced requirements for maximum allowable operating pressure of gas transmission pipelines; and
- Requiring the DOT and pipeline operators to provide information to first responders on the location of pipelines in their jurisdiction.

However, many of those mandates have not been implemented. Congress reauthorized the PHMSA's pipeline safety program in the 114th Congress by enacting the *Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016* (PIPES Act) (P.L. 114-183). The PIPES Act ensures the PHMSA completes the 2011 Act requirements.

The PIPES Act also requires the PHMSA to set federal minimum safety standards for underground natural gas storage facilities, establish revised safety standards for liquefied natural gas facilities, and increase inspection requirements for certain underwater oil pipelines. It provides the PHMSA with emergency order authority, tailored to the pipeline sector, to impose emergency restrictions, prohibitions, and safety measures on owners and operators of pipeline facilities to abate imminent hazards taking into account public health and safety, network, and customer impacts.

The PIPES Act ensures that pipeline operators receive timely post-inspection information from the PHMSA to allow them to maintain and improve their safety efforts, and ensures that product composition information is quickly provided to first responders after an incident. The Act also provides for a number of assessments of the current safety program, including the effectiveness of integrity management programs; the use of technology to improve damage prevention; and the latest innovations in pipeline materials, corrosion prevention technology, and training. In order to better harmonize states, industry stakeholders, and safety groups with the federal government, the PIPES Act creates a working group to develop recommendations on how to create an information sharing system to improve safety outcomes as well as authorizes the PHMSA to study the feasibility of a national integrated pipeline safety database. The bill also requires the Secretary to report on the feasibility of establishing a national integrated pipeline safety regulatory inspection database to improve communication and collaboration.

C. HAZARDOUS MATERIALS TRANSPORTATION SAFETY PROGRAM

The *Hazardous Materials Transportation Act* (P.L. 93-633) was enacted in 1975 and amended in 1990, 1994, 2005, 2012, and 2015. These Acts provide the Secretary with the authority to determine what materials are to be considered "hazardous" and subject to regulation. The Secretary also has the authority to issue regulations governing the transportation of hazardous materials. These regulations are applicable 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. In 1997, a final rule was issued extending hazardous materials regulations, with certain exceptions, 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. For highway

routing, the federal government issues standards that the states must follow in establishing highway routes over which hazardous materials may or may not be transported.

Another method of ensuring safety is through the adequate training of hazmat employees. The *Hazardous Materials Transportation Uniform Safety Act of 1990* (P.L. 101-615) required all hazmat employers to train all hazardous materials employees in the safe loading, unloading, handling, storing, and transporting of hazardous materials, as well as emergency preparedness to respond to emergencies or incidents. The 2012 reauthorization of the PHMSA required operations-level training for emergency responders that are trained using PHMSA grants, required an evaluation of paperless hazard communications systems, increased civil penalties, reformed the hazmat special permits and approvals program, established a program review for motor carrier permitting, and required an evaluation and report on the safety of transporting flammable liquids in the external product piping of cargo tank motor vehicles (wetlines). The legislation also strengthened hazardous materials training and enforcement, enhanced data collection and analysis, and improved research to reduce the risks associated with hazardous materials transportation.

The *Hazardous Materials Transportation Safety Improvement Act of 2015*, enacted as Title VII of the FAST Act, reauthorized the hazardous materials safety program through 2020. The Act included a number of provisions to enhance safety, with a significant focus on the transportation of flammable liquids, including crude oil, by rail. The Act requires all new tank cars to be equipped with thermal blankets and protection for top fittings; mandates that all DOT-111 tank cars in flammable liquids service be retrofitted in accordance with new DOT standards; requires railroads to provide states and local responders with advanced notification and information on high-hazard flammable trains; authorizes grant funding to assist communities in preparing for and responding to hazardous materials accidents; requires withdrawal of the agency's proposed wetlines rule; improves the process for review of special permits and approvals; and requires railroads to develop comprehensive oil spill response plans.

D. PHMSA FUNDING

The *Hazardous Materials Transportation Safety Improvement Act of 2015* reauthorized PHMSA for fiscal years 2016 through 2020, and Congress appropriated \$55.6 million for the agency's hazardous materials safety program and \$28.3 million for emergency preparedness grants in fiscal year 2016. The PIPES Act reauthorized the pipeline safety program for fiscal years 2016 through 2019; Congress appropriated \$21 million for the PHMSA's administrative expenses and \$146.6 million for pipeline safety in fiscal year 2016.

E. ACTIVITIES IN THE 115th CONGRESS

Hearings:

- Hearing titled, "Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline, and Hazardous Materials Safety Regulation and Opportunities for Reform" (April 26, 2017), which reviewed regulatory reform efforts across the Subcommittee's jurisdiction.

- Hearing titled, “PIPES Act of 2016 Implementation: Oversight of Pipeline Safety Programs” (June 21, 2018). This hearing examined the outstanding Congressional mandates that were enacted as part of the *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011* and the PHMSA’s status on rulemakings.

